

SAMPLE
VERMONT HEALTH INFORMATION EXCHANGE (VHIE)
SERVICES AGREEMENT - 2020

This Agreement, effective as of the 1st day of March, 2020 (the “Effective Date”), establishes the rights and responsibilities of **VERMONT INFORMATION TECHNOLOGY LEADERS, INC.**, a Vermont non-profit corporation (“VITL”), and , (the “Health Care Organization” or “HCO”).

RECITALS:

A. VITL is the statewide health information exchange organization for the State of Vermont and in such capacity has created the Vermont Health Information Exchange (the “VHIE”).

B. Health Care Organization seeks to exchange and make available Protected Health Information and Data on the VHIE and/or to access Protected Health Information and Data on the VHIE as permitted by state and federal law.

C. VITL and Health Care Organization agree to update the terms and conditions for the Services provided by VITL to support the VHIE following changes in law related to Patient consent, and agree to have this Agreement supersede any prior agreement between them.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and the parties intending to be bound thereby, HCO and VITL each agree as follows:

Section 1 - Definitions

The following terms shall be used as defined in this Section 1 unless otherwise indicated in this Agreement:

(a) “Accountable Care Organization” (“ACO”) shall mean a legal entity that is recognized and authorized under applicable state and federal law, is identified by a tax identification number and is formed by one or more providers that agree to work together to be accountable for providing coordinated high quality care to patients as established and authorized by the applicable federal, state or private health plan program contracting with the ACO.

(b) “Agreement” means this document and any appendices attached hereto and incorporated herein as well as the Documentation, Order Form and any Project Charter.

(c) “Authorized User” means an individual authorized by VITL and a Participating Health Care Organization to use the VHIE to access Data for a Permitted Use.

(d) “Business Associate” has the meaning contained in Appendix A.

(e) “Cross Community Access” (XCA) allows Participating Health Care Organizations the ability to query across Electronic Health Record System communities for Protected Health Information from within their Electronic Health Record.

(f) “Data” means the patient record data elements relevant to the scope of work of VITL on behalf of Health Care Organization pursuant to this Agreement and includes all written or electronic patient information relating to the Patient’s identity or to the Patient’s medical history, diagnosis, treatment, tests or prognosis which is accessible to a Participating Health Care Organization in the VHIE. Such Information may include, but not be limited to, admission, discharge, transfer, medical, prescription, billing, and/or other data for patients seen, or provided laboratory services or prescription medication, at the Health Care Organization’s facilities or offices.

(g) “Data Services” means the services to be provided to Health Care Organization pursuant to this Agreement as more particularly described in the Documentation, in an Order Form or in a Project Charter.

(h) “Data Subcontractor” means the vendor(s) with whom VITL has subcontracted as its Business Associate(s) pursuant to the terms of this Agreement to assist it in meeting its obligations under this Agreement. VITL shall obtain adequate written assurances from any Data Subcontractor that it will comply with all applicable laws, including but not limited to the HIPAA Privacy and Security Regulations.

(i) “De-Identified” shall mean that all identifying information related to an individual, as set forth in the HIPAA Privacy and Security Rule, 45 CFR Section 164.514(b), are removed from Data and it no longer constitutes PHI.

(j) “Documentation” means user and administrator manuals and guides for the scope and use of Data Services, as may be updated from time to time and that are available from VITL, including on its website (www.vitl.net) and include Policies and Procedures, as such terms are defined in Section 3, any Order Form and any Project Charter.

(k) “Electronic Health Records System” and the abbreviation “EHR system” both mean an electronic data system that stores current and historical information about patient diagnosis and treatment, including test results, provider notes, treatment notes, medication history, problem lists and other information related to care of the patient such as billing, scheduling, and registration data.

(l) “Health Care Organization” or “HCO” is defined in the opening paragraph of this Agreement and means the individual hospital, medical practice, physician practice, home health care agency or other health care provider who has entered into this VHIE Services Agreement. Health Care Organization is either a recipient of Data or a supplier of Data, or both, with respect to Data available through the VHIE.

(m) “Health Care Organization Subcontractor” means a vendor(s) with whom Health Care Organization has subcontracted as its Business Associate pursuant to the terms of this Agreement to assist it in meeting its obligations under this Agreement. Health Care Organization

shall obtain adequate written assurances from such subcontractors that they will comply with all applicable laws including but not limited to the HIPAA Privacy and Security Regulations.

(n) “Health Plan” shall mean a group health plan, health insurance company, health maintenance organization, a government health program, employee health benefit plan or other third party payer of health care as defined in the HIPAA Privacy Regulations, 45 CFR 160.103 and who qualify as a Covered Entity under 45 CFR 160.103.

