

DATA TRANSMISSION SERVICES AGREEMENT

This Data Transmission Services Agreement (the "Agreement") is effective on _____, (the "Effective Date") and governs the Data Transmission Services to be provided by **GREAT LAKES HEALTH CONNECT ("GLHC")**, a Michigan nonprofit corporation, to _____, a _____ (the "Covered Entity").

RECITALS:

GLHC is a health information exchange providing services in the State of Michigan; and

One of the goals of the health information exchange is to increase efficiency and decrease costs of healthcare, and to support activities that improve health; and

As part of its activities, GLHC intends to offer electronic health information transmission services that will permit physician practices, clinics, and hospitals to electronically transmit health-related information for purposes of patient care, quality measurement, public health, and similar purposes, pursuant to this Agreement.

Now, therefore, in consideration of the mutual promises and agreements contained herein and the parties intending to be bound thereby, the parties agree as follows:

Section 1 - Definitions

The following terms used in this Agreement shall have the following definitions, unless otherwise indicated in this Agreement:

(a) "Agreement" means this document, including any exhibits, appendices, and Statements of Work attached hereto and incorporated herein by reference.

(b) "Data" means the data elements that Covered Entity may submit to GLHC for transmission for purposes of patient care, public health, quality measurement, development of evidence-based medicine standards, or similar purposes.

(c) "Data Recipient" means an individual or entity qualified to receive the Data for purposes of public health, quality measurement, development of evidence-based medicine standards, or another Permitted Use, to which GLHC transmits the Data pursuant to this Agreement.

(d) "Data Subcontractor" means the vendor(s) with whom GLHC has contracted to assist it in meeting its obligations under this Agreement.

(e) "Data Transmission Services" means the services provided by GLHC pursuant to this Agreement, including current and future tools whereby Data related to individuals treated by Covered Entity will be transmitted to one or more Data Recipients.

(f) "Documentation" means user and administrator manuals and guides for the scope and use of Data Transmission Services that are available from GLHC, including on its website (www.michiganhealthconnect.org) and include Policies and Procedures as such terms are defined in Section 4 and any Statement of Work.

(g) “Electronic Health Records System” and “EHR system” each mean an electronic data system that stores current and historical Data.

(h) “HIPAA Privacy and Security Regulations” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 and the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and C, or any successor regulations.

(i) “Permitted Use” means the use of any Data for the purposes of public health activities, quality measurement, or development of evidence-based medicine standards, or as permitted or required by law, for treatment, payment or health care operations by a covered entity as permitted under law, or for the proper management and administration or to carry out the legal responsibilities of GLHC or its Data Subcontractors.

(j) “Protected Health Information” and “PHI” shall have the same meaning as the term “protected health information” and shall include “electronic protected health information”, each as defined in 45 C.F.R. § 160.103.

(k) “Statement of Work” means a document entered into between GLHC and Covered Entity which includes, among other things: (i) a description of the Data Transmission Service(s) to be provided by GLHC to Covered Entity; (ii) a plan of implementation and the fees payable by Covered Entity for the interfaces and the implementation services; and (iii) additional information regarding the details of the Data Transmission Services. Any Statement of Work shall be incorporated into and become a part of this Agreement.

Section 2 - GLHC's Role

GLHC offers Data Transmission Services as described in the Documentation, which may be modified from time to time at GLHC's sole discretion. GLHC may delegate responsibilities related to its role to one or more Data Subcontractors. Covered Entity and GLHC shall enter into a Statement of Work which describes more particularly the tasks of each Party in establishing the Data Transmission Services, including tasks related to data mapping and implementation of interfaces. Covered Entity acknowledges and agrees that access to Data shall be granted to GLHC and Data Subcontractors as necessary for GLHC to carry out its functions and obligations under this Agreement and the Statement of Work.

