SECOND AMENDED AND RESTATED CONSORTIUM PARTICIPATION AGREEMENT

This Second Amended and Restated Consortium Participation Agreement (this "**Agreement**") is entered into by and among American Health Care Association, an Ohio non-profit corporation authorized to do business within the District of Columbia ("**AHCA**"), and each of the entities that has either executed a signature page hereto or becomes a party hereto by executing and delivering the Joinder Addendum attached as Exhibit A (each, a "**Consortium Participant**" and, collectively, the "**Consortium Participants**"). For each Consortium Participant, the effectiveness of this Agreement shall be as follows: (a) for Existing Consortium Participants, the Agreement shall become effective as of January 23, 2026; and (b) for any New Participant (as defined below), the Agreement shall become effective on the date of execution and delivery of a Joinder Addendum by such New Participant and the acceptance of such Joinder Addendum by AHCA (in each case, the "**Effective Date**"). AHCA and each Consortium Participant are each referred to individually as a "**Party**" and, collectively, as the "**Parties**".

RECITALS

WHEREAS, AHCA/NCAL Solutions, LLC, a District of Columbia limited liability company ("**Solutions**") and various Covered Entities (as defined below) entered into that certain Consortium Participation Agreement, dated as of January 10, 2022 (the "**Original Agreement**"); and

WHEREAS, the Original Agreement was amended and restated by Solutions and the original consortium participants by the Amended & Restated Consortium Participation Agreement, effective as of November 21, 2022 (the "**A&R Agreement**"), to make various changes, including changes to allow additional Covered Entities to become parties to the Consortium (as defined below) by executing a form of joinder addendum; and

WHEREAS, subsequent to the effective date of the A&R Agreement, various other Covered Entities became parties to the Consortium by signing a joinder addendum, and various other entities that are not Covered Entities expressed interest in becoming a Consortium Participant, including Business Associates (as defined below), Non-Covered Health Care Providers (as defined below) and Service Providers (as defined below); and

WHEREAS, the Parties entered into that certain Expanded Consortium Participation Agreement on September 15, 2024 to reflect the expansion of parties to the A&R Agreement ("**Expanded Participation Agreement**"); and

WHEREAS, Solutions assigned all of its rights and obligations under the Expanded Participation Agreement to its Affiliate (as defined below), AHCA, on November 26, 2025; and

WHEREAS, the Parties now desire to further amend and restate the Expanded Participation Agreement to reflect the expanded role of AHCA as a Business Associate and Service Provider to, respectively, Covered Entities and Non-Covered Health Care Providers and clarify the creation and use of Limited Data Sets (as defined below) and Identifiable Research Data (as defined below) for research activities.

MISSION STATEMENT

The purpose of this Agreement is to set forth the intent of the Parties related to the establishment of a research and data analytics consortium (the "**Consortium**") in which Consortium Participants and AHCA will join to collect, aggregate and evaluate data obtained from Consortium Participants, including skilled nursing facilities ("**SNFs**"), assisted living facilities ("**ALFs**"), and other parties serving the long-term care patient population including but not limited to laboratories and rehabilitation therapy providers, across the United States for mutual benefit and with a common goal to build an integrated electronic health record ("**EHR**")-based data infrastructure to coordinate care within and among Covered Entities and Non-Covered Health Care Providers, conduct public health surveillance, and allow the performance of medical and health care-related research (the "**Purpose**"). Consortium Participants may be Covered Entities or Non-Covered Entities, including Business Associates, Non-Covered Health Care Providers, and Service Providers. The Consortium is intended to enable current and future monitoring and enhancement of patients' treatment and care coordination, and to assess the impact of regulatory and payment policies that affect operational decisions by Covered Entities and Non-Covered Entities and patients' health outcomes. In addition, the Consortium may allow for the use of the data for public health surveillance and evaluation as well as for research. The Parties understand that AHCA will use commercially reasonable efforts to cause to be established a data platform to be used for health care analytics and research purposes, including health care operations of Consortium Participants (the "**Platform**") to facilitate the compilation and analysis of collected Data (as defined below) and further the Consortium Plan (as defined below). The Parties understand that AHCA will further use the data to create both limited data sets and Identifiable Research Data consisting of the combination of EHR and claims data, as a Business Associate to Covered Entities and a Service Provider to Non-Covered Health Care Providers, and on behalf of Consortium Participants, enter into Data Use Agreements (as defined below) with researchers. The Parties further understand that the NIH (as defined below) will cause to be established a separate Centers for Medicare and Medicaid Services ("**CMS**") data distribution infrastructure that will be combined within the Platform to create Identifiable Research Data for research purposes. AHCA and each of the Consortium Participants joined hereto wish to participate in the Consortium in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, each Party agrees as follows:

ARTICLE I.
DEFINITIONS

In this Agreement, unless otherwise expressly provided, the following terms shall have meanings ascribed to them below:

1.01 "**A&R Agreement**" has the meeting set forth in the introduction.

1.02 "**Advisory Committee**" has the meaning set forth in Section 2.02.

1.03 "**Affiliate**" means, with respect to any Party: (i) an organization which directly or indirectly controls the Party; (ii) an organization which is directly or indirectly controlled by the

Party; or (iii) an organization which is controlled, directly or indirectly, by the ultimate parent organization of the Party. The term "control" as used in the foregoing means the possession of the power to direct or cause the direction of the management and the policies of an entity, whether through the ownership of a majority of the outstanding voting security or by contract or otherwise.

1.04 "**Agreement**" has the meaning set forth in the introduction.

1.05 "**ALF**" has the meaning set forth in the Mission Statement.

1.06 "**Amendment Notice**" has the meaning set forth in Section 11.08.

1.07 "**Applicable Laws**" has the meaning set forth in Section 2.06.

1.08 "**Background IP**" means any and all Intellectual Property that were (a) conceived, created, developed, discovered, first reduced to practice or first fixed in a tangible medium prior to the date the Party joined the Consortium, or (b) conceived, created, developed, discovered or reduced to practice independent of the Project, the Data, and/or the Outputs and Results during the Term, as evidenced by competent written documentation maintained in the ordinary course of business.

1.09 "**Business Associate**" has the same meaning as the term "business associate" at 45 CFR 160.103 (or successor regulation under Applicable Laws) and in reference to the Parties to this Agreement includes (i) AHCA, and (ii) those Parties that perform or assist in performing a function or activity on behalf of a Covered Entity or another Business Associate, including but not limited to AHCA, that involves the use and/or disclosure of Protected Health Information, including parent companies or operators of Covered Entities and companies providing management and/or administrative services to Covered Entities.

1.10 "**Cause Event**" has the meaning set forth in Section 4.04.

1.11 "**Change of Control**" means (i) any transaction involving a Party that results in a third party directly or indirectly acquiring the power to direct or cause the direction of the management and policies of such Party or the power to appoint or elect more than fifty percent (50%) of the members of the board of directors or equivalent governing body of such Party; or (ii) or any purported assignment in violation of Section 11.01.

1.12 "**Confidential Information**" has the meaning set forth in Section 5.01.

1.13 "**Consortium**" has the meaning set forth in the Mission Statement.

1.14 "**Consortium IP**" has the meaning set forth in Section 6.03.

1.15 "**Consortium Participant**" means an entity participating in the Consortium in accordance with the A&R Agreement, Expanded Participation Agreement or this Agreement; provided that, if an entity that is a Consortium Participant ceases to be a Party to (i) the A&R Agreement or Expanded Participation Agreement without becoming a Party to this Agreement or (ii) this Agreement, it shall cease to be a Consortium Participant, including for purposes of the A&R Agreement, Expanded Participation Agreement and this Agreement.

1.16 "**Consortium Participant Data**" means all data gathered or collected by the Consortium from or on behalf of a Consortium Participant in connection with the Project in furtherance of the Consortium Plan including data that contains Protected Health Information and/or Personal Information.

1.17 "**Consortium Participant License**" has the meaning set forth in Section 3.05.

1.18 "**Consortium Plan**" has the meaning set forth in Section 2.01.

1.19 "**Co-treater**" has the meaning set forth in Section 3.02.

1.20 "**Covered Entity**" has the same meaning as the term "covered entity" at 45 CFR 160.103 (or successor regulation under Applicable Laws).

1.21 "**Covered Person**" has the meaning set forth in Section 10.01.

1.22 "**Data**" means all of the Consortium Participant Data, collectively.

1.23 "**Data Collection Protocol**" means the procedure, process and format for Consortium Participant Data to be submitted to the Data Firm by each Consortium Participant or, if applicable, a Consortium Participant's EHR vendor, including the fields/records for the Consortium Participant Data.

1.24 "**Data Firms**" means Acumen, LLC or any other entity that contractually agrees with NIH or AHCA to process, store, or analyze Data on behalf of the Consortium in furtherance of the Purpose and in accordance with the Consortium Plan.

1.25 "**Data Use Agreement**" or "**DUA**" means an agreement substantially in the form attached hereto and incorporated as **Exhibit E**, that allows the disclosure of and use by researchers of a Limited Data Set in conformance with 45 C.F.R. § 164.514(e) of HIPAA's Privacy Rule, and establishes third party beneficiary rights to a Consortium Participant whose Consortium Data is disclosed and used pursuant to the DUA.

1.26 "**De-identified Data Outputs**" has the meaning set forth in Section 3.05.

1.27 "**Departing Participant**" has the meaning set forth in Section 4.04.

1.28 "**Discloser**" has the meaning set forth in Section 5.01.

1.29 "**Effective Date**" has the meaning set forth in the introduction.

1.30 "**EHR**" has the meaning set forth in the Mission Statement and, for purposes of this Agreement, also includes other health information technology.

1.31 "**End Date**" has the meaning set forth in Section 4.06.

1.32 "**Existing Consortium Participant**" means a Consortium Participant that was a party to the A&R Agreement or Expanded Participation Agreement prior to the Effective Date.

1.33 "**Expanded Participation Agreement**" has the meeting set forth in the introduction.

1.34 "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended by the final regulations promulgated pursuant to the Health Information Technology for Economic and Clinical Health Act, as part of the American Recovery and Reinvestment Act of 2009, at Pub. L. No. 111-5, and the regulations promulgated thereunder.

1.35 "**Identifiable Consortium Participant Data Outputs**" has the meaning set forth in Section 3.05.

1.36 "**Identifiable Research Data**" means Data that, although initially redacted and aggregated into a Limited Data Set, has been subsequently combined with additional information provided by the NIH, such as Medicare and Medicaid claims data and/or the Covered Entity's CMS Certification Number, or other information available to the researcher not originating from AHCA, such that the resulting dataset contains identifiable information. Identifiable Research Data is a subset of Protected Health Information or Personal Information but is not a Limited Data Set, but has been prepared for disclosure to and use by recipients for research in conformance with 45 C.F.R. § 164.512(i) of HIPAA's Privacy Rule and pursuant to a DUA.

1.37 "**Indemnifying Party**" has the meaning set forth in Section 10.01.

1.38 "**Intellectual Property**" or "**IP**" means all Inventions, technology, processes, designs, methods, techniques, know-how, algorithms, works of authorship, software, compilations, data and other intellectual property rights (including patents, copyrights, and trade secrets).

1.39 "**Inventions**" means discoveries, concepts, or ideas, whether patentable or not, as well as improvements thereof or know-how related thereto.

1.40 "**Joinder Addendum**" has the meaning set forth in the introduction.

1.41 "**Limited Data Set**" means Protected Health Information or Personal Information that has been aggregated and redacted in conformance with the requirements of 45 C.F.R. § 164.514(e) of HIPAA's Privacy Rule for disclosure to and use by recipients for research pursuant to a DUA.

1.42 "**Losses**" means any and all losses, penalties, fines, costs, damages (and any interest due thereon), liabilities, amounts paid in settlements and offsets and any reasonable out-of-pocket costs, expenses and attorneys' fees, including any of the foregoing incurred in connection with the investigation, response to and defense or settlement of a third party claim against or in respect of which indemnification is provided hereunder (including any such reasonable costs, expenses and attorneys' fees incurred in enforcing a party's right to indemnification against or with respect to any appeal) and penalties and interest.

1.43 "**New Participant**" has the meaning set forth in Section 2.04.

1.44 "**NIH**" means the National Institutes of Health.

1.45 "**Non-Covered Entities**" means Business Associates, Non-Covered Health Care Providers, and Service Providers.

1.46 "**Non-Covered Health Care Provider**" means a Party to this Agreement that is a "health care provider" (as defined at 45 C.F.R. 160.103) that serves the long-term care population, but is not a Covered Entity, including an ALF that does not operate as a HIPAA Covered Entity (e.g., an ALF that does not submit claims to insurers electronically for ALF services or benefits).

1.47 "**Outputs and Research**" has the meaning set forth in Section 3.04.

1.48 "**Party**" and "**Parties**" has the meaning set forth in the introduction.