(o) “HIPAA Privacy and Security Regulations” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 and the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164.

(p) “Master Patient Index” and the abbreviation “MPI” both mean an electronic data system that stores patient identifiers as well as the location of other electronic patient information that may be stored in one or more Participating Health Care Organization’s Electronic Health Records Systems and/or in the VHIE itself.

(q) “Order Form” means a document, as may be updated from time to time and agreed to between VITL and Health Care Organization which contains a description of the Data Service(s) to which Health Care Organization subscribes and any other information deemed relevant by the parties. An Order Form may contain the fees charged by VITL for Data Service(s), if any. Any Order Form shall be incorporated into and become a part of this Agreement.

(r) “Participating Health Care Organization” means an individual hospital, medical practice, physician practice, home health care agency or other health care provider who has entered into a VHIE Services Agreement or a substantially similar agreement, including Health Care Organization, thereby agreeing to participate in the exchange of Data on the VHIE.

(s) “Patient” means an individual who has received or will receive treatment or health care services from a Participating Health Care Organization.

(t) “Permitted Use” means the use of any Data available on the VHIE for the purposes of treatment, payment or health care operations as permitted under State and federal law and the Policies and Procedures of VITL as described in Section 3 of this Agreement. “Permitted Use” includes query-based access by other national exchanges for permitted purposes as defined by the Restatement II of the Data Use and Reciprocal Support Agreement (“DURSA”), August 13, 2019. “Permitted Use” may include the use of Data available on the VHIE for public health purposes with public health authorities to the extent that access is authorized under applicable law.

(u) “Project Charter” means a document agreed to by VITL and Health Care Organization which includes, among other things, a plan of implementation for Data Service(s).

(v) “Protected Health Information” and the abbreviation “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the individually identifiable health information created or received by a Business Associate from or on behalf of a Participating Health Care Organization. Such term shall also include Electronic Protected Health Information.

(w) “Quality Review” shall mean the review of Data for the purpose of disease management, utilization review or quality assessment or improvement. Utilization review includes precertification and preauthorization of services, and concurrent and retrospective review of services. It does not include post-payment audits of services rendered.

(x) “Single Sign On” (SSO) is the capability to log into multiple related, but independent software systems using one user name and password. Authorized users can enter the VITLAccess provider portal via a single sign on configuration provided within their Electronic Health Record System.

(y) “Treatment” shall have the definition assigned to it by the HIPAA Privacy and Security Regulations at 45 C.F.R. § 164.501, namely the provision, coordination, or management of health care and related services by one or more health care providers, including but not limited to, services for the diagnosis, prevention, cure or relief of a health care injury or disease. It may also include the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.

(z) “Vermont Health Information Exchange” or “VHIE” is defined in the Recitals to this Agreement and means the Vermont Health Information Exchange, an integrated electronic health information infrastructure for the sharing of PHI and Data among Participating Health Care Organizations.

(aa) “VITLAccess” is a secure internet portal which provides authorized users a patient-centered view of the Protected Health Information (PHI) available through the VHIE. It is one of several service offerings provided to Participating Health Care Organizations under this Agreement.

Section 2 – VITL’s Role and the Vermont Health Information Exchange

(a) VITL shall manage and administer the VHIE and provide Data Services to Health Care Organization as described in this Agreement, and in the Documentation and in compliance with applicable laws and regulations. VITL may delegate responsibilities related to its role to one or more Data Subcontractors so long as VITL and such Data Subcontractors are Business Associates.

(b) Health Care Organization acknowledges and agrees that access to Data shall be granted to VITL and to Data Subcontractor(s) for performance of Data Services pursuant to their respective obligations under this Agreement in operation of the VHIE. The Health Care Organization also acknowledges and agrees that access to Data is granted to VITL in order to permit VITL to create De-Identified Data for use only as permitted under VITL’s Policy on Use of De-Identified Data from VHIE as established and/or amended under the terms and conditions of Section 3 of this Agreement.

(c) VITL will make the VHIE available only for Permitted Uses as defined in Section 1(t) and in Section 3 of this Agreement. VITL shall not allow access to any Data of a Patient on

the Exchange who has affirmatively opted out of having PHI accessible on the VHIE, unless such Patient is in need of Emergency Treatment or such access is required by law.