Section 3 - Covered Entity's Role

(a) Covered Entity must enroll in, and/or obtain necessary authorizations to submit Data to, the Data Recipient. To the extent required by any Data Recipient, Covered Entity shall ensure that each provider submitting Data to that Data Recipient through Covered Entity has executed a Provider User/Usage Agreement (or similar document, as may be required by that Data Recipient) and complies at all times with the use requirements of the Data Recipient in question. Covered Entity shall further ensure that each individual submitting Data or accessing the Data Transmission Services has received appropriate training, and complies at all times with all applicable GLHC Policies and Procedures, including, but not limited to, privacy and security Policies and Procedures, and that such individual's access to the Data and the Data Transmission Services is authorized and appropriate under law. Further, Covered Entity will comply, and ensure that each of its providers submitting Data will comply, with the terms of the Access Agreement for Great Lakes Health Connect, attached hereto as Exhibit A, the terms of which are hereby incorporated by reference. Covered Entity shall be liable for the acts or omissions of each of its providers submitting Data.

(b) Covered Entity shall use due care in obtaining, recording, formatting, and reporting the Data and preparing the Data for transmission to Data Recipients. In the event Covered Entity discovers that Data transmitted to any Data Recipient was inaccurate, incomplete, or incorrect, Covered Entity shall take such actions as may be necessary or appropriate to correct such information including, as appropriate, correcting the information on file with Data Recipient, in accordance with the Policies and Procedures of GLHC and the requirements of the applicable Data Recipient.

(c) Covered Entity must maintain any records required by law, including complete and accurate medical records, without relying on the availability of such data through GLHC.

Section 4 - Patient Consent

Covered Entity represents that:

(a) it is authorized to allow GLHC and its Data Subcontractor(s) access to Data as set forth in this Agreement under state and federal law, and to provide the Data to GLHC for submission to the Data Recipient; and/or

(b) it has or shall obtain from each of its patients (or the legally authorized representative of such patient) consent and/or authorization allowing for the use and disclosure of Data as contemplated by this Agreement. Such consent/authorization shall be obtained prior to providing GLHC access to the Data.

Covered Entity shall, upon request by GLHC, supply access to and copies of such consents and/or authorizations as contemplated by Section 4(a) and (b). Covered Entity shall indemnify GLHC from any such liability that results from Covered Entity's failure to obtain the proper consents and/or authorizations as contemplated by Section 4(a) and (b).

Section 5 - Policies on Use of Data

(a) Policies and Procedures. GLHC will establish policies and procedures ("Policies and Procedures") that will govern GLHC and Covered Entity's use of Data Transmission Services, which shall be available at www.michiganhealthconnect.org. The Policies and Procedures will govern GLHC and Covered Entity's use of the Data Transmission Services and the use, submission, transfer, access, privacy and security of Data. With respect to security, GLHC will implement Policies and Procedures that are reasonable and appropriate to protect the confidentiality, integrity and availability of the Data and to secure compliance with the HIPAA Privacy and Security Regulations and are consistent with requirements of the Nationwide Health Information Network and the Michigan Health Information Network, and their respective successors in interest, as applicable. To the extent that any Policy or Procedure conflicts with the terms of this Agreement, the provisions of the Policy or Procedure shall control, except that no Policy or Procedure shall allow any use of Data supplied by Covered Entity for any purpose other than a Permitted Use without the prior written consent of Covered Entity, such consent to not be unreasonably withheld.

(b) Changes to Policies and Procedures. GLHC may change or amend the Policies and Procedures from time to time at its sole discretion and will post such revised Policies and Procedures at www.michiganhealthconnect.org. Any changes will be effective 60 days following adoption by GLHC, unless GLHC determines that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of Data or an emergency situation. GLHC also may postpone the effective date of a change if GLHC determines, in its sole discretion that additional implementation time is required. Covered Entity will have no ownership or other property rights in the Policies and Procedures or other materials or services provided by GLHC.

(c) Business Associate. Consistent with this section and specifically to comply with the HIPAA Privacy and Security Regulations, GLHC agrees to be a Business Associate of Covered Entity and comply with the Business Associate Addendum attached as Exhibit B and incorporated herein by reference.

Section 6 - Ownership of Equipment and Rights

(a) Any software, equipment or communication lines supplied by Covered Entity shall remain the sole property of Covered Entity or Covered Entity's licensors.

