

Massachusetts Health Information Highway Participation Agreement

This Participation Agreement (“Agreement”) is entered into by and between the Commonwealth of Massachusetts, Executive Office of Health and Human Services and the participating organization identified on the final page of this Agreement (the “Participant”).

1. Background and Scope.

1.1 Background.

The Executive Office of Health and Human Services (EOHHS) is the Commonwealth’s single state agency for administration of the Massachusetts Medicaid program known as MassHealth. Electronic health records (EHRs) and health information exchange (HIE) are essential enablers of accountable, coordinated care delivery, which is the best long-term strategy for improving the quality and efficiency of healthcare in Massachusetts, both for MassHealth members and for all residents. In order to promote the widespread adoption of HIE, EOHHS, with the guidance of multiple stakeholders and the Health Information Technology Council, is deploying a statewide HIE infrastructure (the “Massachusetts Health Information Highway”) that will be widely available, and will provide an additional method, for healthcare organizations to use to exchange health information. The Massachusetts Health Information Highway will provide a secure data transmission conduit for members of the healthcare community to exchange clinical information regarding patients, consistent with laws, regulations, and patient consent as further detailed below, among participants who have a variety of computer systems in place. The Massachusetts Health Information Highway will perform the necessary data transformations so that the information is usable by any participant using a compatible clinical software system.

1.2 Scope.

This Agreement governs the terms and limitations of Participant’s access to and use of the Massachusetts Health Information Highway and its related online tools and services. Nothing in this Agreement shall preclude any Participant from exchanging information with the Commonwealth or with other providers who may or may not participate in the Massachusetts Health Information Highway using other methods of communication, including but not limited to telephone, hard copy delivery, facsimile, and other HIE networks, and nothing in this Agreement shall apply to any such method of other communication. The Massachusetts Health Information Highway will support the sharing of information between parties known to each other but will not provide Participants the ability to query and retrieve data.

1.3 Role of EOHHS.

EOHHS is making the Massachusetts Health Information Highway available to authorized users for use, authorized under this Agreement, as one method to promote improved communication. EOHHS’ has no responsibility for (a) Participant’s determination whether, when, and how to use the Massachusetts Health Information Highway to exchange information with other Participants;

or (b) for any decisions and actions taken or not taken by the Participant with respect to its use of the Massachusetts Health Information Highway and the Participant's Authorized Users (as defined below). EOHHS will not be able to access Participant data in the ordinary course of business, and will not be responsible for accessing, assessing, managing, or archiving the content of any message sent or received using the Massachusetts Health Information Highway.

1.4 Terms of Access.

The terms under which the Participant may access the Massachusetts Health Information Highway are set forth in this Agreement, the HIE Service Addendum described in Section 2.3 hereof, the Massachusetts Health Information Highway Delegated Administration Agreement described in Section 4.2 hereof, and the Massachusetts Health Information Highway Policies and Procedures ("Policies and Procedures") described in Section 4.1. Execution of this Agreement, the HIE Service Addendum(a), and the Delegated Administration Agreement are required for participation and access to the Massachusetts Health Information Highway.

2. Participation Requirements.

2.1 Permitted Users and Uses.

EOHHS shall have sole authority to determine, permitted users and uses of the Massachusetts Health Information Highway. Initial participation is open to Massachusetts-licensed providers and entities, Massachusetts-licensed health plans, Commonwealth agencies, and certain employees and agents of the foregoing authorized as users under Sec. 4.2 below. Use of the Massachusetts Health Information Highway is limited to exchanges of information that are allowed by law and that are related to treatment, payment, or healthcare operations as defined by HIPAA. EOHHS may, if it determines, in its sole discretion that such actions are in the public interest:

- (a) allow additional participants and/or authorized users;
- (b) allow additional uses;
- (c) deny or suspend participation, or use, for any organization or individual.

2.2 Technical, Security, and Administrative Requirements.

EOHHS shall establish, and may, from time to time update, the Policies and Procedures containing technical, security, administrative, and other requirements for participation in the Massachusetts Health Information Highway, the current version of which is available at: (Link to be provided by EOHHS once the link is active)

2.3 Massachusetts Health Information Highway Services Addendum.

EOHHS will provide the Participant with access to the Massachusetts Health Information Highway and related services, as more specifically described in one or more HIE Service Addenda that the Participant shall execute contemporaneously with this Participation Agreement, or from time to time thereafter.