(d) VITL will make commercially reasonable efforts to make the VHIE available to Participating Health Care Organizations 24 hours a day, 7 days a week; however the VHIE's availability may be temporarily suspended for maintenance or unscheduled interruptions. VITL will use commercially reasonable efforts to provide Participating Health Care Organizations with reasonable advance notice of any suspension or interruption of the VHIE's availability and to restore the VHIE's availability. Participating Health Care Organizations are responsible for obtaining PHI through other means during any periods when the VHIE is not available.

Section 3 – Policies and Procedures of the Vermont Health Information Exchange – Permitted Use of Data

(a) VITL will establish policies and procedures, including but not limited to policies covering the Permitted Use of Data (respectively, “Policies” and “Procedures”) that will govern VITL's, a Participating Health Care Organizations' and ACO's or Health Plans' activity on the VHIE. These Policies and Procedures shall be available at VITL's web site (www.vitl.net). VITL encourages Participating Health Care Organizations to provide input in the development and revision of Policies and Procedures through VHIE working groups and committees. These Policies and Procedures govern use of the VHIE and Data provided to and available on the VHIE. Health Care Organization's use of the VHIE constitutes acceptance of those Policies and Procedures and failure to comply with such Policies and Procedures by either VITL or Health Care Organization shall constitute a material failure to comply with the terms and conditions of this Agreement under Section 10(b) of this Agreement. To the extent that any Policy or Procedure conflicts with the terms of this Agreement, the provisions of the Policy or Procedure shall control, except that no Policy or Procedure shall allow, without the prior written consent of Health Care Organization, such consent to not be unreasonably withheld, any use of Data supplied by Health Care Organization, for any purpose other than a Permitted Use. Health Care Organization specifically agrees that VITL may provide access to Data supplied by it for the services related to Permitted Use which VITL may further describe in the Documentation and Order Form, and also agrees that VITL may provide access to such Data for Quality Review consistent with VITL's Policy on Secondary Use of PHI on the VHIE which provides for use by Accountable Care Organizations or Health Plans for Quality Review under a Data Use Agreement.

(b) Changes to Policies and Procedures. VITL may change or amend the Policies and Procedures from time to time at its discretion and will post notice of final changes at VITL's web site (www.vitl.net). VITL shall provide Participating Health Care Organizations notice of such changes to Policies and Procedures by electronic mail or other electronic notification, as well as by posting such notice on its website. Any changes will be effective 60 days following adoption by VITL, unless VITL determines that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of Data or an emergency situation. Participating Health Care Organizations will have no ownership or other property rights in the Policies and Procedures or other materials or services provided by VITL.

**Section 4 – Health Care Organization’s Role and
the Vermont Health Information Exchange**

(a) The Health Care Organization may participate in the transmission of Data through the VHIE via the submission and/or the use of Data in accordance with the terms of this Agreement and, if it does, shall only do so for a Permitted Use.

(b) The scope and arrangement of Data Services for Health Care Organization subject to this Agreement is described in the Documentation. An Order Form to this Agreement will describe the Data Services to which Health Care Organization subscribes. (Any Order Form shall amend this Agreement to the extent that any specific terms for a Data Service to be provided to Health Care Organization require additional or different terms.) Health Care Organization may delegate responsibilities related to its role to one or more Health Care Organization Subcontractors.

(c) VITL, through its agreements with Data Subcontractors, shall accept and process Data from Health Care Organization. To best promote the technical and formatting accuracy of Data available to Participating Health Care Organizations, VITL reserves the right to suspend the submission and exchange of Data to the VHIE by Health Care Organization until technical specifications are met. VITL will work with Health Care Organization to resolve any such problems.

(d) To the best of the Health Care Organization’s knowledge, Health Care Organization represents that storing its Data on the VHIE does not violate any rights, including copyrights, of third parties.

(e) Health Care Organization shall be responsible for the costs of supplying equipment for operation of its EHR system in connection with this Agreement. Health Care Organization further agrees that it shall be responsible for all costs charged by its vendors, internet service providers or telecommunications providers in connection with connecting Health Care Organization’s computer network to the VHIE.

(f) In the event that Health Care Organization requests and obtains from VITL Single Sign On functionality between its EHR system and the VHIE and/or Cross Community Access functionality, it agrees to comply with the requirements set forth in Appendix B hereto.

(g) No Data received, accessed or obtained by Health Care Organization under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of VITL.

Section 5 – Ownership of Exchange Equipment and Rights

(a) Any equipment or communication lines supplied by Health Care Organization shall remain the sole property of Health Care Organization. Equipment, software, intellectual property, or communication lines supplied by VITL shall remain the sole property of VITL.