(b) GLHC or its Data Subcontractors shall retain ownership of all equipment, software, intellectual property, communication lines, and interfaces (including any intellectual property rights embodied in the software or interface or related to it) and any intellectual property developed by them in connection with the Data Transmission Services or during the course of performing Data Transmission Services whether they are performed by GLHC or by a Data Subcontractor and shall own all improvements, enhancements, and derivative works of any intellectual property owned or developed by them prior to the date of this Agreement. If Covered Entity participates in the development of any improvements, enhancements or derivative works of intellectual property owned by GLHC or a Data Subcontractor, Covered Entity hereby assigns to GLHC or the Data Subcontractor, as the case may be, all of its rights in and to such improvements, enhancements, and derivative works. GLHC grants to Covered Entity a nonexclusive license to use the software and any other intellectual property rights of GLHC or its Data Subcontractors necessary for the provision of the Data Transmission Services. Covered Entity agrees to provide reasonable assistance, at GLHC's expense, to GLHC or its Data Subcontractors in enforcing its rights to such software and intellectual property. Neither GLHC nor any of its Data Subcontractors will acquire any rights to any of Covered Entity's or its licensor's confidential information which may be included in or transmitted by any software or interface.

Section 7 - Disclaimer of Warranties

Covered Entity acknowledges that GLHC and/or its Data Subcontractors do not make clinical, medical, or other decisions and the use of the Data or Data Transmission Services under this Agreement is not a substitute for competent, properly trained, and knowledgeable staff who bring professional judgment and analysis to the Data provided. Each party further acknowledges that Covered Entity is solely responsible for verifying the accuracy of all Data with each individual and/or the individual's representative(s) before such Data is relied upon or utilized in diagnosing or treating the individual and determining the information necessary for it (or its staff) to make medical and diagnostic decisions as well as complying with all laws, regulations, licensing requirements and accreditation agency recommendations or requirements applicable to its delivery of health care services. With the exception of certain obligations to ensure Data is in conformance with certain standards or contains validation criteria, GLHC and its Data Subcontractors do not and cannot independently update, verify, warrant, or review the accuracy or completeness of Data transmitted through the Data Transmission Services.

COVERED ENTITY ACKNOWLEDGES THAT NO WARRANTIES HAVE BEEN MADE BY GLHC OR ITS DATA SUBCONTRACTORS, EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA TRANSMISSION SERVICES DESCRIBED AND DELIVERED HEREUNDER OR WITH RESPECT TO DATA. EACH PARTY FURTHER ACKNOWLEDGES THAT GLHC AND ITS DATA SUBCONTRACTORS DO NOT PROVIDE MEDICAL SERVICES TO INDIVIDUALS AND THAT INDEPENDENT MEDICAL JUDGMENT MUST BE MADE IN RENDERING HEALTH CARE SERVICES TO INDIVIDUALS. GLHC AND THE DATA SUBCONTRACTORS EACH DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND LIABILITY ATTRIBUTABLE TO OR RELATED TO ANY USE, NONUSE, OR

INTERPRETATION OF DATA OR INFORMATION USED IN THE TRANSFER OF DATA IN PROVIDING MEDICAL SERVICES.

IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, DATA, REVENUE, BUSINESS OPPORTUNITY, OR BUSINESS ADVANTAGE, DAMAGES RESULTING FROM PERSONAL INJURY/WRONGFUL DEATH, LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OF OR INABILITY TO USE THE DATA TRANSMISSION SERVICES), WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, CONTRIBUTION, INDEMNITY OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING CONTAINED HEREIN IS, OR SHALL BE DEEMED TO, OR INTENDED TO, CREATE ANY THIRD-PARTY BENEFICIARIES AND THE PROVISIONS HEREIN SHALL BE SOLELY FOR THE BENEFIT OF THE PARTIES AND SHALL NOT INURE TO THE BENEFIT OF ANY THIRD PARTIES.