2.4 Annual Participation Fees.

EOHHS will establish annual participation fees for the Massachusetts Health Information Highway. Such fees, as further described in the Fee Schedule and attached as Exhibit 1, shall be paid by the Participant in order to access the Massachusetts Health Information Highway. Fees will be set on an annual basis and shall be paid as specified in the Fee Schedule.

3. EOHHS Responsibilities

3.1 Execution of Participation Agreements.

EOHHS will require all Participants to enter into a Participation Agreement before being granted access to the Massachusetts Health Information Highway.

3.2 Compliance with Laws and Regulations.

EOHHS will comply with applicable federal and state laws and regulations relating to its operation of the Massachusetts Health Information Highway.

3.3 Business Associate Terms.

Unless otherwise provided in an HIE Service Addendum entered into by and between EOHHS and the Participant, EOHHS does not intend or anticipate that in performing any services under this Participation Agreement, it will access, use, or disclose any Protected Health Information or other personally identifiable information that Participant will send via the Massachusetts Health Information Highway. However, if in connection with any services provided by the Massachusetts Health Information Highway to Participant under this Agreement, EOHHS is a business associate of the Participant, as that term is defined by the HIPAA Privacy Rule, then in addition to the terms of this Agreement, EOHHS will be bound by the additional terms specified in Business Associate Addendum attached hereto as Exhibit 2 and made a part hereof.

3.4 Security Procedures.

EOHHS will implement safeguards that are reasonable and appropriate to ensure the security of the Massachusetts Health Information Highway. Such security procedures shall include

administrative procedures, physical security measures, and technical security safeguards, as more specifically described in the Policies and Procedures.

3.5 Metrics.

EOHHS will track metrics associated with the usage of Massachusetts Health Information Highway, including, but not limited to, usage details, transaction volumes, certificate management and application status,

4. Obligations of Participant.

4.1 Compliance with Massachusetts Health Information Highway Policies and Procedures.

Participant agrees to use the Massachusetts Health Information Highway in accordance with the Policies and Procedures, which EOHHS may update from time to time. The current version is available at: (Link to be provided by EOHHS once it is active).

4.2 Delegated Administration.

The Participant shall be solely responsible for determining which of its employees and agents require access to the Massachusetts Health Information Highway, and for complying with the requirements established by EOHHS for creating authorized users (Authorized Users). The Participant must designate a Massachusetts Health Information Highway access administrator (Access Administrator) by completing and executing the Massachusetts Health Information Highway Delegated Administration Agreement. Only a designated Access Administrator will be able to create Authorized Users for the Participant. Additional information about the creation of Authorized Users is contained in the Policies and Procedures and the Massachusetts Health Information Highway Delegated Administration Agreement. The Participant's Access Administrator shall be responsible for terminating Authorized Users when such individual(s) no longer require access to the Massachusetts Health Information Highway by reason of termination of employment, change in employment function, or as otherwise required in the Policies and Procedures.

4.3 Compliance with Laws and Regulations.

Participant agrees to comply with applicable federal and state laws and regulations in its use of the Massachusetts Health Information Highway and all applicable federal and state laws and regulations relating to its use of the Massachusetts Health Information Highway, including without limitation the transmission and/or receipt of personal information or data.

4.4 Participant Use, Transmission and Receipt of Information.

- (a) Participant acknowledges that information and data (“Information”) sent via the Massachusetts Health Information Highway, consistent with information sent by other methods, is subject to subsequent use and disclosure by the recipient. Only Participants (and their Authorized Users) may transmit or receive Information via the Massachusetts Health Information Highway.
- (b) If Participant receives information in error, it is the responsibility of the Participant to destroy such Information.
- (c) Participant is responsible for the security and privacy of content downloaded or transmitted via the Massachusetts Health Information Highway.
- (d) Participant acknowledges that they are responsible for selecting and addressing the intended recipient(s) of all Information they send over the Massachusetts Health Information Highway.