(b) VITL or its Data Subcontractors shall retain ownership of all software (including any intellectual property rights embodied in the software or related to it) and any intellectual

property developed in connection with the VHIE or during the course of performing services related to the VHIE, whether they are performed by VITL or a Data Subcontractor. In addition, VITL or its Data Subcontractors shall own all improvements, enhancements, and derivative works of any intellectual property owned or developed by them prior to the date of the commencement of this Agreement and in the VHIE. Each Health Care Organization, if it participates in the development of intellectual property owned by VITL or any of its Data Subcontractors, hereby waives and relinquishes all rights that it may have or has in such intellectual property owned or developed by VITL or its Data Subcontractors prior to the date of the commencement of this Agreement and, to the extent it does have any such rights, hereby assigns them to VITL and its Data Subcontractors, as the case may be. VITL grants to each Health Care Organization a nonexclusive, nontransferable, non-sublicensable license to use the software solely for participation in the VHIE and subject to the limitations described in this Agreement. Health Care Organization agrees to provide reasonable assistance to VITL or its Data Subcontractors in enforcing its rights to such software and intellectual property. Neither VITL nor any of its Data Subcontractors will acquire any rights to any of Health Care Organization's confidential information which may be included in any software unless expressly agreed otherwise. This subsection shall not grant to VITL or its Data Subcontractors any rights in clinical research related intellectual property developed by Health Care Organization as a result of having access to Data under this Agreement.

Section 6 – Medical Judgment Required

Health Care Organization acknowledges that neither VITL nor the VHIE makes clinical, medical, or other decisions and participation in the VHIE is not a substitute for competent, properly trained, and knowledgeable staff who bring professional judgment and analysis to the Data provided through the VHIE. Each party further acknowledges that, as between VITL and its Data Subcontractors on the one hand and Health Care Organization and its Health Care Organization Subcontractors on the other, Health Care Organization is solely responsible for verifying the accuracy of all Data and determining the data necessary for it (or its staff) to make medical and diagnostic decisions, as well as complying with all laws, regulations, licensing requirements and Joint Commission or other accreditation recommendations or requirements applicable to its delivery of health care services.

Section 7 – Disclaimer of Warranties

(a) VITL REPRESENTS AND WARRANTS THAT TO THE BEST OF ITS KNOWLEDGE: (I) THE DATA SERVICES AND DOCUMENTATION EACH ARE AND SHALL REMAIN IN MATERIAL COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES AND REGULATIONS; AND (II) NEITHER THE DATA SERVICES, DOCUMENTATION NOR CUSTOMER'S USE OF THE SAME SHALL INFRINGE UPON THE INTELLECTUAL PROPERTY RIGHTS, CONTRACTUAL RIGHTS OR OTHER RIGHTS OF ANY THIRD PARTY.

(b) EACH PARTY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT OR IN AN APPENDIX, NO WARRANTIES HAVE BEEN MADE BY ANY OTHER PARTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA SERVICES DESCRIBED AND DELIVERED HEREUNDER OR WITH RESPECT TO

CLINICAL DATA, INFORMATION, OR THE VHIE. EACH PARTY FURTHER ACKNOWLEDGES THAT THE VHIE DOES NOT PROVIDE MEDICAL SERVICES TO PATIENTS AND THAT INDEPENDENT MEDICAL JUDGMENT MUST BE MADE IN RENDERING HEALTH CARE SERVICES TO PATIENTS. EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND LIABILITY ATTRIBUTABLE TO OR RELATED TO ANY USE, NONUSE, OR INTERPRETATION OF THE INFORMATION OR DATA USED IN THE EXCHANGE OR IN PROVIDING MEDICAL SERVICES.

(c) IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, DATA, REVENUE, BUSINESS OPPORTUNITY, OR DIRECT BUSINESS ADVANTAGE, DAMAGES RESULTING FROM PERSONAL INJURY/WRONGFUL DEATH, LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OF OR INABILITY TO USE THE VHIE), WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, CONTRIBUTION, INDEMNITY OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 8 - Indemnity

(a) Health Care Organization agrees, and shall cause its Health Care Organization Subcontractors to agree, and VITL agrees, and shall cause its Data Subcontractors to agree, to use, furnish, disclose, publish and reveal Data only in a manner that is consistent with the terms of this Agreement and VITL's Policies or Procedures and/or other policies and procedures outlined in Documentation provided by VITL or the Data Subcontractor. Health Care Organization or VITL, as the case may be, (the "Indemnifying Party") shall indemnify, defend and hold harmless the other and its respective employees, officers, directors, subcontractors and any other Participating Health Care Organization against whom any claim or cause of action is brought ("Sued Party") from any damages, litigation, liability or claimed liability, claims and any expenses including legal expenses incident thereto up to the Maximum Indemnified Amount, as defined this Section, arising out of or resulting from the Indemnifying Party's negligence in complying with the terms of this Agreement and/or VITL's Policies or Procedures and/or the Documentation. Such indemnification, up to the Maximum Indemnified Amount, shall include the payment of all costs associated with defending such claims or causes of action, whether such claims or causes of action are meritorious, including reasonable attorney's fees and any settlement by or judgment against the Sued Party arising out of or resulting from any such claim or cause of action.