1.49 "**Personal Information**" means any information that identifies, relates to, describes, is capable of being associated with or identifying, or could reasonably be linked, directly or indirectly, with a particular individual or device, including, without limitation, any inferences drawn therefrom or derivatives thereof. Personal Information may include, without limitation, names (or portions of names); contact information; demographic information; medical information (*e.g.,* symptoms, diagnoses, test results, prescription information, dates of service); financial information; government identifiers; and any information that would constitute Protected Health Information if such information were created, received, maintained, or transmitted by or on behalf of a Covered Entity. Personal Information does not include Protected Health Information.

1.50 "**Platform**" has the meaning set forth in the Mission Statement.

1.51 "**Project**" means the Data research and analytics activities of the Consortium (through AHCA and Consortium Participants) in furtherance of the Consortium Plan, the Purpose.

1.52 "**Protected Health Information**" has the meaning given to such term in 45 C.F.R. § 160.103 (or successor regulation under Applicable Laws).

1.53 "**Publication**" has the meaning set forth in Section 8.01.

1.54 "**Publishing Party**" has the meaning set forth in Section 8.01.

1.55 "**Purpose**" has the meaning set forth in the Mission Statement.

1.56 "**Recipient**" has the meaning set forth in Section 5.01.

1.57 "**Related Entity**" means, with respect to any Consortium Participant, any entity on behalf of whom such Consortium Participant has the authority to authorize the release of data by an EHR vendor to AHCA and/or the Data Firms as contemplated by this Agreement.

1.58 "**Removed Participant**" has the meaning set forth in Section 4.04.

1.59 "**Representative**" has the meaning set forth in Section 5.03.

1.60 "**Research Review Committee**" means AHCA and any third parties specified within that certain charter adopted by the Research Review Committee, as it may be amended from

time to time, who collectively will evaluate the whether research proposals received from, or sponsored by, Covered Entities, Non-Covered Entities and other third parties align with the Consortium's mission, reflect the Consortium's scientific and community priorities, use data of adequate quality and completeness to address research objections, provide sufficient detail to assess data feasibility, and minimize data sharing burdens on Covered Entities and Non-Covered Health Care Providers.

1.61 "**Review Period**" has the meaning set forth in Section 8.01.

1.62 "**Reviewing Party**" has the meaning set forth in Section 8.01.

1.63 "**Service Provider**" means a person or entity that creates, receives, maintains, or transmits Personal Information on behalf of a Non-Covered Health Care Provider or another Service Provider, but other than in the capacity of a member of the workforce of such Non-Covered Health Care Provider or Service Provider. In reference to the Parties to this Agreement, Service Provider includes (i) AHCA and (ii) those Parties that perform or assist in performing a function or activity on behalf of a Non-Covered Health Care Provider or another Service Provider that involves the use and/or disclosure of Personal Information, including parent companies or operators of Non-Covered Health Care Providers and companies providing management and/or administrative services to Non-Covered Health Care Providers.

1.64 "**SNF**" has the meaning set forth in the Mission Statement.

1.65 Reserved.

1.66 "**Term**" means the period referred to in Section 4.01.

1.67 "**Use**" means to use, disclose, employ, apply, utilize, examine, analyze, exploit, improve, modify, reproduce, distribute, publish, display, perform, and create derivative works (in any format or medium), subject to any restrictions set forth in this Agreement.

1.68 "**Wind Down Party**" has the meaning set forth in Section 4.06.

1.69 "**Withdrawing Participant**" has the meaning set forth in Section 4.03.

1.70 "**Work Product**" has the meaning set forth in Section 3.07.

The exhibits, annexes, and attachments referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. Any references to the words "include," "includes" or "including" in this Agreement shall be deemed to be followed by the words "without limitation." Whenever the singular form is used in this Agreement, and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. The words "herein" "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section or other subdivision. The word "or" is used inclusively herein (for example, the phrase "A or B" means "A or B or both", not "either A or B but not both"), unless used in an "either or" or similar construction.

ARTICLE II.
SCOPE OF CONSORTIUM

2.01 **Consortium Plan**. The data research and analytics activities contemplated by the Consortium, including the Data to be collected, are further detailed in the plan adopted by AHCA and attached hereto as **Exhibit B**, as amended by AHCA from time to time (the "**Consortium Plan**"). The Parties agree to collaborate in the furtherance of the Project. Each Party shall use reasonable efforts to carry out in a diligent manner those parts of the Project allocated to it in accordance with this Agreement and the Consortium Plan. Each Party shall obtain and maintain all relevant ethics and other approvals as may be relevant for its participation in the Project.

2.02 **Advisory Committee**. AHCA shall establish and maintain an advisory committee (the "**Advisory Committee**") to govern the Consortium in the accordance with the charter adopted by the Advisory Committee, as amended from time to time. The Advisory Committee exists to promote the integrity, preserve the credibility, and ensure the sustainability and success of the Consortium and to assist in guiding program policies and procedures, and determining the framework for positive stakeholder experience.

2.03 **Research Review Committee**. The members of the Research Review Committee shall review each proposed research proposal in good faith, to among other things, determine whether such research proposal can be performed in accordance with the A&R Agreement, Expanded Participation Agreement, this Agreement and any other applicable agreements then in existence. To the extent that a research proposal was referred to the Consortium by a member of the Research Review Committee, the referring member shall have a non-voting role in any discussions among the Research Review Committee that relates to such research proposal.

2.04 **Consortium Participants**. Any third party may request to join the Consortium by submitting written notice to AHCA. The Advisory Committee will discuss any such request and may approve the request upon a majority vote of the Advisory Committee; provided that AHCA shall have the right to object to joinder in the event that such third party is not a member of AHCA, not affiliated with a member of AHCA, not providing services to a member of AHCA or for any other reason, at AHCA's sole discretion. Each duly approved third party (each, a "**New Participant**") shall execute and deliver a Joinder Addendum; provided that AHCA shall be required to execute such Joinder Addendum if any material changes, in AHCA sole discretion, are made to such Joinder Addendum by such New Participant. For the avoidance of doubt, each Existing Consortium Participant shall not be required to execute and deliver a Joinder Addendum, provided that such Existing Consortium Participant executes a signature page to this Agreement on the Effective Date. Upon the execution and delivery of a Joinder Addendum by any such New Participant and acceptance of such Joinder Addendum by AHCA, such New Participant shall become a Consortium Participant, and upon execution and delivery of a signature page to this Agreement or a Joinder Addendum (in the event an Existing Consortium Participant executes this Agreement after the Effective Date), this Agreement shall be binding on each Existing Consortium Participant and this Agreement shall replace the A&R Agreement and Expanded Participation Agreement in their entirety with respect to each Existing Consortium Participant that is a Party hereto (and thereafter, the A&R Agreement and Expanded Participation Agreement shall be null and void with respect to such Existing Consortium Participant). The rights and obligations of each Consortium Participant hereunder shall remain in full force and effect notwithstanding the addition

of any New Participant hereunder. Consortium Participant status does not automatically confer the right to vote on matters before the Advisory Committee or the Research Review Committee.

2.05 **Related Entities**. A Consortium Participant shall be fully responsible for any breach of this Agreement caused by one or more of its Related Entities.

2.06 **Conduct**. Consortium activities will be conducted in accordance with all applicable federal, state, provincial, and local statutes, rules, and regulations (collectively, "**Applicable Laws**"), including but not limited to HIPAA and other statutes, rules and regulations governing the privacy and security of the Data, and antitrust laws, anti-bribery and anti-corruption laws. To the extent that Consortium activities are performed pursuant to a governmental or agency grant award, such activities will be conducted in accordance with applicable governmental or agency requirements associated with the standards that prevent individuals engaged in grant-supported activities from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties. When governmental or agency grant funds will be used to support Consortium activities, Consortium Participants will be provided with any specific governmental or agency requirements that are applicable and made available to AHCA. Conduct of the Consortium Participants and each of their respective Related Entities shall also demonstrate a reasonable expectation that the design, conduct, or reporting of research funded under certain governmental or agency grants will be free from bias resulting from any conflicting financial interest of an investigator. No Party shall, in connection with the performance of this Agreement, directly or indirectly (including through any Related Entity), make, promise, authorize, ratify or offer to make, or take any act in furtherance of any payment or transfer of anything of value for the purpose of influencing, inducing or rewarding any act, omission or decision to secure an improper advantage; or improperly assisting it or any other Party (or a Related Entity of any other Party) in obtaining or retaining business, or in any way with the purpose or effect of public or commercial bribery, and warrants that it has taken reasonable measures to prevent Related Entities, subcontractors, agents, or any other third parties subject to its control or determining influence from doing so. For the avoidance of doubt, this includes facilitating payments that are unofficial, improper, or gifts offered or made to Government Officials to secure or expedite a routine or necessary action to which a Party is legally entitled. For the purpose of this Agreement, "Government Official" (where 'government' means all levels and subdivisions of governments, e.g., local, regional, national, administrative, legislative, executive, or judicial, and royal or ruling families) means: (a) any officer or employee of a government or any department, agency or instrumentality of a government (which includes public enterprises, and entities owned or controlled by the state); (b) any officer or employee of a public international organization such as the World Bank or United Nations; (c) any officer or employee of a political party, or any candidate for public office; (d) any person defined as a government or public official under applicable local laws (including anti-bribery and corruption laws) and not already covered by any of the above; or (e) any person acting in an official capacity for or on behalf of any of the above. "Government Official" shall include any person with close family members who are Government Officials (as defined above) with the capacity, actual or perceived, to influence or take official decisions affecting a Party's (or Related Entities') business(es).

ARTICLE III.
BUSINESS ASSOCIATE DATA USES AND DISCLOSURES; LIMITED DATA SETS AND IDENTIFIABLE RESEARCH DATA; SUBMISSION; OUTPUTS and WORK PRODUCT

3.01 **Use and Disclosure of Consortium Participant Data by AHCA as a Business Associate**.

(a) AHCA may Use Consortium Participant Data as permitted under this Agreement, the Business Associate Agreement attached hereto as **Exhibit C** and executed by AHCA and each Consortium Participant, Applicable Law, and the Data Collection Protocol.

(b) During the Term of this Agreement and prior to a Consortium Participant's withdrawal, AHCA may Use Consortium Participant Data for purposes of carrying out data analytics, data storage, and other health care operations permitted by Applicable Law on behalf of each Consortium Participant and its Related Entities.

(c) During the Term and thereafter as permitted by Applicable Law, AHCA may Use Consortium Participant Data to create Limited Data Sets and Identifiable Research Data, in each case in furtherance of the Consortium Plan and any Statements of Work, provided that such activities comply with HIPAA, the Business Associate Agreement, and the Data Collection Protocol.

(d) For all Uses and disclosures permitted under this Section 3.01, AHCA shall operate as a Business Associate or Service Provider to each Consortium Participant.

3.02 **Limited Data Sets and Identifiable Research Data**.

(a) AHCA may permit the Use of Limited Data Sets created by AHCA pursuant to Section 3.01 by entities and individuals engaging in medical or health care-related research who have entered into a Data Use Agreement that complies with 45 C.F.R. § 164.514(e) and is substantially similar to the Data Use Agreement attached hereto as **Exhibit E**.

(b) AHCA may also permit the Use of Identifiable Research Data by entities and individuals engaging in medical or health care-related research only in compliance with 45 C.F.R. § 164.512(i) of HIPAA's Privacy Rule. AHCA shall also enter into a Data Use Agreement with such entities and individuals that is substantially similar to the Data Use Agreement attached hereto as **Exhibit E.**

(c) AHCA shall ensure that each Consortium Participant whose Consortium Participant Data is Used pursuant to a DUA is a third party beneficiary of the DUA with the power to enforce its terms.

3.03 **Release and Submission of Data**. Each Consortium Participant represents, warrants and covenants that it possesses any required consents and permissions to release Consortium Participant Data in accordance with this Agreement, including on behalf of each

Related Entity of such Consortium Participant, and agrees to promptly provide evidence of such authority to AHCA upon request. Each Consortium Participant shall execute and send, or permit AHCA to send on such Consortium Participant's and its Related Entities' behalf, to its/their respective EHR vendor(s) the Data Release Form attached hereto as **Exhibit D**, which directs such EHR vendor(s) to release Consortium Participant Data to the Data Firm(s) in accordance with the Data Collection Protocol. During the Term, each Consortium Participant will submit, or cause to be submitted by its respective and, to the extent applicable its Related Entity's respective, EHR vendor(s), Consortium Participant Data to the Data Firm(s) in accordance with the Data Collection Protocol and in furtherance of the Consortium Plan. Each Consortium Participant hereby confirms that the Data Release Form properly and completely authorizes its EHR vendor(s) to release Consortium Participant Data to AHCA.