4.5 Patient Consent.

Participant is responsible for obtaining any and all necessary patient consents and authorizations relating to the use and exchange of patient information, including without limitation consent to release HIV test results, genetic test information, substance abuse information, and as otherwise required by law. In addition, Participant is responsible for obtaining patient permission to share patient information over the Massachusetts Health Information Highway. EOHHS may audit Participant or request Participant to certify that it is complying with this provision.

4.6 Security Procedures.

Participant will implement safeguards that are reasonable and appropriate regarding their access and use of the Massachusetts Health Information Highway to ensure the security of the Massachusetts Health Information Highway. Such security procedures shall include administrative procedures, physical security measures, and technical security safeguards, as more specifically described in the Policies and Procedures.

4.7 Audits.

- (a) **Compliance with Policies.** Participant will be responsible for performing periodic internal reviews or audits to monitor Participant’s compliance with the Massachusetts Health Information Highway terms and conditions and for reporting the findings of such reviews/audits to EOHHS. Such audits shall be conducted as reasonably requested by EOHHS, and as further provided in the Policies and Procedures.
- (b) **PHI transmitted via the Massachusetts Health Information Highway.** Participant shall be responsible for maintaining audit trails and access logs as necessary for

Participant to meet its obligations under any applicable state or federal law, including the HIPAA Privacy rule, to provide patients with any notice, report, or accounting regarding access to, or use or disclosure of, a patient's Protected Health Information or other personally identifiable information that Participant sends via the Massachusetts Health Information Highway.

4.8 Investigations and Remediation.

Participant shall adopt policies and procedures for the investigation and remediation of security incidents and shall make such policies and procedures available to EOHHS on request. Participant shall promptly inform EOHHS of any security incident or privacy breach related to Participant's use or access of the Massachusetts Health Information Highway of which the Participant becomes aware, and shall cooperate with EOHHS in the investigation of any security incident or privacy breach relating to Participant's communications. Without limiting the generality of the foregoing, Participant agrees to comply with the requirements of Chapter 93H of the Massachusetts General Laws and Section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act, and their implementing regulations.

5. Use, Ownership, and Intellectual Property.

5.1 Retention of Ownership Rights.

Participant and EOHHS retain all rights not expressly granted herein, including each party's rights to and ownership of their content, data, confidential information, and any other information or materials relating to or exchanged via the Massachusetts Health Information Highway.

5.2 HIE Services.

Participant agrees to comply with the terms of use, ownership, and intellectual property terms stated in any HIE Service Addenda that the Participant may execute contemporaneously with this Participation Agreement, or from time to time thereafter.

5.3 Software Certificate, Private Keys, and Network Connected Appliance.

Participant acknowledges and agrees that its possession, installation or use of any EOHHS or EOHHS contractor software or appliance, HIE related software, private keys or other devices, appliances and HIE related intellectual property ("EOHHS Technology") in conjunction with its use of the Massachusetts Health Information Highway, or the payment of any fee hereunder, will not transfer to Participant any title to the EOHHS Technology and Participant agrees to comply with any terms of use related to such EOHHS Technology. Any EOHHS Technology must be securely stored at the Participant's location. If any EOHHS Technology is compromised, it is the responsibility of the Participant to notify EOHHS immediately after discovery such compromise of the EOHHS Technology.

6. Miscellaneous Terms and Conditions.

6.1 Term and Termination.

The term of this Agreement shall commence upon the Effective Date specified below and shall continue until terminated. Either Participant or EOHHS may terminate this Agreement without cause upon not less than thirty (30) days prior written notice, at which time this Agreement, and Participant's access to the Massachusetts Health Information Highway, shall terminate.

6.2 Suspension of Access.

EOHHS may, at any time, suspend Participant's access to the Massachusetts Health Information Highway or suspend any user account associated with Participant, as required in its sole discretion, to prevent unauthorized use of the Massachusetts Health Information Highway, to prevent, investigate, or remedy a privacy breach or security incident, or to protect the integrity of the information systems operated by EOHHS and its contractors or for non-payment of fees hereunder. Restoration of such access or account shall be at EOHHS' sole discretion.