(b) In the event a suit is brought against the Sued Party under circumstances where this Section applies, the Indemnifying Party, at its sole cost and expense, shall defend the Sued Party in such suit if written notice thereof is promptly given to the Indemnifying Party within a period wherein it is not prejudiced by lack of such notice. If the Indemnifying Party is required to indemnify and defend under this Section, it will thereafter have control of such litigation, but the Indemnifying Party may not settle such litigation without the consent of the Sued Party, which consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any

defense or immunity otherwise available to the Sued Party; and the Indemnifying Party, in defending any action on behalf of the Sued Party, shall be entitled to assert in any action every defense or immunity that the Sued Party could assert on its own behalf. Additionally, the Indemnifying Party agrees, to the fullest extent possible, to assign any remedies that it may have against any Health Care Organization Subcontractor or Data Subcontractor, as the case may be, for the corruption or improper use or disclosure of Data. The Indemnifying Party agrees that, although not signatories to this Agreement, any Participating Health Care Organization may enforce the provisions of this Section as if it was a party to this Agreement.

(c) For purposes of this Section, the “Maximum Indemnified Amount” means: the amount of \$3 million, such amount to be fully insured by Health Care Organization with a cyber liability insurance policy. VITL agrees to obtain and maintain cyber liability insurance with coverage in the amount of \$5 million, plus excess coverage in the amount of \$5 million.

Section 9 - Fees

(a) Fees for Data Services are described in the Fee Schedule published in the Documentation or in an Order Form. Fees shall be invoiced to Health Care Organization as provided in the Documentation. Health Care Organization shall remit payment pursuant to payment instructions on each invoice from VITL. In no event will VITL refund any fees paid by Health Care Organization as a result of termination of this Agreement for any reason.

(b) If VITL intends to change any fees payable by Health Care Organization for the provision of Data Services, VITL shall provide Health Care Organization with written notice at least 30 days prior and in such event, notwithstanding anything to the contrary contained herein, Health Care Organization may terminate this Agreement upon sixty (60) days written notice to VITL.

Section 10 - Term and Termination

(a) The term of this Agreement shall begin on the Effective Date and shall terminate when this Agreement is terminated pursuant to this Section.

(b) Either party may terminate this Agreement for cause at any time for material failure of the other party to comply with the terms and conditions thereof, if such material failure is not corrected within a period of sixty (60) days after receipt of written notice from the other party specifying such failure or, in the event that such material failure cannot be cured within such period, commence and pursue diligent efforts to cure within such time period.

(c) Either party may terminate this Agreement without cause upon one hundred-twenty (120) days prior written notice of termination to the other party.

Section 11 – Miscellaneous Provisions

(a) Compliance: VITL and Health Care Organization each agree that they shall perform their respective obligations under this Agreement in compliance with all applicable state and federal laws, rules and regulations and they each further agree that their respective use of Data under this Agreement shall be in compliance with state and federal law and regulation relative to the privacy and security of PHI. In the event that state or federal law changes during the term of this Agreement and prohibits the use and/or disclosure of Data as set forth herein, this Agreement shall automatically terminate and VITL and Health Care Organization each agree to take all appropriate and necessary actions to comply with such change in law to the extent that it has any retroactive effect.

(b) Survival: The provisions of Sections 1, 5, 7, 8 and 11 and Appendix A shall survive the termination of this Agreement indefinitely.

(c) Force Majeure: No party shall be liable or deemed to be in breach of this Agreement by reason of any act, delay or omission caused by or resulting from acts beyond the affected party's control, including, without limitation, strikes, lockouts, labor stoppages, slowdowns or other labor disputes, regulations, ordinances or order of a court of competent jurisdiction, act of government, national, state or local emergency, Act of God, war, invasion, hostilities, terrorist act, riot, civil unrest, pandemic or epidemic, flood, fire, earthquake or like natural disaster, shortage of power or telecommunications, embargo or quarantine, or any other similar cause, including unusually severe weather, beyond the reasonable control of the party claiming force majeure.