3.04 **Data Collection Protocol**. AHCA will, in consultation with the Advisory Committee, establish the Data Collection Protocol that defines the procedures, processes and format for the Consortium Participant Data to be submitted to the Data Firm(s). AHCA may from time to time, give notice to Consortium Participants of proposed amendments to the Data Collection Protocol, which shall be discussed and approved by the Advisory Committee.**Data Firm(s)**. One or more Data Firm(s), as a subcontractor Business Associate of AHCA and on behalf of applicable Consortium Participants, their respective Related Entities and third parties, may Use the submitted Consortium Participant Data in accordance with the terms of a subcontractor Business Associate Agreement with AHCA, the A&R Agreement, the Expanded Participation Agreement, this Agreement and any other applicable agreement. Such Use may produce (a) Limited Data Sets and Identifiable Research Data ("**Identifiable Consortium Participant Data Outputs**") and (b) Data de-identified pursuant to 45 C.F.R. § 164.514 of HIPAA's Privacy Rule and any other Applicable Law ("**De-identified Data Outputs**"), Identifiable Consortium Participant Data Outputs and De-identified Data Outputs, are collectively, "**Outputs and Results**"). The specific duties and obligations of the Data Firm(s) will be as set forth in separate agreement(s) to be negotiated between AHCA and each Data Firm. Each Data Firm will act as a subcontractor Business Associate or Service Provider of AHCA for purposes of the Uses performed under clauses (a) and (b) and enter into a subcontractor Business Associate Agreement with AHCA that complies with HIPAA and other Applicable Law.

3.05 **Sharing and Use of Outputs and Work Product**. During the Term, certain De-identified Data Outputs via the Platform or some other distribution infrastructure may be shared amongst all Parties, as determined by the Advisory Committee. Accordingly, during the Term, AHCA hereby grants to each Consortium Participant a non-exclusive, royalty-free, worldwide license to Use any De-identified Data Output and Work Product derived therefrom in accordance with the terms of this Agreement and Applicable Law (the "**Consortium Participant License**").

3.06 **Work Product**. AHCA, Data Firm(s) and other third parties may derive work product through its Use of the Data, Identifiable Consortium Participant Data Outputs and De-identified Data Outputs (collectively, the "**Work Product**"). The Consortium Plan shall set forth the details for which Work Product derived from the De-identified Data Output shall be circulated to Consortium Participants.

ARTICLE IV.
TERM AND WITHDRAWAL

4.01 **Term**. This Agreement shall commence on the Effective Date and shall continue until there are no longer any Consortium Participants (the "**Term**"), unless terminated earlier pursuant to this Agreement.

4.02 **Termination**. This Agreement may be terminated at any time by mutual Agreement of all then-existing Consortium Participants. This Agreement will automatically terminate in the event that there are no longer any Consortium Participants involved in the Consortium (*i.e.*, due to withdrawal or removal of all Consortium Participants as provided herein). Upon any termination, the Parties shall use reasonable efforts to wind up the work carried out in accordance with the then-current Consortium Plan in an orderly fashion except as otherwise agreed by the Advisory Committee.

4.03 **Withdrawal of Consortium Participant**. A Consortium Participant may elect to withdraw itself (in which case it shall be deemed a "**Withdrawing Participant**") from the Consortium at any time by giving at least thirty (30) days' written notice to AHCA and the Advisory Committee and subject to the provisions of Section 4.05.

4.04 **Removal of Consortium Participant**. If there is a Cause Event involving or brought on by a Consortium Participant (including as a result of actions by a Related Entity) (deemed a "**Removed Participant**" and together with a Withdrawing Participant, a "**Departing Participant**") the Removed Participant may be removed from the Consortium by a majority vote of the Advisory Committee. "**Cause Event**" means any of the following circumstances: (a) if the Removed Participant fails to fulfill commitments detailed in the Consortium Plan applicable to such Removed Participant (either directly or indirectly, including in relation to such Removed Participant's Related Entities); (b) if the Removed Participant or its Related Entities is acting in a non-professional manner, such as by engaging in behavior disruptive to the Consortium or its activities; (c) if the Removed Participant fails to execute any of the exhibits, annexes or attachments referred to herein as required by the terms of this Agreement; (d) if the Removed Participant or any of its Related Entities files or has filed against it a petition in bankruptcy that is not dismissed within sixty (60) days; (e) if the Removed Participant or its Related Entities breaches any representation or warranty made by the Removed Participant under this Agreement, including any exhibit, annex or attachment referred to herein; (f) upon a material breach by the Removed Participant or its Related Entities of its obligations under this Agreement, including any disclosure of Confidential Information to unauthorized parties; or (g) in case of a Change of Control of the Removed Participant and/or any Related Entity.

4.05 **Effect of Withdrawal or Removal**. As of the date of withdrawal or removal from the Consortium, (a) access to the Platform or any other distribution system will be terminated for a Departing Participant, (b) the Departing Participant no longer shall (or cause their respective EHR vendor(s) to no longer) submit Consortium Participant Data to the Consortium, (c) the Departing Participant and each of its Related Entities, to the extent applicable, shall retain all rights in their respective Background IP (subject to any licenses granted in this Agreement), (d) AHCA shall retain the right to allow the Use of the Consortium Participant Data provided by the Departing Participant for research purposes pursuant to Section 3.02, (e) the Consortium Participant License

shall terminate with respect to the Departing Participant, and (f) the rights and obligations of the Departing Participant and all its Related Entities shall end except for the rights and obligations described in this Section 4.05 and any other obligations that are specified to survive termination of this Agreement. A Departing Participant and all of its Related Entities shall promptly return or destroy all materials of the other Parties in its possession, including Confidential Information of another Party.

Similarly, each remaining Party shall promptly return or destroy all materials of the Departing Participant and its Related Entities in its possession, including Confidential Information of the Departing Participant and its Related Entities (other than the Consortium Participant Data that may be retained by AHCA pursuant to Section 3.02). Neither the Departing Participant nor any of its Related Entities shall at any time prior to the End Date of the Consortium, use any De-identified Data Outputs or Work Product in a manner that impairs, or competes or conflicts with, the Purpose except for care coordination and care delivery to individual patients. For the avoidance of doubt, any person(s) who provide or have provided Data to the Consortium on behalf of any Departing Participant or any Related Entity shall also cease providing Consortium Participant Data to the Consortium with respect to the applicable Departing Participant and each of its Related Entities, effective upon the date on which the Departing Participant departs. If such person is also acting on behalf of another Consortium Participant (as a Cotreater or otherwise), then such person may continue to provide Data on behalf of such other Consortium Participant(s) who are not a Departing Participant or its Related Entities.

4.06 **Effect of Expiration or Termination of Agreement**. Upon expiration, or earlier termination of this Agreement, the rights and obligations of each Party then involved in the Consortium (each, a "**Wind Down Party**") as of the applicable date of expiration or termination (the "**End Date**") shall be as follows (subject to any obligations that are specified in this Agreement to survive termination of this Agreement): (a) each Wind Down Party's access to the Platform or other distribution system under AHCA's control will be terminated, (b) subject to restrictions under HIPAA and other Applicable Law, each Wind Down Party may continue to Use any Outputs and Results in its possession pursuant to the licenses granted herein in connection with Publications and projects in progress as of the End Date other than the Project, (c) each Wind Down Party shall no longer submit Consortium Participant Data to the Consortium, (d) each Wind Down Party and each such Wind Down Party's Related Entities shall retain all rights in its respective Background IP and Consortium IP (subject to any licenses granted in this Agreement); and (e) AHCA shall retain the right to Use the Data pursuant to Section 3.02. Subject to the foregoing, each Wind Down Party and its Related Entities shall promptly return or destroy all materials of the other Wind Down Parties (and their respective Related Entities) in its possession (other than the Consortium Participant Data that may be retained by AHCA pursuant to Section 3.02), including Confidential Information of another Wind Down Party and its Related Entities upon the request of such Party. For clarity, notwithstanding any expiration or termination of the Consortium or this Agreement, AHCA may continue to use all De-identified Data Outputs based on submitted Consortium Participant Data on a perpetual, irrevocable basis.

4.07 **Continuing Support and Survival**. The provisions of Article 3, Article 4, Article 5, Article 6, Article 8, Article 10, and Section 11.04 and any other provisions contained herein which by their nature or effect are required or intended to be observed after termination of this Agreement will survive the termination or expiration of this Agreement and remain binding.

ARTICLE V.
CONFIDENTIALITY

5.01 **Definition**. "**Confidential Information**" means any and all confidential, non-public or proprietary information of a Party (a "**Discloser**"), including but not limited to data, techniques, protocols or results, or business, financial, commercial or technical information, to which a receiving Party (a "**Recipient**") has access in connection with the Consortium. Confidential Information of a Discloser shall include any and all confidential, non- public or proprietary information of such Discloser's Affiliates and Related Entities. All De-identified Data Outputs any Work Product derived therefrom shall be deemed to be the Confidential Information of AHCA. A Recipient and its Related Entities shall have a duty to protect only that Confidential Information which is marked as "confidential" (if provided in tangible form) or identified as "confidential" at or prior to disclosure (if provided orally or in other non-tangible form) or, if not so marked, that, by its nature or by reason of the circumstances in which it is disclosed Recipient and its Related Entities should reasonably understand to be confidential. If there is a question regarding whether unmarked information should be considered "Confidential Information", then Consortium members should take reasonable steps to confirm whether the information should be considered "Confidential Information" prior to taking any actions that would otherwise result in a breach of this Agreement, including under Article V.

5.02 **Protection of Confidentiality**. Each Recipient agrees that it will use a Discloser's Confidential Information only in connection with the Project and the purposes specified in this Agreement, and not for any other purpose or for the benefit of itself or any third party except with the written consent of the Discloser. Except to the extent expressly authorized by this Agreement or otherwise agreed to by the Discloser in writing, a Recipient shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement. In taking such measures, a Recipient agrees that it shall use the highest degree of care that it utilizes to protect its own Confidential Information of a similar nature (but in any event no less than a reasonable degree of care). A Recipient agrees to notify the Discloser in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information which may come to the Recipient's attention.

5.03 **Disclosure to Representatives**. Notwithstanding Section 5.02, a Party may disclose Confidential Information (a) to its and its Related Entities' employees, staff, contractors, subcontractors, lawyers, accountants, and advisors with a legitimate need to know such information (collectively, "**Representatives**"), (b) to government or other regulatory authorities to the extent that such disclosure is required by statute, regulation or order, (c) solely with respect to AHCA, to government or other regulatory authorities in furtherance of public health surveillance reporting programs as permitted by this Agreement and required by applicable law, and (d) to another Party who has a legitimate need to know such Confidential Information. Each Party agrees that its Representatives shall be informed of the confidentiality obligations and use restrictions in this Agreement and shall agree, or otherwise be subject to an obligation, to protect the Confidential Information on terms substantially similar to those contained in this Agreement. A Recipient shall be responsible for any use or disclosure of Confidential Information in breach of the restrictions in this Agreement by any of its Representatives.

5.04 **Exceptions**. This ARTICLE V imposes no obligation upon a Recipient with respect to information that the Recipient can demonstrate:

(a) was already known to the Recipient, other than under an obligation of confidentiality to any Party, at the time of receipt by the Recipient, as evidenced by competent written records; or

(b) was generally available to the public or otherwise part of the public domain at the time it was acquired; or

(c) has become generally available to the public, or otherwise part of the public domain, after its receipt and other than through any act or omission of the Recipient or its Representatives in breach of this Agreement; or

(d) was disclosed to the Recipient, other than under an obligation of confidentiality, by a third party who had no obligation to another Party not to disclose such information; or

(e) was developed independently without reference to Confidential Information as evidenced by the Recipient's competent written records; or

(f) is disclosed with the prior written approval of the Discloser.

5.05 **Legally Required Disclosure**. In the event a Recipient must disclose Confidential Information in order to comply with applicable governmental regulations or as otherwise required by law or judicial process, the Recipient shall give reasonable advance notice to the Discloser of such proposed disclosure in order that the Discloser may intercede and oppose such process, and the Recipient shall only disclose that portion of the Confidential Information that is required to be disclosed and shall use its best efforts to secure confidential treatment of such Confidential Information which is required to be disclosed.

5.06 **Injunctive Relief**. Each Recipient agrees that a Discloser would be irreparably harmed by a breach of this ARTICLE V and that the Discloser shall be entitled to an injunction (both preliminary and permanent) from any court of competent jurisdiction, without posting bond or other security, enjoining and restricting the breach or threatened breach of this ARTICLE V (in addition to such remedies as may be available to the Discloser at law or in equity).

5.07 **Confidentiality of Terms**. Except for the disclosure of the existence of this Agreement, including the title of the Project and identification of the Parties, which information shall not be deemed confidential, the specific terms and conditions of this Agreement shall be considered Confidential Information.

ARTICLE VI.
INTELLECTUAL PROPERTY

6.01 **Data**. As between AHCA and each Consortium Participant, each Consortium Participant and/or its Related Entities, as applicable, will retain sole ownership (subject to the rights set forth in Section 3.01) of its Consortium Participant Data.