Section 8 - Indemnity

(a) Covered Entity agrees that if it breaches this Agreement, or submits inaccurate, incomplete, or defamatory Data, it shall indemnify and hold harmless GLHC and its Data Subcontractors (each an "Indemnitee") against any claim, loss or damage arising out of or resulting from such breach of this Agreement or submission of inaccurate, incomplete, or defamatory Data by Covered Entity. Such indemnification shall include the payment of all costs associated with defending or remedying such claims, loss, damage or causes of action, whether or not such claims, loss, damage or causes of action are meritorious, including reasonable attorney fees and any settlement by or judgment against the Indemnitee arising out of or resulting from any breach of this Agreement, breach of confidentiality of the Data, or the submission of inaccurate, incomplete, or defamatory Data. In the event a suit is brought against the Indemnitee under circumstances where this Section applies, Covered Entity, at its sole cost and expense, shall defend the Indemnitee in such suit and will thereafter have control of such litigation, but Covered Entity may not settle such litigation without the consent of the Indemnitee, which consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Indemnitee; and Covered Entity, in defending any action on behalf of the Indemnitee, shall be entitled to assert in any action every defense or immunity that the Indemnitee could assert in its own behalf.

(b) Covered Entity is responsible for ensuring that the Data is submitted for Permitted Purposes. Covered Entity agrees to assume all liability for any use, furnishing, disclosure, publication or revealing in any way by GLHC of Data authorized to be furnished under the terms of this Agreement, and to hold GLHC harmless from any damages, litigation, liability or claimed liability, allegations, assertions, or claims and any expenses including legal expenses incident thereto resulting from any such authorized use, furnishing, disclosure or revealing of Data, whether such damages, litigation, liability or claimed liability, allegations, assertions or claims arise during the term of this Agreement or thereafter unless such use, furnishing, disclosure, publication, or revealing of Data by GLHC is a result of GLHC's willful misconduct. In the event that the use, furnishing, disclosure, publication, or revealing of Data by GLHC is a result of GLHC's willful misconduct, GLHC shall be responsible to Covered Entity for any damages or losses up to the maximum amount of ten thousand dollars (\$10,000.00) per occurrence giving rise to the claim; provided that notwithstanding the foregoing, all such losses and costs shall not exceed \$50,000.00 in the aggregate over any twelve (12) month period.

Section 9 - Fees and Costs.

Fees for Data Transmission Services are described in the Fee Schedule published in the Documentation and/or the applicable Statement of Work. If GLHC intends to change any fees payable by Covered Entity for the provision of Data Transmission Services, GLHC shall provide Covered Entity with written notice at least ninety (90) days prior and, notwithstanding anything to the contrary contained herein, Covered Entity may terminate this Agreement upon sixty (60) days prior written notice to GLHC.

Section 10 - Term and Termination

(a) **Term.** The term of this Agreement shall begin on the Effective Date and shall end when terminated by either party as provided below.

(b) **Termination.**

(i) **Termination for Convenience.** Either party shall have the right, at any time upon sixty (60) days prior written notice, to terminate this Agreement. If Covered Entity is the terminating party, it shall be liable for all payment obligations to GLHC incurred up to and including the date of termination.

(ii) **Termination for Cause.** If either party believes that the other party has failed in any material respect to perform its obligations under this Agreement, then that party shall provide written notice to the breaching party describing the alleged failure in reasonable detail. If the breaching party does not, within thirty (30) days after receiving such written notice, cure the failure or, in the event that such breach cannot be cured within such period, commence and pursue diligent efforts to cure within such time period, then the non-breaching party may terminate this Agreement for cause by written notice to the breaching party. Termination of this Agreement will be in addition to, and not in lieu of, other remedies available to the terminating party under this Agreement.

Section 11 - Deactivation of Data Transmission Services

Upon termination of this Agreement for any reason, GLHC shall deactivate the Data Transmission Services. GLHC may, in such case, remove from Covered Entity's premises and/or computer environment any equipment, software, interfaces, Documentation or other property owned or licensed by GLHC and/or the Data Subcontractors. Covered Entity shall provide GLHC access to Covered Entity's premises within five (5) days of GLHC's written request for such access to permit removal of GLHC's equipment, software, interfaces, Documentation, or other property.