6.3 Amendments.

EOHHS may amend the terms of this Agreement or the Policies and Procedures from time to time. EOHHS will provide notice of changes by email to the Participant's designated Access Administrator and by posting changes to the Massachusetts Health Information Highway website in a manner and form that makes the changes apparent and readily available for review. EOHHS will post any such amendments on the Massachusetts Health Information Highway website at least thirty days before implementation of the amendment, but reserves the right to provide less notice, including no prior notice, if EOHHS reasonably determines that less notice is necessary for the security of the Massachusetts Health Information Highway, or unless the amendment is required in order for EOHHS, the Participant, or any other participant to comply with applicable laws or regulations. In that case, EOHHS may implement the amendment within a shorter period of time as EOHHS reasonably determines is appropriate under the circumstances, but will provide as much notice of the amendment as reasonably possible. It is the responsibility of the Participant to check the Massachusetts Health Information Highway Website periodically for such updates. Participant's continued use of the Massachusetts Health Information Highway constitutes acceptance of the changes.

6.4 Accuracy of Information.

- (a) Participant hereby acknowledges that all Information available through the Massachusetts Health Information Highway originates from and is controlled by the Participant and/or other participants and not EOHHS. All such Information is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. EOHHS neither initiates the transmission of any data nor

monitors the content of data being transmitted. EOHHS has no responsibility for or assumes no liability related to the accuracy, content, currency, completeness, content or delivery of any Information either provided or accessed by the Participant via the Massachusetts Health Information Highway. In time sensitive, or life threatening situations Participant should use additional means of communication and not rely solely on the Massachusetts Health Information Highway to communicate.

- (b) The Participant acknowledges and agrees that any Information accessed by the Participant or its Authorized Users is provided on an “as is” basis, and the Participant will take all reasonable efforts necessary to inform recipients of such Information of their responsibility to review, update and confirm the accuracy of any Information accessed through the Massachusetts Health Information Highway.
- (c) Use of the Massachusetts Health Information Highway is not a substitute for a health care provider’s standard practice or professional judgment. Any decisions with respect to the appropriateness of diagnoses or treatments or the validity or reliability of Information are the sole responsibility of the patient’s health care provider.

6.5 Disclaimer of Liability.

Except as may be required by law (and in that sole case, only to the extent required by law), EOHHS disclaims all liability whatsoever arising out of Participant’s use of the Massachusetts Health Information Highway.

6.6 NO WARRANTIES.

ACCESS TO THE MASSACHUSETTS HEALTH INFORMATION HIGHWAY AND THE INFORMATION OBTAINED OR TRANSMITTED BY THE PARTICIPANT BY USE OF THE MASSACHUSETTS HEALTH INFORMATION HIGHWAY ARE SERVICES AND INFORMATION PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE MASSACHUSETTS HEALTH INFORMATION HIGHWAY OR THE INFORMATION OBTAINED OR TRANSMITTED BY USE OF THE MASSACHUSETTS HEALTH INFORMATION HIGHWAY, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT WILL EOHHS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY

DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE MASSACHUSETTS HEALTH INFORMATION HIGHWAY.

6.7 Severability.

Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

6.8 Governing Laws.

This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions, and the Commonwealth of Massachusetts shall be the sole forum for resolution of disputes regarding this Agreement or the subject matter thereof.

6.9 Survival.

Sections 4.5, 4.7, 5, 6.4, 6.5, 6.6, 6.8 and Exhibit 2 - the Business Associate Addendum shall survive the termination of this Agreement. Upon termination of this Agreement, all other rights, privileges and responsibilities of the each party with respect to the other party shall terminate.

IN WITNESS WHEREOF, the Participant hereby executes this Agreement by signing in the places allocated below according to the convention /s/ Name, and agrees said electronic signature shall be valid and binding under the Uniform Electronic Transactions Act and the E-Signatures in Global and National Commerce Act and other applicable law.

Participant

Organization Name: _____

By: _____

Name: _____

Title: _____

Date: _____ (the Effective Date)