(d) Independent Contractors: It is mutually understood and agreed that in performing their respective duties and obligations hereunder, the parties are at all times acting as independent contractors with respect to each other. Nothing in this Agreement shall constitute or be construed to create a partnership or joint venture between or among the parties.

(e) Assignment: No party may assign its rights and obligations under this Agreement without the prior written consent of the other party.

(f) Notice: All notices, requests, demands, or other communications associated with this Agreement shall be in writing and will be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given or on the third day after mailing if mailed to the party to whom notice is to be given by certified mail, return receipt requested, and, in either case, properly addressed to the individual executing this Agreement on behalf of the respective party and at the address as set forth on the signature portion of this Agreement, with a copy to other persons as such party may designate in writing.

(g) Binding Effect: The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors, administrators, nominees, and assigns.

(h) No Third Party Rights: Except as otherwise specifically stated in this Agreement, this Agreement does not and will not create in any natural person, corporation, partnership, or

other organization any benefits or rights, and this Agreement will be effective only as to the parties and their successors and assigns.

(i) Notification of Claims: Each party shall promptly notify the other party upon notification or receipt of any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions arising out of or related to this Agreement, regardless of whether the other party is named as a party in such claims, demands, causes of action, lawsuits, or enforcement actions.

(j) Entire Agreement: The Recitals, Appendix A and Appendix B to this Agreement are hereby incorporated into this Agreement. This Agreement, including the Recitals, Appendix A and Appendix B, along with the most recent versions of the Documentation, Order Form and Project Charter(s), contain the entire understanding of the parties hereto regarding the subject matter hereof, and supersede all prior oral or written understandings between them.

(k) Amendment: This Agreement may be altered or amended only by a document in writing signed by both parties.

(l) Severability: If any one or more of the provisions of this Agreement shall be held invalid, illegal or unenforceable in any respect, such provisions shall not affect any other provision of this Agreement and each provision of this Agreement shall be enforced to the full extent permitted by law.

(m) Governing Law: This Agreement, together with all of the respective rights of the parties hereto, shall be governed by and construed and enforced in accordance with the laws of the State of Vermont without regard to conflicts of laws provisions. The parties agree that jurisdiction over any action arising out of or relating to the Agreement shall be brought or filed in the State of Vermont.

(n) Jury Waiver: EACH OF VITL AND HEALTH CARE ORGANIZATION HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED.

(o) Counterparts/Facsimiles: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile and electronically scanned copies hereof shall be deemed to be originals.

(p) Authority: The signatories to this Agreement represent and warrant that they are authorized to execute the same and bind their respective parties.

(q) Number and Gender: As used in this Agreement, all pronouns and any variation thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or entity may require.

(r) Headings: Any subject headings used in this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

(s) Regulatory References: A reference in this Agreement to a section in a federal, state, or local statute, law, or regulation means the section as in effect or as amended.

(t) Waiver of Breach: No failure or delay by any party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.

(u) No Exclusion: Each of Health Care Organization and VITL certifies on behalf of itself and on behalf of its respective individual directors and officers that it and they have never been excluded, debarred, suspended or otherwise determined to be ineligible from participation in any federally-funded health care program, including but not limited to Medicare and Medicaid, and no proceedings are pending or have been threatened which might result in debarment, exclusion, or determination of ineligibility.

(v) Prior Agreements Terminated. Health Care Organization and VITL may have entered into prior agreement(s) related to data services provided by VITL to Health Care Organization for the electronic sharing of medical information (collectively, the “Prior Agreements”). Both Health Care Organization and VITL agree that any and all Prior Agreements shall be terminated and no longer of any force and effect.

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IN WITNESS WHEREOF, VITL and the Health Care Organization listed below have executed this Agreement effective as of Effective Date.

Vermont Information Technology Leaders, Inc.

Health Care Organization

Signature :

Signature :

By : (Printed Name)

By : (Printed Name)

Beth Anderson

Title :

Title :

President/CEO

Date :

Date :

APPENDIX A

Business Associate and Qualified Services Organization Agreement

1. Definitions.

(i) “Business Associate” means VITL and any contractor working with VITL to fulfill its responsibilities under this Agreement, including but not limited to Data Subcontractor(s), when any of them perform services described in 45 C.F.R. § 160.103.

(ii) “Qualified Service Organization” or “QSO” shall have the same meaning as in 42 CFR § 2.11.