Section 12 - Miscellaneous Provisions

(a) **Compliance:** Covered Entity is solely responsible for ensuring that all appropriate patient consent/authorizations for transmission of the Data have been obtained. So long as such consent/authorizations have been obtained, GLHC agrees that its use of Data under this Agreement shall be in compliance with state and federal laws relative to the confidentiality and security of health care information throughout the term of this Agreement. In the event that state or federal law changes during the term of this Agreement and prohibits the use and/or disclosure of Data as set forth herein, GLHC may suspend the Data Transmission Service and take any actions it deems necessary or appropriate to comply with any effect of the change in law.

(b) **Survival:** The provisions of Sections 6, 7, 8, 11, and 12 shall survive the termination of this Agreement indefinitely.

(c) Force Majeure: Except for the payment of money, no party shall be liable or deemed to be in breach of this Agreement by reason of any act, delay or omission caused by strikes, lockouts or other labor disputes, regulations, ordinances or order of a court of competent jurisdiction, act of government, Act of God, war, riot, epidemic, flood, earthquake or like natural disaster, embargo or quarantine, or any other similar cause, including unusually severe weather, beyond the reasonable control of the party claiming force majeure.

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

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

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

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

(h) No Third Party Rights: Except as otherwise specifically stated in this Agreement, this Agreement does not and will not create in any natural person, corporation, partnership, or other organization any benefits or rights, and this Agreement will be effective only as to the parties and their successors and assigns.

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

(j) Entire Agreement: This Agreement embodies the entire Agreement between the parties with respect to the subject matter and supersedes all prior oral or written understandings between the parties.

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

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

(m) Governing Law: This Agreement, together with all of the respective rights of the parties hereto, shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.

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

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

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

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

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

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

IN WITNESS WHEREOF, GLHC and the Covered Entity listed below have executed this Agreement effective as of the Effective Date.

COVERED ENTITY

GREAT LAKES HEALTH CONNECT

Covered Entity Name: _____

By: _____  _____

Name: _____

Name: Doug Dietzman

Title: _____

Title: Executive Director

Address: _____

Address: 4829 East Beltline Ave NE,
Suite 303
Grand Rapids, Michigan 49525

EXHIBIT A
ACCESS AGREEMENT
FOR GREAT LAKES HEALTH CONNECT

The Great Lakes Health Connect health information exchange (the "GLHC HIE") is intended to facilitate the exchange of health information to benefit patients and those who provide care to those patients. In furtherance of this objective, the following terms will govern the rights of all members of the Covered Entity's workforce to access and receive information via GLHC HIE.

Information received via GLHC HIE may only be used as permitted by law and all other applicable regulations (including, but not limited to, the Health Insurance Portability and Accessibility Act of 1996, as amended ("HIPAA"); 42 C.F.R. Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records) and Michigan law). As a condition of receiving credentials from GLHC HIE, all members of Covered Entity's workforce must agree to the following statements:

- All non-public information obtained through or about Great Lakes Health Connect is strictly confidential.
- The password and username provided for access to Great Lakes Health Connect is personal to me. Use by anyone other than me is strictly prohibited.
- Use of my username and password acts as a "signature". I am accountable for all actions taken using my username and password including but not limited to creating, monitoring and inactivating other users within the above named office.
- The limits regarding access to and use of data and information in this Access Agreement apply (1) when I use my username and password to access data; and (2) when data is delivered automatically and directly into my data storage programs, such as the electronic medical record.
- I will comply with Great Lakes Health Connect's policies and procedures, including rules about use of strong passwords, remote access requirements, and limitations on my use of the Great Lakes Health Connect services and data.
- I will confirm that the appropriate patient consents have been signed by the patient prior to sending patient data through the GLHC HIE.
- I am responsible for ensuring that the computer I use to access the GLHC HIE or to receive data from GLHC HIE is protected against viruses and other malicious code. I agree to maintain and run anti-virus software, updated to maintain currency of definitions and other protections.
- I am responsible for obtaining any hardware, software, connectivity, and interfaces necessary to exchange data via Great Lakes Health Connect. Use of any pirated or illegally copied or distributed software is strictly prohibited.
- I will immediately report to the GLHC Privacy Officer any breach or possible breach of data provided by or through the GLHC HIE of which I am aware. I will also immediately report to the Security Official for GLHC, any security threats known to me that might affect the HIE.
- I understand and agree that Great Lakes Health Connect has the right to suspend my access to the data or to terminate this Agreement, in its sole discretion (a) as necessary or appropriate to maintain stability of the network or integrity of the data; (b) as necessary to ensure compliance with law; or (c) to otherwise respond to unanticipated occurrences. I understand that, to the extent practicable, Great Lakes Health Connect will attempt to notify me before taking such action, but failure or inability to provide such notice will not constitute a breach or otherwise be actionable. Great Lakes Health Connect may terminate this Agreement without cause upon thirty (30) days prior written notice.
- I agree to defend, indemnify and hold harmless Great Lakes Health Connect, and other users of the GLHC HIE and their officers, directors, employees, affiliates, agents and assigns) from and