6.02 **Data (NIH Grant Only).** Consortium Participant acknowledges and agrees that, consistent with NIH policy, NIH grant recipients may retain ownership of and certain rights in data resulting from NIH-supported project. Specific terms and conditions of an NIH award may indicate alternative rights, *e.g*., under a cooperative agreement or based on specific programmatic considerations. In addition, any publications, data, or other copyrightable works developed under an NIH grant may be copyrighted without NIH approval. As used herein, "**data**" means recorded information, regardless of the form or media on which it may be recorded, and includes writings, films, sound recordings, pictorial reproductions, drawings, designs, or other graphic representations, procedural manuals, forms, diagrams, work flow charts, equipment descriptions, data files, data processing or computer programs (software), statistical records, and other technical research data. In all cases, NIH must be given a royalty-free, nonexclusive, and irrevocable license for the Federal government to reproduce, publish, or otherwise use the material and to authorize others to do so for Federal purposes.

6.03 **Background Intellectual Property**. Each Party will own all right, title and interest in and to its Background IP, subject to any license rights granted to another Party under this Agreement. .

6.04 **Ownership**. Notwithstanding the foregoing, as between the Parties , all rights, title and interest to Intellectual Property conceived, created, developed, discovered, or reduced to practice in the course of carrying out the Project or Consortium Plan or otherwise created in connection with this Agreement (including Intellectual Property arising in connection with the Use of any Data) by or on behalf of AHCA or the Consortium, whether created solely or jointly by any of the Parties ("**Consortium IP**") is, as between the Parties, hereby owned by AHCA, including any Outputs and Results and Work Product derived therefrom (subject to the Consortium Participant License set forth in Section 3.06).

ARTICLE VII.
MANAGEMENT OF INTELLECTUAL PROPERTY

7.01 **Prosecution and Maintenance**. Each Party has the right to file and prosecute at its own expense Intellectual Property applications on any Intellectual Property to which it holds exclusive title.

7.02 **Enforcement**. Each Party has the right, but not the obligation, to bring actions to enforce Intellectual Property to which it holds exclusive title.

7.03 **Assistance**. Each Party shall give an applicable owning Party immediate notice of any third party's infringement of such Party's Intellectual Property which comes to that Party's attention during the Term. Upon request, a Party shall, at the requesting Party's cost and expense, give in a timely fashion all reasonable assistance requested by the requesting Party in connection with the filing, prosecution, maintenance, defense and enforcement of such Intellectual Property.

7.04 **Third Party Claims**. If during the Term a Party receives any notice, claim or proceedings from any third party alleging infringement of that third party's intellectual property by reason of any Party's activities in relation to this Agreement or the use and exploitation of any

Intellectual Property contemplated by this Agreement, the Party receiving that notice shall forthwith notify the other Parties of the notice, claim or proceeding.

ARTICLE VIII.
PUBLICATIONS

8.01 A party (a "**Publishing Party**") intending to publish at any symposia, national, international or regional professional meeting or in any journal, thesis, dissertation, newspaper or otherwise, any findings, methods, data and results derived in whole or in part from the Project, Outputs and Results or Data (a "**Publication**") shall provide the Advisory Committee or its designee with notice and a copy of any proposed Publication in advance of the submission of such proposed Publication to a journal, editor, or other third party. For a period of thirty (30) days from receipt of such notice (the "**Review Period**"): (i) the Advisory Committee or its designee shall have the right to object to the Publication if it impairs, or competes with or conflicts with, the defined goals of the Consortium, (ii) AHCA shall review the proposed Publication and validate its contents and methods, comments from AHCA shall be taken under good faith consideration by the Publishing Party, it being understood that AHCA may not dictate the content of any Publication, and (iii) all Parties (each a "**Reviewing Party**") may identify any Confidential Information or potentially patentable subject matters which need protection. The Advisory Committee or its designee may extend the Review Period for an additional thirty (30) days. If no objection is made to the proposed Publication within the Review Period, the Publishing Party shall be free to proceed with the Publication, provided that:

(a) Any Confidential Information identified by a Reviewing Party that is governed by ARTICLE VII shall be deleted from the proposed Publication unless the Publishing Party agrees to treat the Confidential Information as patentable information in accordance with Section 8.01(b); and

(b) In the event that a Reviewing Party objects to any Publication on the basis that the same would disclose patentable information, the Publishing Party agrees to delay for an additional ninety (90) days to allow for the filing of any relevant patent applications with respect to the patentable subject matter contained in the proposed Publication.

A Publishing Party shall not permit publication of any Publication without addressing objections based on criteria set forth in Solution's publication policy raised during a Review Period and re-submitting the Publication for additional review pursuant to the procedure in this Section 8.01. During any Review Period, the Reviewing Parties may also provide written comments to the Publishing Party on the contents of the Publication, which the Publishing Party agrees to reasonably consider.

8.02 **Citation and Authorship**. In accordance with scientific custom, each Party shall in all of its Publications acknowledge any other Party's contributions to the Project, and all Consortium Participants will be named as an author on all such Publications (unless a Consortium Participant requests that its name not be used in connection with such Publication), unless other arrangements regarding citation and authorship are agreed upon by Consortium members and reduced to writing.

PUBLICATIONS (NIH GRANT ONLY). AS A MEANS OF SHARING KNOWLEDGE, NIH POLICY STATEMENT 8.2.1 (IN EFFECT AS OF THE DATE OF THE EXECUTION OF THIS AGREEMENT) ENCOURAGES GRANT RECIPIENTS TO ARRANGE FOR PUBLICATION OF NIH-SUPPORTED ORIGINAL RESEARCH IN PRIMARY SCIENTIFIC JOURNALS. RECIPIENTS ALSO SHOULD ASSERT COPYRIGHT IN SCIENTIFIC AND TECHNICAL ARTICLES BASED ON DATA PRODUCED UNDER THE GRANT WHERE NECESSARY TO EFFECT JOURNAL PUBLICATION OR INCLUSION IN PROCEEDINGS ASSOCIATED WITH PROFESSIONAL ACTIVITIES. JOURNAL OR OTHER COPYRIGHT PRACTICES ARE ACCEPTABLE UNLESS THE COPYRIGHT POLICY PREVENTS THE RECIPIENT FROM MAKING COPIES FOR ITS OWN USE (AS PROVIDED IN 45 CFR 75.322). CONSORTIUM MEMBERS ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATED TO THE DISPOSITION OF ROYALTIES AND OTHER INCOME EARNED FROM A COPYRIGHTED WORK AS ADDRESSED IN ADMINISTRATIVE REQUIREMENTS-MANAGEMENT SYSTEMS AND PROCEDURES-PROGRAM INCOME. ALL CONSORTIUM MEMBERS THAT ARE GRANT RECIPIENTS MUST ACKNOWLEDGE FEDERAL FUNDING WHEN ISSUING STATEMENTS, PRESS RELEASES, REQUESTS FOR PROPOSALS, BID INVITATIONS, AND OTHER DOCUMENTS DESCRIBING PROJECTS OR PROGRAMS FUNDED IN WHOLE OR IN PART WITH FEDERAL MONEY. AN EXAMPLE OF SUCH AN ACKNOWLEDGEMENT IS:

"Research reported in this [publication, release] was supported by [name of the Institute, Center, or other funding component] of the National Institutes of Health under grant number [specific NIH grant number in this format: R01GM012345]."

Additionally, each publication must include a disclaimer that says:

"The content is solely the responsibility of the authors and does not necessarily represent the official views of the National Institutes of Health."

8.03 **Publicity**. Except as expressly permitted under this Agreement or under Applicable Law, no Party has any right to use in advertising, publicity or other marketing activities any name, trade name, trademark, insignia, symbol or other designation of another Party without the prior written approval of the other Party.

ARTICLE IX.
REPRESENTATIONS, WARRANTIES AND COVENANTS

9.01 **General Representations and Warranties**. Each Party hereby represents and warrants to the other Parties that:

(a) Such Party is duly organized and validly existing under the laws of its jurisdiction of incorporation or organization, and in good standing in each jurisdiction necessary or applicable for the performance of its obligations under this Agreement, except where the failure to so be in good standing would not have a material adverse effect on its ability to perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement by such Party have been duly approved and authorized by all necessary action.

(c) This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(d) The execution, delivery and performance of this Agreement by such Party shall not (i) conflict with, violate or result in any breach of any of the terms and provisions of, or constitute a default under, any material agreement, arrangement, or other instrument to which such Party is a party or by which it or any of its properties are bound, (ii) violate any organizational document of such Party, (iii) require any consent of approval under any judgment, order, decree, permit or license to which such Party is a party or by which its assets are bound, or (iv) require the consent or approval of any other party.

(e) Such Party has the right to grant the licenses granted by such Party under this Agreement.

9.02 **Consortium Participant Entity Representations, Warranties and Covenants**. Each Consortium Participant hereby represents, warrants and covenants to the other Parties that:

(a) Such Consortium Participant is duly authorized to act by and on behalf of all Related Entities for which it takes any action hereunder or otherwise in relation to the Consortium, including the gathering and transfer of Consortium Participant Data under this Agreement.

(b) No action or proceeding has been filed, no claim has been asserted and no action has been threatened by a third party, including any governmental agency, relating to the right of the Consortium Participant or any of its Related Entities to transfer or other disclose data (including Consortium Participant Data) in a manner contrary to the terms and conditions of this Agreement.

(c) All data provided by or on behalf of such Consortium Participant and its Related Entities to AHCA or any other person in contemplation of this Agreement will be, as of the date of such disclosure, true, accurate and complete in all material respects.

9.03 **No Non-Infringement Warranty**. No Party makes any representations, conditions or warranties, either express or implied, with respect to any of its Background IP or services provided by it pursuant to the terms of this Agreement, or the Consortium IP created under this Agreement. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed as a warranty by a Party that any practice of its Background IP or Consortium IP is or will be free from infringement of patents, copyrights, trademarks, industrial designs or other Intellectual Property rights of any third party.

9.04 **Disclaimer**. EXCEPT FOR THE WARRANTIES THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY, TO THE MAXIMUM EXTENT PERMISSIBLE BY APPLICABLE LAW, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, ORAL OR WRITTEN, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

ARTICLE X.
INDEMNIFICATION; LIMITATION OF LIABILITIES

10.01 **General Indemnity**. To the fullest extent permitted by Applicable Law, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement, only to the extent that such amendment, substitution or replacement provides broader indemnification rights than were provided prior to such amendment, substitution or replacement), a Party (the "**Indemnifying Party**") shall indemnify, hold harmless, defend, pay and reimburse any Covered Person (as hereinafter defined) against any and all Losses to which such Covered Person becomes subject by reason of (a) the negligence or willful misconduct of the Indemnifying Party or its Related Entities or Representatives, (b) any inaccuracy in, any breach of, or any failure to perform or comply with, any of the Indemnifying Party's representations, warranties, agreements, obligations, or covenants contained in this Agreement or in any other agreement, instrument or other document made pursuant hereto, (c) a violation by the Indemnifying Party or its Related Entities or Representatives of Applicable Law or as otherwise contemplated herein or arising in connection herewith, in each case in proportion to the percentage of fault of the Indemnifying Party as ultimately determined in a judicial or arbitral body of competent jurisdiction. As used herein, the term "**Covered Person**" shall mean (i) each Party and its Affiliates and Related Entities; (ii) each officer, director, stockholder, partner, member, employee, agent or representative of each Party and its Affiliates and Related Entities; and (iii) each agent, Representative, or representative of the Consortium.

10.02 **Control of Defense of Third Party Claim**. Upon a Covered Person's discovery of any claim, lawsuit or other proceeding brought by a third party relating to any Losses for which such Covered Person may be indemnified pursuant to Section 10.01, the Party to whom such Covered Person is related shall, or shall cause such Covered Person to, give prompt notice to the Indemnifying Party of such claim, lawsuit or proceeding, provided, that the failure of such Covered Person to provide such notice shall not relieve the Indemnifying Party of any indemnification obligation under Section 10.01, unless the Indemnifying Party shall have been materially prejudiced thereby, including by not being able to avail itself of insurance coverage which would have been available if notice had been given hereunder. The Indemnifying Party shall be entitled to participate in or assume the defense of any such claim, lawsuit or proceeding at such Indemnifying Party's own expense. After notice from the Indemnifying Party to the Covered Person of any election to assume the defense of any such claim, lawsuit or proceeding, the Indemnifying Party shall not be liable to such Covered Person under this Agreement or otherwise for any legal or other expenses subsequently incurred by such Covered Person in connection with investigating, preparing to defend or defending any such claim, lawsuit or other proceeding. If the Indemnifying Party elects not to (or fails to elect) to assume the defense of any such claim, lawsuit or proceeding, including if the Indemnifying Party cannot as a result of a conflict of interest between the Indemnifying Party and the Covered Person, the Covered Person shall have the right to assume the defense of such claim, lawsuit or proceeding as it deems appropriate. Neither the Indemnifying Party nor the Covered Person, if it has assumed the defense, shall settle any such claim, lawsuit or proceeding without the consent of the other, as the case may be (which consent shall not be unreasonably withheld, conditioned or delayed), and the Party to whom such Covered Person is related shall itself abide by this requirement and cause such Covered Person to do so.