2. Services:

Under the terms of this Agreement, VITL provides Data Services to and for the Health Care Organization that involve the access to, or the use, disclosure, or receipt of PHI. Except as otherwise specified herein:

- (i) VITL may access, use, or disclose PHI only as necessary to perform its obligations as set forth in this Agreement;
- (ii) Additionally, VITL may use and disclose PHI as necessary to manage its internal business processes relating to its functions under this Agreement; provided, however, that any disclosures made for such purpose shall be made consistent with minimum necessary requirements under 45 C.F.R. Section 164.502(b) and only to persons who agree in writing to hold the PHI confidentially, to use or further disclose the PHI only as directed by VITL or as required by law, and to notify VITL of any discovered breach thereof within five (5) days of discovery;
- (iii) VITL may disclose PHI for the purposes authorized by this Agreement consistent with minimum necessary requirements under 45 C.F.R Section 164.502(b) only (a) to its employees, subcontractors and agents, in accordance with Subsection (vii) below, or (b) as directed by the Health Care Organization;
- (iv) VITL may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Health Care Organization except for the specific uses and disclosures set forth herein. VITL shall maintain the confidentiality of any PHI it receives or has access to as part of the Data Services provided pursuant to this Agreement, and use and/or disclose PHI only as permitted or required by this Agreement or as required by law;
- (v) VITL shall report to the designated privacy officer of Health Care Organization, in writing, any use or disclosure of PHI that is not permitted or required by this Agreement including breaches of unsecured protected health information as defined in 45 CFR 164.401 or any security incident of which VITL becomes aware, within five (5) days of VITL’s discovery of such unauthorized use, disclosure, or incident.

VITL shall take any reasonable action necessary or reasonably requested by the Health Care Organization to mitigate, to the extent practicable, any harmful effect that is known to VITL of a breach, security incident or other use or disclosure by VITL or a Subcontractor of VITL in violation of a requirement of this Appendix A. In the event of a breach of PHI, VITL's notice to Health Care Organization of such breach shall include, to the extent possible, the identification of such Patient whose PHI has been, or is reasonably believed by VITL to have been, accessed, acquired or disclosed during such breach. VITL shall also provide Health Care Organization any other available information that the Health Care Organization is required to include in the notification to the Patient even if such information becomes available after notification to the Patient, and shall take any action necessary as requested by the Health Care Organization to assist Health Care Organization in complying with any applicable breach notification requirements;

- (vi) VITL shall use all commercially reasonable efforts to maintain the privacy and security of PHI and to prevent any unauthorized use or disclosure of such protected health information. Such security measures shall, at a minimum:
 - a. Implement administrative, physical, and technical safeguards, as defined by 45 C.F.R. § 164.304, that reasonably and appropriately protect the confidentiality, integrity and availability of Health Care Organization's PHI that VITL creates, receives, maintains, or transmits on behalf of Health Care Organization; and
 - b. Ensure that any agent to whom VITL provides such PHI or access thereto agrees in writing to implement reasonable and appropriate safeguards to protect it;
- (vii) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), VITL shall require all of its employees, representatives, subcontractors, and subcontractors' employees that receive or use or have access to PHI under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply herein, including the obligation to deactivate the PHI as provided under (xi) of this section;
- (viii) VITL shall make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Secretary of the U.S. Department of Health and Human Services (HHS) for purposes of determining both VITL's and Health Care Organization's compliance with the HIPAA Privacy and Security Regulation, subject to attorney-client and other applicable legal privileges;
- (ix) VITL shall, upon written request, make available to Health Care Organization during normal business hours at VITL's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI within fifteen (15) days for purposes of enabling Health Care Organization to determine VITL's compliance with the terms of this Agreement;

- (x) VITL shall, within five (5) days of receiving a written request from Health Care Organization, provide to Health Care Organization such information as is requested by Health Care Organization to permit it to respond to a request by the subject individual for access to, amendment of, or an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.524, § 164.526 and § 164.528;
- (xi) VITL shall, within thirty (30) days of the termination of this Agreement, deactivate the interfaces established under this Agreement and access to PHI in VITL's possession so that such PHI is no longer accessible for any purpose through VITL's interfaces or systems;
- (xii) VITL agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by VITL in violation of the requirements of this Agreement; and
- (xiii) VITL agrees to document and make available such disclosures of PHI and information related to such disclosures as would be required for Health Care Organization to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3. Responsibilities of Health Care Organization:

With regard to the use and/or disclosure of PHI by VITL, Health Care Organization hereby agrees:

- (i) To inform VITL of any changes in the form of notice of privacy practices that Health Care Organization provides to individuals pursuant to 45 C.F.R. § 164.520 and provide VITL a copy of the notice currently in use;
- (ii) To inform VITL of a Patient's election not to have his or her PHI available on the VHIE as may be otherwise permitted by Health Care Organization under this Agreement pursuant to 45 C.F.R. § 164.506 or § 164.508; and
- (iii) To notify VITL, in writing and in a timely matter, of any relevant restrictions on the use and/or disclosure of PHI agreed to by Health Care Organization as provided for in 45 C.F.R. § 164.522.