10.03 **Limitation on Damages**. NO PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING ANY SUCH DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF OPPORTUNITY, LOSS OF USE OR LOSS OF BUSINESS EXPECTATIONS), RELATING TO OR ARISING IN ANY MANNER OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED.

10.04 **Limitation on Recovery**. THE TOTAL LIABILITY OF EACH PARTY ARISING OUT OF ALL CLAIMS (WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTORY OR OTHERWISE) RELATING TO OR ARISING IN ANY MANNER OUT OF THIS AGREEMENT, OR THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, SHALL NOT EXCEED AN AMOUNT EQUAL TO $100,000.

10.05 **Exclusions**. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIMITATIONS IN SECTIONS 10.03 AND 10.04 WILL NOT APPLY WITH RESPECT TO BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE V, INFRINGEMENT OF ANOTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, LOSSES FOR WHICH A PARTY HAS AN OBLIGATION TO INDEMNIFY ANOTHER PARTY HEREUNDER, OR A PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

10.06 **Insurance**. Each Party shall maintain insurance, at its own expense, in an amount that is adequate to cover Losses, to the extent insurable, covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount and with such deductibles as the Parties' may reasonably determine; provided, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Indemnifying Party for any amount previously paid to such Covered Person by the Indemnifying Party in respect of such Losses.

ARTICLE XI.
GENERAL

11.01 **Assignment**. A Consortium Participant may not assign, delegate, subcontract, sublicense or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written consent of AHCA (which such consent shall not be unreasonably withheld or delayed). AHCA may assign this Agreement to an Affiliate or successor corporation without the consent of any of the Consortium Participants. This Agreement is binding upon the

successors and permitted assigns of the Parties. Any purported assignment not consistent with this section is null and void.

11.02 **Change of Control**. In the event of a Change of Control of Consortium Participant, Consortium Participant shall promptly notify AHCA in writing of such Change of Control.

11.03 **Language**. All business relating to this Agreement, both verbal and in writing, shall be conducted in the English language.

11.04 **Governing Law and Disputes**.

(a) This Agreement and all disputes and claims arising out of or in connection herewith shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law provisions.

(b) All disputes or disagreements arising out of or in connection with the Project or this Agreement, its interpretation, validity effectiveness, recession and termination shall, if possible, first be finally settled amicably within the Advisory Committee. If any such dispute is not so settled within thirty (30) days after such dispute has arisen, then either the applicable Consortium Participant(s) or the Advisory Committee may refer such dispute or disagreement to mediation.

(c) If the dispute or disagreement has not been resolved in accordance with Section 11.04(b), the dispute or disagreement shall be finally settled under the Commercial Arbitration Rules of the American Arbitration Association by an arbitrator appointed in accordance with such Rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration shall be New York, New York and the language of the arbitration shall be English. The arbitration shall be governed by the laws of the State of New York, USA and the U.S. Federal Arbitration Act without giving effect to any choice of law or conflict of law rule or principle that would otherwise require the application of the laws of any other jurisdiction. The arbitrator will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a particular law permits them to do so.

11.05 **Notices**. Any notices, request, delivery, approval or consent required or permitted to be given under this Agreement will be in writing and will be deemed to have been sufficiently given when it is received, after being delivered in person, transmitted by facsimile or email, or delivered by overnight courier service, to the Party to which it is directed at its address shown in the signature page hereof or of a Joinder Addendum, or such other address as such Party will have last given by notice to the other Parties. If notice is to be given to the Advisory Committee, such notice shall be served to AHCA who shall provide email or other notice to all members of the Advisory Committee using then-current contact information.

11.06 **Entire Agreement**. This Agreement, including the exhibits, annexes and attachments hereto which are hereby incorporated herein, constitutes the entire agreement of the Parties with respect to the subject matter hereof. No purported variation of this Agreement shall be effective unless made in writing and signed by the Parties to be bound.

11.07 **Relationship of the Parties**. The Consortium is not a separate legal entity, and these terms and conditions do not create a partnership or joint venture among any two or more of the Parties. No Party can bind or create any relationship of principal or agent between such Party and any other Party.

11.08 **Amendment; Waiver and Termination**. This Agreement may be amended, modified or terminated and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by AHCA (except as otherwise set forth in Section 4.02) (each such written instrument, an "**Amendment Notice**"). Any amendment, modification, termination or waiver set forth in an Amendment Notice shall become effective thirty (30) days following the date of receipt of such Amendment Notice (or after such longer period, if any, as set forth in such Amendment Notice). If a Consortium Participant continues to transfer Consortium Participant Data following the effective date of any amendment, modification or waiver, then such Consortium Participant shall be deemed to have accepted the terms and conditions of any such amendment, modification, or waiver set forth in the Amendment Notice. Any amendment, modification, or waiver set forth in any Amendment Notice shall be binding upon AHCA, the Consortium Participants, and all of their respective successors and permitted assigns whether or not such party, assignee or other affiliated actually entered into or approved such amendment, modification, or waiver. Notwithstanding the foregoing, (i) this Agreement may not be amended, modified or terminated and the observance of any term hereunder may not be waived with respect to any Consortium Participant without the written consent of such Consortium Participant unless such amendment, modification, termination or waiver applies to all Consortium Participants, respectively, in the same fashion, and (ii) this Agreement may not be amended, modified or terminated and the observance of any term hereunder may not be waived with respect to any Consortium Participant without the written consent of such Consortium Participant, if such amendment, modification, or waiver would adversely affect the rights of such Consortium Participant in a manner disproportionate to any adverse effect such amendment, modification, or waiver would have on the rights of the other Consortium Participants under this Agreement. No consent or waiver, express or implied, by a Party with respect to any breach or default by a Party hereunder shall be deemed or construed to be a consent or waiver with respect to any other breach or default by any Party of the same provision or any other provision of this Agreement. Failure on the part of a Party to complain of any act or to declare the other Party in default shall not be deemed or constitute a waiver by the Party of any rights hereunder.

11.09 **Further Assurances**. The Parties shall cooperate with each other and execute and deliver to the other such instruments and documents and take such other action (at the requesting party's cost and expense) as may be reasonably requested from time to time in order to carry out and confirm the rights and the intended purpose of this Agreement.

11.10 **Severability**. If any provision of this Agreement, or the application thereof, will for any reason and to any extent be determined to be invalid or unenforceable, the remaining provisions of this Agreement will remain in effect. The Parties agree that any invalid provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law consistent with the original intent and economic terms of the invalid provision.

11.11 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument. This Agreement (including any Joinder Addendum) may be executed via a recognized electronic signature service (e.g., DocuSign) or may be delivered by facsimile transmission, or may be signed, scanned and emailed to a Party, and any such signatures shall be treated as original signatures for all applicable purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, AHCA has executed this Agreement through its authorized representatives as of the Effective Date:

AHCA: American Health Care Association
By:
Name: Rae Anne Davis
Title: Chief Strategic Officer & Senior Vice President for Administration
Date:
Address: 122 C Street NW, Suite 400 Washington, DC 20001

EXHIBIT A
JOINDER ADDENDUM

This Joinder Addendum No._____ (this "**Joinder**"), dated as of _____ __ to the Second Amended and Restated Consortium Participation Agreement, dated as of _____, 2025 (the "**Consortium Agreement**"), by and among the entity identified below as "New Participant" and the parties listed on the signature pages to the Consortium Agreement and those additional entities that have become parties thereto (collectively, "**Parties**" and each, individually, a "**Party**"), including American Health Care Association ("**AHCA**"). Terms used in this Joinder Addendum with capital letters that are not defined herein shall have the respective meanings assigned to them in the Consortium Agreement.

W I T N E S S E T H:

WHEREAS, AHCA has established with the Consortium Participants a consortium to collect, aggregate and evaluate data obtained from Covered Entities and Non-Covered Entities across the United States for mutual benefit and with a common goal to build an integrated EHR-based data infrastructure to coordinate care within and among Covered Entities and Non-Covered Entities, conduct public health surveillance, and enable the performance of medical and health care-related research (the "**Consortium**");

WHEREAS, the undersigned ("**New Participant**") wishes to participate in the Consortium in accordance with the requirements, terms and conditions of the Consortium Agreement.

NOW THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, New Participant hereby agrees as follows:

1. In accordance with Section 2.04 of the Consortium Agreement, New Participant by its signature below, becomes a "Consortium Participant" under the Consortium Agreement with the same force and effect as if originally named therein as a "Consortium Participant," and New Participant hereby (a) agrees to all of the terms and provisions of the Consortium Agreement applicable to it as a "Consortium Participant" thereunder and (b) represents and warrants that the representations and warranties made by it as a "Consortium Participant" thereunder are true and correct in all material respects on and as of the date hereof. Each reference to a "Consortium Participant" in the Consortium Agreement shall be deemed to include New Participant.

2. New Participant represents and warrants to AHCA and all of the other Consortium Participants that this Joinder Addendum has been duly executed and delivered by New Participant and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms. This Joinder Addendum may be executed in counterparts as provided in Section 11.11 of the Consortium Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Joinder Addendum to be executed and delivered as of the day and year first above written.

NEW CONSORTIUM PARTICIPANT: **[Insert full legal name of New Consortium Participant]**
By:
Name:
Title:
Date:
Address:

Accepted by AHCA: **AMERICAN HEALTH CARE ASSOCIATION:**
By:
Name: Rae Anne Davis
Title: Chief Strategic Officer & Senior Vice President for Administration
Date:

EXHIBIT B
CONSORTIUM PLAN

This Exhibit B outlines the Consortium Plan, which includes research activities and data analytics activities conducted pursuant to the underlying Consortium Participation Agreement using the Consortium Participant Data and other data identified below.

I. Research Activities

All research activities must be approved by the Consortium Research Review Committee.

- Research Activities: Effectiveness and outcomes research that may be observational or interventional in design
- Data Collected:
    - Consortium Participant Data and optionally:
        - CMS claims and administrative data including, but not limited to, Medicare Part A, B, C and D claims
        - Publicly available facility-level data such as CASPER data on facility characteristics
        - Other data supplied by researchers such as laboratory data, or resident's answers to survey questionnaires
- Example Research Activities:
    - Retrospective evaluation of the impact that the COVID-19 pandemic, vaccinations, and treatment protocols have on the long-term care ("LTC") population
    - Retrospective evaluation of the impact of CMS' 3-day waiver policy during the pandemic on hospitalization rates.
- Work Product and Outcomes:
    - Research publications, presentations and reports will also only contain De-Identified Data Outputs, unless consent is provided by the Participant.

II. Data Analytics Activities

Data analytics activities will be guided by input from Consortium Participants and are designed to support Consortium Participants in the delivery of care, care coordination and management, and other health care operations activities or public health surveillance. These data analytics activities fall into two broad categories: (i) Data Aggregation Across Consortium Participants, and (ii) Consortium Participant-Specific Delivery of Care, Health Care Operations, and Public Health Surveillance.

- <u>Data Aggregation Across Consortium Participants</u>
    - Data Collected:
        - Consortium Participant Data and optionally:
            - Publicly available facility-level data such as CASPER data on facility characteristics
    - Example Data Analytics Activities:
        - Data storage and linkage across data sources, including longitudinal data linkage
        - Benchmarking metrics among multiple Consortium Participants
        - Aggregate-level health care operations for multiple Consortium Participants (*e.g.*, population-based analytics relating to improving health or reducing

health care costs)
        - Aggregate-level public health surveillance and evaluation such as vaccination usage or prevalence of multi-drug resident organisms at admission from hospitals
        - Other aggregate reports based on input and requests from Consortium Participants
    - Example Work Product and Outcomes:
        - Feedback reports to Consortium Participants with De-Identified Data Outputs
        - Aggregate public health reporting to federal and state agencies
        - Benchmarking in data trending and reporting available to LTC providers and others

- Consortium Participant-Specific Delivery of Care, Health Care Operations, and Public Health Surveillance
    - Data Collected:
        - Consortium Participant Data and optionally:
            - Publicly available facility-level data such as CASPER data on facility characteristics
    - Example Data Analytics Activities:
        - Data storage and linkage across data sources collected including longitudinal data linkage
        - Consortium Participant-specific analytics to evaluate and enhance care coordination and management (*e.g.*, identifying residents at-risk for poor outcomes such as hospitalization, falls, or pressure ulcers, and evaluating medication use to help Participants better address resident needs)
        - Consortium Participant-specific analytics for quality assessment and improvement activities (*e.g.*, enhancing speed of access to quality measures used in the Medicare Value-Based Payment and Quality Reporting programs, regulatory compliance)
        - Consortium Participant-specific business planning and development (*e.g.*, cost- management and planning analyses related to managing and operating the facility, such as quality metrics by health plan coverage)
        - Consortium Participant-specific public health surveillance, including monitoring rates of multi-drug resistant organisms being admitted to the nursing homes from the hospital
        - Consortium Participant-specific assessment of the impact of regulatory and payment policies that affect operational decisions and patients' health outcomes
    - Example Work Product and Outcomes:
        - Consortium Participant-specific feedback reports to Consortium Participants (may include Consortium Participant Data or De-Identified Data Outputs)
        - Consortium Participant-specific public health reporting to federal and state agencies (with prior notice to Consortium Participant)

III. Wind-Down Activities

Wind-down activities will be guided by Sections IV. Term and Withdrawal, in each of the Expanded Consortium Participation Agreement and the Amended & Restated Consortium Participation Agreement, as amended (as applicable).

- In the event that the Consortium Participation Agreement is terminated
    - Status of Consortium Participant Data:
        - No new Consortium Participant Data will be received after the date of termination for any purpose, including Research Activities (as described in Section I of this Consortium Plan) and Data Analytics Activities (as described in Section II of this Consortium Plan.
        - All Consortium Participant Data held for Data Analytics Activities will be returned or destroyed, if feasible, consistent with the parties' Business Associate Agreement.
    - Status of Work Product and Outcomes:
        - Consortium Participants may continue to use of Example Work Product and Outcomes described in Section II (Data Analytics Activities) of this Consortium Plan that were distributed prior to the date of termination; however, access to Work Product and Outcomes (e.g., feedback reports via an online portal) will be terminated.
    - Status of Research Activities:
        - Consortium Participant Data that was submitted prior to the date of termination may continue to be used for approved research projects.
        - Consortium Participant Data that was submitted prior to the date of termination may be made available to researchers who have proposals approved by the Research Review Committee, via the NIH's separate distribution infrastructure it has established for research purposes.

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "**BAA**") is made effective as of the Effective Date of the Underlying Agreement (defined below) by and between **American Health Care Association** ("**Business Associate**"), and Consortium Participant ("**Participant**").

RECITALS

WHEREAS, Participant and Business Associate are parties to a Consortium Participant Agreement to which this BAA is annexed whereby Business Associate provides services for and on behalf of Participant (the "**Underlying Agreement**"), that may involve the use or disclosure of Protected Health Information ("**PHI**"), as defined below;

WHEREAS, the parties desire to safeguard PHI consistent with the applicable requirements of the **Health** Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"), as amended by the final regulations promulgated pursuant to the Health Information Technology for Economic and Clinical Health ("**HITECH**") Act, as part of the American Recovery and Reinvestment Act of 2009, at Pub. L. No. 111-5, and the Privacy Rule, Security Rule and Breach Notification Rule (each as defined below) promulgated thereunder (collectively "**HIPAA Rules**"); and

WHEREAS, the parties agree that this BAA is only applicable to the extent Business Associate is acting in such a way as to establish a business associate or subcontractor relationship with Participant under 45 C.F.R. § 160.103.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, Participant and Business Associate hereby agree as follows:

I. DEFINITIONS. For purposes of this BAA:

A. "Breach" shall have the same meaning given to such term in 45 C.F.R. § 164.402.

B. "Breach Notification Rule" shall mean the rule related to breach notification for Unsecured Protected Health Information codified at 45 C.F.R. Parts 160 and 164, subpart D.

C. "Designated Record Set" shall have the same meaning given to such term in 45 C.F.R. § 164.501.

D. "Electronic Protected Health Information" or ("EPHI") shall have the meaning given to such term in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Participant.

E. "HIPAA Rules" shall mean the Privacy, Security and Breach Notification Rules.

F. "Individual" shall have the same meaning given to such term in 45 C.F.R. § 160.103 and shall include a person who qualifies as a Personal Representative in accordance with 45 C.F.R. § 164.502(g).

G. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160 and 164, subparts A and E.

H. "Protected Health Information" or ("PHI") shall have the meaning given to such term in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Participant.

I. "Required by Law" shall have the same meaning given to such term in 45 C.F.R. § 164.103.

J. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

K. "Security Incident" shall have the same meaning given to such term in 45 C.F.R. § 164.304.

L. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. Parts 160 and 164, subparts A and C.

M. "Unsecured PHI" shall have the same meaning given to such term in 45 C.F.R. § 164.402.

N. All other terms used, but not otherwise defined, in this BAA, shall have the same meaning as those terms in HIPAA, the HITECH Act, or the HIPAA Rules.

II. PRIVACY RULE PERMITTED USES AND DISCLOSURES OF BUSINESS ASSOCIATE

A. Permitted Uses and Disclosures of PHI. Business Associate may use and disclose PHI only for the following purposes:

1. Business Associate may only use and disclose PHI to perform functions, activities or services for, or on behalf of Participant, including as specified in the Underlying Agreement, except as provided in Section II(A)(2)-(5) below.

2. *Reporting Violations.* Business Associate may use and disclose PHI as Required by Law, including using PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

3. *Use and Disclosure for Management and Administration.* Business Associate may use and disclose PHI for the proper management and administration of its business and to carry out the legal responsibilities of Business Associate; however, Business Associate may only disclose PHI for such purposes if the disclosure is (i) Required by Law or (ii) Business Associate obtains reasonable assurances from any recipient of such PHI that (a) the PHI will remain confidential and be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the recipient, and (b) the recipient will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI was breached.

4. *Data Aggregation.* Business Associate may provide data aggregation services relating to the health care operations of Participant or applicable covered entities as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

5. *De-Identification.* Business Associate may de-identify PHI as permitted by 45 C.F.R. § 164.514, and may use and disclose de-identified information, provided that any such use or disclosure is consistent with applicable law.

III. PRIVACY RULE OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

A. Business Associate shall:

1. *Limitation on Disclosure.* Not use or disclose PHI other than as permitted or required by this BAA, the Underlying Agreement, or as Required by Law. Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule if done by Participant, unless expressly permitted to do so pursuant to the Privacy Rule and this BAA.

2. *Appropriate Safeguards.* Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this BAA, the Underlying Agreement, or as Required by Law.

3. *Obligations on Behalf of Covered Entities.* To the extent Business Associate carries out an obligation for which a covered entity is responsible under the Privacy Rule, Business Associate must comply with the requirements of the Privacy Rule that apply to the covered entity in the performance of such obligation.

4. *Mitigation*. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of HIPAA, the Underlying Agreement, or this BAA.

5. *Reporting of Improper Use or Disclosure*. Report to Participant any use or disclosure of PHI not permitted by this BAA promptly after Business Associate becomes aware of such use or disclosure.

6. *Business Associate's Subcontractors.* Ensure, consistent with 45 C.F.R. § 164.502(e)(1)(ii), that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees in writing to substantially similar restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI.

7. *Access to PHI.* Only to the extent Business Associate agrees to maintain PHI in a Designated Record Set on behalf of Participant, provide access to such PHI to Participant within fifteen (15) business days of receipt of a written request by Participant, in order for Participant to meet its obligations under the Privacy Rule at 45 C.F.R. § 164.524. If an Individual submits a request for access directly to Business Associate, Business Associate shall notify Participant after receiving such request. Participant shall be responsible for responding to such requests.

8. *Amendment of PHI.* Only to the extent Business Associate agrees to maintain PHI in a Designated Record Set on behalf of Participant, provide access to such PHI to Participant, within fifteen (15) business days of receipt of a written request by Participant, in order for Participant to meet its obligations under 45 C.F.R. § 164.526. If an Individual requests an amendment of PHI directly from Business Associate, Business Associate shall notify Participant after receiving such

request. Participant shall be responsible for responding to such requests. Any denial of amendment of PHI maintained by Business Associate shall be the responsibility of Participant.

9. *Accounting/Documentation of Disclosures.* To the extent applicable, agree to document disclosures of PHI and information related to such disclosures as would be required for Participant to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the Privacy Rule at 45 C.F.R. § 164.528. Business Associate shall provide Participant with such documentation within fifteen (15) business days of receipt of a written request from Participant. If an Individual submits a request for an accounting of disclosures of PHI directly to Business Associate, Business Associate shall notify Participant of such request and provide Participant the aforementioned documentation. Participant shall be responsible for responding to such requests.

10. *Government Access to Records.* Make available to the Secretary its internal practices, books and records, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Participant, for purposes of determining a covered entity's compliance with the HIPAA Rules.

11. *Minimum Necessary.* Business Associate agrees to comply with the minimum necessary standard for Business Associates as set forth in the Privacy Rule, 45 C.F.R. § 164.502(b).

12. *Legal Proceedings.* If Business Associate receives a court order, subpoena or other request through a similar legal process for PHI that Business Associate maintains for or on behalf of Participant pursuant to the Underlying Agreement (the "**Request**"), Business Associate will notify Participant within five (5) business days, unless prohibited by the Request. Business Associate will not release any information pursuant to the Request until Business Associate first gives Participant the opportunity to object in accordance with the Request and as permitted by law. If Participant objects to the Request, Business Associate will not release any of the requested PHI until the objections are resolved by agreement between Participant and the requesting party or final court order.

IV. SECURITY RULE OBLIGATIONS OF BUSINESS ASSOCIATE.

A. Business Associate shall:

1. *Compliance with the Security Rule.* Comply with the Security Rule with respect to EPHI, and have in place reasonable and appropriate Administrative, Physical, and Technical Safeguards to protect the Confidentiality, Integrity, and Availability of EPHI and to prevent use or disclosure of EPHI other than as permitted by this BAA, the Underlying Agreement, or as Required by Law.

2. *Subcontractors*. Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits EPHI on behalf of Business Associate agrees in writing to comply with the Security Rule with respect to such EPHI.

3. *Security Incident.* Promptly report any successful Security Incident involving EPHI of which it becomes aware. Business Associate shall not be required to report unsuccessful incidents. For purposes of this BAA, an "unsuccessful" Security Incident is an unsuccessful attempt to breach the security of Business Associate's systems that Business Associate determines was targeted at Business Associate's systems storing Participant's EPHI, and includes, but is not limited to,

general pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident resulted in unauthorized access, use or disclosure of PHI, and such unsuccessful Security Incidents shall be deemed as having been reported.

V. BREACH NOTIFICATION RULE OBLIGATIONS OF BUSINESS ASSOCIATE

A. *Notification Requirement.* To the extent Business Associate accesses, retains, modifies, records, stores, destroys or otherwise holds, uses or discloses Unsecured PHI, following the discovery of a Breach of Unsecured PHI, notify Participant of any such Breach in accordance with 45 C.F.R. § 164.410 without unreasonable delay, and in no case later than 10 (10) business days after discovery of the Breach.

B. *Discovery of Breach*. For purposes of reporting a Breach to Participant, the discovery of a Breach shall occur on the first day on which such Breach is known to Business Associate or, by exercising reasonable diligence would have been known to any person (other than the person committing the Breach) who is an employee, officer or agent of the Business Associate.

C. *Contents of Notification*. Any notice referenced above in Section V(A) of this BAA will include, to the extent known to the Business Associate, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used, or disclosed during such Breach. Business Associate will also provide to Participant other available information that Participant or the relevant covered entity is required to include in its notification to the individual pursuant to the Breach Notification Rule.

VI. TERM AND TERMINATION

A. *Term*. This BAA shall be effective as of the Effective Date and shall terminate upon termination or expiration of the Underlying Agreement, or when either party terminates for cause as authorized below, whichever is sooner.

B. *Termination for Cause*. Either party may terminate this BAA if it determines that the other party has breached a material term of this BAA, after providing written notice to the breaching party in sufficient detail to enable the breaching party to understand the specific nature of the breach, and shall allow a reasonable opportunity for the breaching party to cure the breach. If the breach is not cured within thirty (30) business days of notice to the breaching party, the non-breaching party may terminate this BAA with thirty (30) days written notice to the breaching party; provided, however, that the non-breaching party shall be responsible for payment for services provided pursuant to the Underlying Agreement prior to the effective date of termination.

C. *Effect of Termination*. Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Participant, or created, maintained, or received by Business Associate on behalf of Participant, shall, if feasible, return or destroy all such PHI that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall continue to extend the protections of this BAA to such PHI as required by the HIPAA Rules and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible, for so long as Business Associate retains such PHI. This Section shall survive termination of this BAA for any reason.

VII. PARTICIPANT OBLIGATIONS.

A. Participant agrees and represents as follows:

1. Participant shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Participant.

2. To the extent Participant has agreed to further limitations on uses and disclosures of PHI, Participant shall notify Business Associate of such additional restrictions, including any limitations in or changes to Participant's or the relevant covered entity's Notice of Privacy Practices issued in accordance 45 C.F.R. § 164.520, to the extent such limitation(s) or change(s) may affect Business Associate's use or disclosure of PHI.

3. To the extent Participant provides PHI to Business Associate, Participant has obtained the consents, authorizations and/or other forms of legal permission required under HIPAA and other applicable law, if any. Participant shall notify Business Associate, in writing, of any changes or revocation of permission by an Individual to use or disclose

4. that Individual's PHI, to the extent such change(s) or revocation affect(s) Business Associate's use or disclosure of PHI.