4. Qualified Service Organization Provisions. This Section shall only apply in the event that VITL gains access to any Data from Health Care Organization that is subject to 42 CFR Part 2 ("Part 2 Program Information").

- (i) VITL's Role. VITL is a Qualified Service Organization or QSO of Health Care Organization for the purpose of providing the services specified in this Agreement to the extent that such services include processing Data containing Part 2 Program Information and receiving and reviewing requests for disclosures to third parties for Permitted Uses under this Agreement.

- (i) Limits on Use and Disclosure.
 - a. VITL shall only access Data or Part 2 Program Information to the extent needed by it to provide the services described in this Agreement.
 - b. VITL agrees not to use or further disclose any Part 2 Program Information other than as specified in this Agreement.
 - c. VITL acknowledges that in receiving, storing, processing, or otherwise using any Part 2 Program Information, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.
 - d. VITL shall undertake to resist in judicial proceedings any effort to obtain access to Part 2 Program Information other than as expressly provided for in 42 CFR Part 2, and VITL shall notify Health Care Organization in such case.

5. Miscellaneous.

(i) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(ii) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(iii) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

APPENDIX B

Terms of Use for Single Sign On or Cross Community Access Functionality

Section 1

If Health Care Organization is granted Single Sign On and/or Cross Community Access Functionality, Health Care Organization agrees that access through either SSO or XCA to the VHIE shall only be granted to certain of its Authorized Users (“SSO/XCA End Users”) for a Permitted Use.

Section 2

Health Care Organization agrees that it will provide to each of its SSO/XCA End Users who may use the SSO/XCA End Users functionality orientation and regular training on the terms and conditions which apply to Health Care Organization’s access to Protected Health Information on the VHIE under this Agreement, and specifically including:

- (a) that access to the Protected Health Information in the VHIE is restricted to Patients for whom the SSO/XCA End User is, or will be, involved in their diagnosis and treatment, payment for this treatment or necessary health care operations related to such treatment;
- (b) that access to the VHIE is not allowed for:
 - (i) the SSO/XCA End User to access his or her own medical record or the medical records of family members;
 - (ii) education purposes, or
 - (iii) research purposes.
- (c) the confidentiality requirements for Protected Health Information accessed in the VHIE under all VHIE Policies and Procedures, as well as under state and federal law, including the HIPAA Privacy and Security Regulations;
- (d) privacy and security compliance procedures, including safeguarding passwords and related measures; and
- (e) that all SSO/XCA End User access is subject to periodic compliance audits at any time conducted by Health Care Organization and/or VITL.

Health Care Organization agrees to provide a record of orientation and training of any VHIE SSO/XCA End User upon request by VITL.

Section 3

Health Care Organization is responsible for the compliance of its designated SSO/XCA End Users with the VHIE Policies and Procedures and federal and state privacy and security law,

notwithstanding its fulfilling the orientation and training requirements as set forth in Section 2 above.

Section 4

(a) Health Care Organization agrees to regularly monitor and audit the use and appropriateness of its VHIE SSO/XCA End Users' access to the VHIE.

(b) Health Care Organization shall provide to VITL within 5 business days of receiving a request from VITL, an audit report of SSO/XCA End User access on the VHIE to an identified patient(s)' Protected Health Information.

(c) Health Care Organization agrees to discipline, including to terminate the access of any VHIE SSO/XCA End User in the event that it determines that such user has violated any Health Care Organization or VHIE Policies or Procedures related to VHIE access, and to promptly, and within 48 hours, notify VITL of the termination and circumstances involved. Health Care Organization agrees to fully cooperate with and assist VITL in investigating any potential breach activity and in making all notifications and taking steps to mitigate any harm.

Section 5

Either VITL or the Health Care Organization may terminate the Health Care Organization's Single Sign On Access or Cross Community Access contemplated by this Section: (i) without cause upon no less than 90 days' prior written notice of termination to the other party; or (ii) for cause at any time for material failure of the other party to comply with the terms and conditions hereof, if such material failure is not corrected within a period of thirty (30) days after receipt of written notice from the other party specifying such failure or, in the event that such material failure cannot be cured within such period.