5. Participant shall promptly notify Business Associate, in writing, of any restriction to the use or disclosure of PHI that Participant has agreed to in accordance with 45 C.F.R. § 164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI.

6. Participant represents that, to the extent Participant provides PHI to Business Associate, such information is only the Minimum Necessary amount of PHI to accomplish the intended purpose of the disclosure.

7. In the event the Secretary investigates any complaint against Business Associate or conducts a compliance review of Business Associate in connection with Business Associate's activities performed under this BAA, Participant agrees to reasonably cooperate with and assist Business Associate, as requested, in responding to such complaint or compliance review.

VIII. MISCELLANEOUS

A. *Binding Effect*. This BAA shall be binding upon and shall inure to the benefit of the parties, and any successor to the operations and business of the parties whether by operation of law or otherwise, including the parties' heirs, legal representatives, successors, and permitted assigns. The preceding sentence shall not affect any restriction on assignment set forth elsewhere in this BAA.

B. *Assignment*. Participant may not assign its rights or responsibilities under this BAA without Business Associate's prior written consent.

C. *Notices*. All notices and other communications required or permitted by this BAA must be in writing and shall be deemed given to a Party when: (i) delivered to the appropriate address by hand or by nationally recognized overnight courier service (cost prepaid); (ii) sent be facsimile or e-

mail with confirmation of transmission by the transmitting equipment; or (iii) received or rejected by the addressee, if sent by certified mail, return receipt requested, in ease case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention to the person (by name or title) designated below:

D. *Severability*. If any provision of this BAA shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be construed in all respects as if such invalid or unenforceable provision were replaced with a valid and enforceable provision as similar as possible to the one replaced, and the remainder of this BAA shall continue in full force and effect and shall not be invalidated impaired or otherwise affected.

E. *Entire Agreement*. This BAA contains the entire understanding of the parties hereto with regard to the subject matter hereof, and supersedes all other agreements and understandings, written and oral, relating to the subject matter hereof.

F. *Interpretation.* The parties agree that in the event of any conflict, inconsistency, or discrepancy between the Underlying Agreement and this BAA relating to any subject matter herein, the terms of this BAA shall prevail. Any ambiguity in this BAA shall be resolved to permit the parties to comply with the Privacy, Security, and Breach Notification Rules, and HIPAA.

G. *Amendment.* The parties agree to take such action as is necessary to amend this BAA from time to time in order for Participant and Business Associate to comply with the requirements of the Privacy and Security Rules. Specifically, the parties agree to negotiate in good faith any changes or modifications to this BAA as proposed or requested by either party as may be necessary for the parties to comply with their respective obligations under HIPAA, HITECH, and the Privacy, Security, and Breach Notification Rules.

H. *Regulatory References*. A reference in this BAA to a section in the Privacy, Security, or Breach Notification Rule means the section as in effect or as amended, and for which compliance is required.

I. *Waiver*. The waiver of any one breach of this BAA shall not be construed as a waiver of any rights or remedies with respect to any other breach or subsequent breach.

J. *Survival*. The respective rights and obligations of Business Associate under Section VI(C) of this BAA shall survive the termination of this BAA.

K. *Governing Law*. This BAA shall be governed by and construed in accordance with the same internal laws as that of the Underlying Agreement.

L. *No Third Party Rights*. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Participant, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

M. *Counterparts*. This BAA may be executed in one or more counterpart copies, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile or electronic (PDF) signatures shall be treated as original signatures. This BAA shall be

binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected on this BAA as the signatories thereto.

Notices to Participant: _____

_____

_____

_____

_____

Attn: _____

Fax: _____

Email: _____

Notices to Business Associate

American Health Care Association
122 C Street NW, Suite 400

Washington, DC 20001

Attn: Rae Anne Davis_____

Fax: _____

Email: rdavis@ahca.org_____

EXHIBIT D
FORM OF DATA RELEASE FORM

DATA RELEASE FORM

TO: [ ] (the "**EHR Vendor**"); and

American Health Care Association ("**AHCA**")

WHEREAS:

(a) The undersigned entity [ ] (the "**Organization**") has contracted with the EHR Vendor for the hosting and storing of electronic health record data containing personally identifiable information related to the Organization's post-acute and long-term care patient population (the "**Data**");

(b) The Organization is participating in a research and data analytics consortium whereby AHCA will collect, aggregate and evaluate the Data on behalf of the Organization;

(c) The Organization is requesting that EHR Vendor share all of the Data in EHR Vendor's control with AHCA (the "**Data Release**") for the purpose of building an integrated electronic health record-based data infrastructure to coordinate care within and among skilled nursing facilities, assisted living facilities, and other parties serving the long-term care patient population; conduct public health surveillance; and enable the performance of research (the "**Purpose**");

(d) The Organization acknowledges that the Data Release will be implemented in phases (*i.e.*, not all at once) pursuant to the terms of individual statements of work under a written agreement by and between AHCA and EHR Vendor;

(e) The Organization has agreements in place with the EHR Vendor and AHCA that require each of the EHR Vendor and AHCA to protect the Data in accordance with all applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended, and applicable state law.

THEREFORE, in consideration of the foregoing:

(1) The Organization requests, consents to, directs and authorizes the access of the Data by the EHR Vendor for the Purpose and the Data Release(s) to AHCA for those facilities included on the Organization's contract with the EHR Vendor.

(2) The initial Data Release is expected to occur on or about receipt of authorization, with subsequent weekly recurring Data Releases for a period not extending longer than the projected period of the research and data analytics consortium.

(3) The Organization is executing this Data Release Form on the understanding that AHCA will bear the cost of any and all Data Release(s) pursuant to the terms of a written agreement by and between AHCA and EHR Vendor.

(4) The Organization may withdraw its consent at any time by providing at least ten (10) days' notice to the EHR Vendor.

[ ] (the "**Organization**")

By: _____
Name: _____
Title: _____
Date: _____

I have authority to bind the Organization.

EXHIBIT E

DATA USE AGREEMENT

This Data Use Agreement ("**Agreement**") effective as of its last date of signature below is by and between American Health Care Association ("**AHCA**") and _____("**Recipient**"). AHCA and Recipient are referred to herein each individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, AHCA has created a research database of patient health information ("**Data**") compiled from skilled nursing facilities, assisted living facilities and other post-acute care health care providers ("**Participating Providers**"), some of whom are Covered Entities under the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereunder (collectively "**HIPAA Rules**") and some of whom are not Covered Entities;

WHEREAS, AHCA is a Business Associate of the Covered Entities from whom AHCA has compiled Data;

WHEREAS, the patient health information from the Covered Entities is Protected Health Information under the HIPAA Rules but has been redacted to meet the definition of a Limited Data Set of Protected Health Information under 45 C.F.R. § 164.514(e) of the HIPAA Rules [and then subsequently combined with additional information provided by the National Institutes of Health ("NIH"), such as Medicare and Medicaid claims data and/or the Covered Entity's Centers for Medicare and Medicaid Services (CMS) Certification Number][1];

WHEREAS, the patient health information from health care providers who are not covered entities has also been redacted, used, disclosed and protected in the same manner as Data from Covered Entities; and

WHEREAS, Recipient desires to use and/or disclose the Data in accordance with this Agreement and the HIPAA Rules, and is entering into this Agreement on behalf of the Participating Providers, each of whom is a third party beneficiary of this Agreement with the power to enforce its terms.

NOW, THEREFORE, in consideration of the mutual promises below and exchange of information pursuant to this Agreement, AHCA and Recipient hereby agree as follows:

1. **Definitions**.
   (a) "Business Associate" shall have the same meaning given to such term in 45 C.F.R. § 160.103.
   (b) "Covered Entity" shall have the same meaning given to such term in 45 C.F.R. § 160.103.
   (c) "Limited Data Set" shall have the same meaning given to such term in 45 C.F.R. § 164.514(e)(2).

[1] *NTD: Additional language included to the extent the research involves the use of Identifiable Research Data*.

(d) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160 and 164, subparts A and E.

(e) "Protected Health Information" or "PHI" shall have the same meaning given to such term in 45 C.F.R. § 160.103, limited to the information created or received by Recipient from AHCA.

(f) All other capitalized terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in the HIPAA Rules.

2. Access. Recipient will have access to Data via a third-party web-based platform designated by AHCA (the "**Platform**"). Recipient will agree to be bound and abide by the third-party's terms and conditions of use on such Platform. Recipient agrees that AHCA is not responsible or liable for the acts or omissions of any third party that facilitates the storage and transmission of the Data to Recipient and that Recipient's sole recourse in connection with its use of such Platform to obtain access to Data is with the third party and not AHCA, unless otherwise agreed to by the Parties.

3. Use and Disclosure.

(a) Purpose; Permissible Use and Disclosure. Recipient agrees not to use or disclose the Data for purposes other than for the research purpose(s) set forth in Attachment 1 (the "**Project**"). Except as otherwise limited in this Agreement, Recipient may use or disclose Data to perform functions, activities, or services necessary for the Project, provided that an alteration to or waiver, in whole or in part, of the individual authorization required by the HIPAA Rules under 45 C.F.R. § 164.508 for use or disclosure of PHI has been approved by either a privacy board or institutional review board approval in compliance with 45 C.F.R. § 164.512(i)(1)(i), with documentation evidencing such approval attached hereto as Attachment 2 ("**Required Approval**"), and would not violate the Privacy Rule if done by AHCA or a Covered Entity.

(b) Data Use Representations: Recipient shall:

(i) Not use or further disclose the Data other than as permitted by this Agreement or as otherwise required by law;

(ii) Use appropriate safeguards to prevent use or disclosure of the Data other than as provided for by this Agreement;

(iii) Report to AHCA any use or disclosure of the Data not provided for by this Agreement of which it becomes aware, as set forth in Section 7;

(iv) Ensure that any agents to whom it provides the Data agree to the same restrictions and conditions that apply to Recipient with respect to the Data;

(v) [Not identify or attempt to identify or contact any specific individual or entity whose information appears in the Data][2]; and

(vi) Not use the Data other than as permitted or required by the Required Approval.

4. Authorized Users. The Data provided by AHCA and made accessible to Recipient over the Platform shall only be used or disclosed by Recipient and those workforce members and agents authorized by Recipient that have a need to use, or provide a service in respect

[2] NTD: Language to be struck to the extent the research involves the use of Identifiable Research Data obtained through NIH Platform (or elsewhere).

of, Data in connection with the Project ("**Authorized Users**"). Recipient will make Authorized Users aware of the existence of this Agreement, and responsibilities and obligations hereunder. Recipient will terminate access to the Data and the Platform of any Authorized User who no longer needs such access. Recipient is responsible and liable for the acts and omissions of the Authorized Users and any of their Platform accounts. No Recipient subcontractors will be made Authorized Users.

5. **Confidential Information.** Any (i) Data, (ii) anything marked "confidential" (either at the time of delivery or within a period of 7 days thereafter, and (iii) any information a reasonable person would understand is confidential are AHCA's confidential information ("**Confidential Information**"). Except as otherwise expressly permitted in this Agreement, Recipient will not, nor will it permit anyone to, access, disclose, use, copy, distribute, sell, license, publish, reproduce, or otherwise process or make available AHCA's Confidential Information, in whole or in part, except as necessary to perform its obligations under this Agreement. Recipient shall safeguard AHCA's Confidential Information against unauthorized access, use, or disclosure, loss, and unavailability with technical, administrative, and organizational measures at least as stringent as those it employs to safeguard its own confidential information of a similar nature, and in no event with less than reasonable means and shall advise AHCA as soon as practicable in the event Recipient learns that any person within Recipient's organization has violated the confidentiality required under this Agreement. For clarity, nothing in this Section 5 shall be construed to eliminate or reduce in any manner whatsoever, Recipient's additional obligations relating to the use, including disclosure, of the Data pursuant to law or the terms of this Agreement, including without limitation Section 3(b) above. For Confidential Information other than Data, the confidential requirements under this section 5 shall continue for a period of five (5) years from execution of this Agreement. For avoidance of doubt, Recipient may disclose the existence of the Platform and that they are using it.

6. **Appropriate Safeguards**. Recipient shall use appropriate and reasonable technical, administrative, and physical safeguards to prevent use or disclosure of Data other than as permitted by this Agreement. AHCA and its subcontractors may reasonably monitor Recipient and Authorized Users' use of the Data and the Platform. Recipient will reasonably cooperate and permit AHCA or its representative (and any governmental authorities with jurisdiction in connection with an audit request concerning Recipient) reasonable and necessary access (with advanced approval of Recipient, which may not be unreasonably withheld) to Recipient's relevant books, records, and premises, and all pertinent security procedures and physical access controls and records in order to verify Recipient's compliance with its obligations under this Agreement including, without limitation, with respect to any privacy, confidentiality, and security provisions in this Agreement.

7. **Reporting**. Recipient shall report to AHCA any Data Security Breach as soon as practicable but no later than seventy-two (72) hours after Recipient becomes aware of such incident. "**Data Security Breach**" means (a) any use or disclosure of Data not expressly permitted by this Agreement by Recipient; (b) any actual or reasonably suspected unauthorized use of, unauthorized access to, damage to, loss of, or unauthorized exercise of control over Data by Recipient; (c) any Breach of Unsecured PHI as defined by HIPAA

at 45 C.F.R. § 164.402 by Recipient; or (d) any other circumstance that actually compromises, or is reasonably suspected of compromising the privacy, security, confidentiality, availability, or the integrity of any of Data by Recipient.

8. **Permissible Requests by AHCA**. AHCA shall not request Recipient to use or disclose Data in any manner that would not be permissible under the Privacy Rule, if done by AHCA or a Covered Entity.

9. **Compliance with Applicable Law**. Recipient shall comply with all applicable laws, rules, and regulations, and all professional standards applicable to the Project, inclusive of applicable human subject research and clinical trials regulations, including without limitation 45 C.F.R. Part 46, and 21 C.F.R. Parts 50 and 56, with respect to the Project and any use and disclosure Data (and the Platform through which the Data is available) hereunder.

10. **Required Approval**. Recipient shall perform adequate oversight of the Data and its Authorized Users to ensure conformance to the Required Approval. Recipient shall obtain and/or confirm the Required Approval prior to initiation of the Project.

11. **Ownership**. As between AHCA and Recipient, AHCA shall retain ownership and control of all rights it may have in the AHCA's Confidential Information (including all intellectual property rights therein), and Recipient does not obtain any rights of any kind in AHCA's Confidential Information other than as expressly set forth herein.

12. **Fees**. If applicable, reimbursement of any costs associated with the preparation, compilation, and transfer of the Data to Recipient will be addressed in Attachment 3.

13. **No Federal Exclusion**. Recipient represents and warrants to the best of its knowledge at the time of this Agreement that Recipient and Authorized Users have not been placed on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. § 1320a(7), have not been excluded from government contracts by the General Services Administration ("**GSA**") and have not been convicted of a felony or any crime relating to healthcare. Further, if during any term of this Agreement, if Recipient becomes aware of Recipient or any Authorized User is placed on the sanctions list, excluded from government contracts or convicted of a felony or any crime relating to healthcare, Recipient will notify AHCA in writing of the event and such notice shall contain reasonably sufficient information to allow AHCA to determine the nature of the sanction, exclusion or conviction. AHCA will have the right to terminate this Agreement immediately by written notice to Recipient if Recipient or any Authorized User is placed on the sanctions list, banned from government contracts by GSA or convicted of a felony or any crime relating to healthcare.

14. **Representations and Warranties**. Except as expressly provided herein or prohibited by applicable law, access to the Platform and use of the Data provided by AHCA to Recipient pursuant to this Agreement are understood to be provided "AS IS" and "AS AVAILABLE." AHCA MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE

NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE PLATFORM AND DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. Notwithstanding the foregoing, AHCA, to its knowledge and belief, has the right and authority to provide Data and access to the Platform to Recipient for use in the Project in accordance with this Agreement.

15. **Liability**. Except to the extent prohibited by applicable law, Recipient assumes liabilities for damages that are directly caused by (a) its use, storage, disclosure, or disposal of Data, (b) breach of this Agreement or violation of applicable law by Recipient, (c) the negligence or willful misconduct of Recipient, (d) any alleged or actual infringement or misappropriation of intellectual property rights by Recipient. AHCA will not be liable to Recipient for any loss, claim, or demand made by Recipient, or made against Recipient by any other party, due to or arising from the use of Data by Recipient, except to the extent permitted by law when caused solely and directly by the gross negligence or willful misconduct of AHCA. Recipient shall indemnify, defend, and hold harmless AHCA from any or all claims and losses accruing to any person, organization, or other legal entity in connection with Recipient's actions leading to (a) improper access to the Platform, or (b) use of the Data contained in the Platform that results in a Breach (as defined by HIPAA at 45 C.F.R. § 164.402) of Unsecured PHI. Notwithstanding anything to the contrary, Recipient must reimburse AHCA for (i) all fines or penalties assessed by a third party (including, without limitation, governmental authority or regulator) and associated with analyzing and responding to third-party claims or regulatory actions, (ii) all costs and expenses associated with providing legally-required or customary notices to affected data subjects, printing and mailing services, and call center and breach website services, (iii) all amounts due or payable to affected data subjects and for breach-related services made available to affected data subjects, including, but not limited to, all credit monitoring and identity protection and repair services costs and expenses, and (iv) all costs and expenses associated with all investigative, containment, mitigation, and remedial costs, including attorneys' fees and all costs to repair and recover all affected Confidential Information, resulting from a Breach.

16. **Limitation of Liability.** IN NO EVENT WILL AHCA BE LIABLE TO RECIPIENT UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE, CONTRACTS, OPPORTUNITIES OR ANTICIPATED SAVINGS, LOSS OF BUSINESS, COST OF COVER, OR LOSS OF USE OR PRODUCTION, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE MAXIMUM AGGREGATE LIABILITY OF AHCA TO RECIPIENT FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON, OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE, BUT NOT WILLFUL

MISCONDUCT), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED $10,000.

17. Publicity. Recipient shall not use AHCA's name, trademarks, image, or other logos in any publicity, advertising, or news release without the prior written approval of AHCA.

18. Publications and Presentations.

(a) Recipient agrees that prior to submission to any third party for publication, Recipient shall provide all written products intended for publication to AHCA for review ("**Pre-Publication Review**") to confirm compliance with the confidentiality and other applicable terms of this Agreement. AHCA shall conduct the Pre-Publication Review within four (4) to six (6) weeks after receipt of any written products intended for publication.

(b) Recipient shall adhere to the Publication Policy of the Long-Term Care Data Cooperative, which shall be made available to Recipient by AHCA.

(c) Recipient may not disclose or publish at any symposia, national, international or regional professional meeting or in any journal, thesis, dissertation, newspaper or otherwise, any direct findings, listings, or information derived from the Data, with or without direct identifiers (a "**Publication**"), if such findings, listings, or information can, by themselves or in combination with other data, be used to deduce the identity of an individual, or a health care provider or establishment.

(d) As appropriate according to widely recognized standards for acknowledgements, Recipient shall acknowledge in any Publications (i) AHCA's contributions to the Project and (ii) the Long-Term Care Data Cooperative.

19. Term and Termination.

(a) Term. This Agreement shall be effective as of the date set forth above until terminated in accordance with this Agreement. This Agreement shall automatically expire and terminate if Recipient or its Authorized Users do not access the Data over the prior year.

(b) Termination for Convenience. Each Party may terminate this Agreement at any time without cause for convenience upon thirty (30) days prior written notice to the other Party.

(c) Termination for Cause. Upon AHCA's knowledge of a material breach by Recipient, AHCA shall either:

i. Provide an opportunity for Recipient to cure the breach or end the violation. If Recipient does not cure the breach or end the violation within the time specified by AHCA, AHCA shall terminate this Agreement;

ii. Immediately terminate this Agreement if Recipient has breached a material term of this Agreement and cure is not possible; or

iii. If neither termination nor cure is feasible, report the violation to the Secretary of the Department of Health and Human Services.

(d) Effect of Termination.

i. Except as provided in paragraph (ii) of this Section 19(c), upon termination of this Agreement, for any reason, Recipient shall return or destroy all AHCA's Confidential Information and discontinue use and access of Data received from AHCA, or created or received by Recipient on behalf of AHCA outside of the

Platform. Recipient shall retain no copies of AHCA's Confidential Information.

ii. If Recipient determines that returning or destroying the AHCA's Confidential Information is infeasible, Recipient shall provide to AHCA notification of the conditions that make return or destruction infeasible. Upon AHCA's determination that return or destruction of AHCA's Confidential Information is infeasible, Recipient shall extend the protections of this Agreement to such AHCA's Confidential Information and limit further uses and disclosures of such AHCA's Confidential Information included therein to those purposes that make the return or destruction infeasible, for so long as Recipient maintains such AHCA's Confidential Information.

20. Dispute Resolution

(a) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, including all questions of arbitrability, shall be settled by one arbitrator in an arbitration administered by the American Arbitration Association ("**AAA**") in accordance with its Commercial Arbitration Rules.

(b) The Parties shall attempt to agree upon the sole arbitrator. If the Parties fail to agree upon the appointment of the sole arbitrator within twenty-one (21) days of the commencement of the arbitration, such appointment shall be made by the AAA.

(c) The place, or legal seat of arbitration, shall be New York, New York, and the language of the arbitration shall be English.

(d) The arbitrator shall issue a reasoned award.

(e) The arbitrator shall have the power to grant any interim or provisional measures that the arbitrator deems appropriate, including, but not limited to, injunctive relief and specific performance, and any interim or provisional measures ordered by the arbitrator may be specifically enforced by any court of competent jurisdiction as a final award. Each Party retains the right to seek interim measures from a judicial authority, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(f) A Party may only bring claims in its individual capacity on its own behalf, and not in any representative capacity, or on behalf of any class or purported class, and no arbitration commenced hereunder may be joined with or include any claims by any other persons, unless both Parties consent. Each Party shall bear its own arbitration filing fees.

(g) The arbitrator shall award the prevailing Party, if any as determined by the arbitrator, its reasonable costs, including reasonable attorneys' fees. Judgment on any award rendered by the arbitrator may be entered in any court of competent jurisdiction.

(h) No information concerning an arbitration, beyond the names of the Parties, their counsel or the relief requested, may be unilaterally disclosed to a third party by any Party unless required by law. Any documentary or other evidence given by either Party or witness in any arbitration shall be treated as confidential by any party whose access to such evidence arises exclusively because of its participation in the arbitration and shall not be disclosed to any third party (other than a witness or expert), except as may be required by law. Any Party who commences any judicial proceeding in connection with an arbitration initiated hereunder shall endeavor to have the judicial record of any such proceeding sealed to the extent permitted by law.

21. Miscellaneous.

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

(b) Entire Agreement; Waiver. This Agreement, in addition to any terms and conditions applicable to the use of the Platform, constitutes the entire agreement between the Parties with respect to the subject matter contained herein. No consent or waiver, express or implied, by a Party shall be deemed or construed to be a consent or waiver with respect to any other breach or default by either Party to this Agreement of the same provision or any other provision of this Agreement. Failure on the part of a Party to complain of any act or to declare the other Party in default shall not be deemed or constitute a waiver by such Party of any rights hereunder.

(c) Severability. If any provision of this Agreement, or the application thereof, will for any reason and to any extent be determined to be invalid or unenforceable, the remaining provisions of this Agreement will remain in effect. Any invalid provision of this Agreement will be deemed to be restated so as to be enforceable to the maximum extent permissible under law consistent with the original intent and economic terms of the invalid provision.

(d) Governing Law. This Agreement shall be governed by the internal laws of the State of New York, without regard and to the exclusion of New York's conflict of laws rules. The United Nations Convention for the International Sale of Goods is excluded and shall not apply.

(e) Amendment. The Parties shall take such action as is necessary to amend this Agreement from time to time as is necessary for AHCA or this Agreement to comply with the requirements of the HIPAA Rules.

(f) Interpretation. Any ambiguity in this Agreement shall be resolved to permit AHCA to comply with the HIPAA Rules and all other applicable laws.

(g) Assignment; Change in Control. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party, except in the case of assignment by AHCA to affiliates, which requires only advance notice to Recipient. In the event of a change in control in a Party other than assignment by AHCA to its affiliates, (a) such Party must notify the other Party of such change in control, and (b) the non-notifying Party may terminate this Agreement with immediate effect.

(h) Third-Party Beneficiaries. Each Participating Provider is a third-party beneficiary of this Agreement and shall have the right to enforce the terms of this Agreement as if it were a party hereto. There are no other third party beneficiaries of this Agreement other than the Participating Providers.

(i) Survival. The expiration or termination of this Agreement shall not affect the accrued rights of either Party or any contractual provision intended to survive termination.

(j) Force Majeure. If performance of an obligation under this Agreement is impossible by reason of Force Majeure, the Parties are released from their obligations (except those continuing obligations pursuant to Section 21(d) above) and neither party shall be responsible for any damages or costs sustained as a result of the Force Majeure, and have no further recourse against the other party in relation to the Force Majeure. "**Force Majeure**" shall mean fire, earthquake, hurricane, tornado, flood, tsunami, or other natural disasters or acts of God, infectious diseases, epidemics, pandemics, endemics, nuclear explosions, strikes, work stoppages, or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, terrorism, power of

government, or governmental agency or authority, or any other cause beyond the control of either party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

American Health Care Association	[Recipient]
By:___	By:___
Print Name:__	Print Name:__
Title:__	Title:__
Date:__	Date:__