against any and all claims for loss, liability, damage or injury, including attorney's and expert fees, that arise or result, in whole or in part, from my negligent, reckless or intentional violation of these provisions, including but not limited to unlawful use or disclosure of any confidential information.

- I UNDERSTAND THAT THERE ARE NO WARRANTIES WITH RESPECT TO MY ACCESS TO THE GLHC HIE OR DATA PROVIDED BY GREAT LAKES HEALTH CONNECT. GREAT LAKES HEALTH CONNECT IS MERELY ACTING AS A CONDUIT FOR CERTAIN INFORMATION, AND INFORMATION, RESULTS AND DATA PROVIDED BY OR THROUGH THE GLHC HIE AND GREAT LAKES HEALTH CONNECT ARE PROVIDED "AS IS" WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, TIMELINESS, ACCURACY AND USE OF DATA LIES WITH THE USER OF SUCH INFORMATION, DATA AND RESULTS. Great Lakes Health Connect does not guarantee that transmission or connectivity will be uninterrupted or error-free.
- I AGREE THAT I AM RESPONSIBLE FOR MANAGING AND MONITORING ALL DECISIONS AND ACTIONS TAKEN OR NOT TAKEN INVOLVING PATIENT CARE, UTILIZATION MANAGEMENT, AND QUALITY MANAGEMENT RESULTING FROM OR IN ANY WAY RELATED TO THE USE DATA OR INFORMATION PROVIDED BY OR THROUGH GLHC HIE OR GREAT LAKES HEALTH CONNECT, AND I AGREE THAT I DO NOT HAVE ANY RECOURSE, AND SHALL WAIVE ANY CLAIMS, AGAINST GREAT LAKES HEALTH CONNECT OR ITS MEMBERS FOR ANY LOSS, DAMAGE, CLAIM, OR COST RELATING TO OR RESULTING FROM MY USE, MISUSE, OR FAILURE TO USE DATA PROVIDED BY OR THROUGH GLHC HIE OR GREAT LAKES HEALTH CONNECT.
- I agree that Great Lakes Health Connect intends for data accessed or transmitted through Great Lakes Health Connect and GLHC HIE to improve patient care and lead to increased efficiency in healthcare, and that there is no intent to violate any law. If, in the reasonable opinion of legal counsel, compliance with this Agreement or continued use of Great Lakes Health Connect to provide access to data as contemplated by the parties is or could reasonably be found, deemed or construed to be illegal or to violate law, the parties agree to negotiate in good faith to modify this Agreement and any other arrangements as necessary to comply with law, and if such modification is not possible, this Agreement shall terminate upon ten (10) days prior written notice. To the extent I have a financial or ownership arrangement with any participating entity or member of GLHC, this Agreement shall be deemed to reference, and to be referenced in, any agreement between me and such entity, solely to the extent required to comply with law.
- I understand and agree that GLHC has the right to monitor and investigate the use of the GLHC Services and HIE, and to pursue available remedies, including legal action, for violations of law or policy. As appropriate, GLHC may provide information regarding my use of the GLHC to law enforcement, if it is suspected that my use is in violation of law.
- To the extent required by law, a business associate agreement addressing privacy and security of protected health information, as defined by HIPAA, will be executed.
- I agree that I am not employed by, or an agent of, GLHC HIE, and I cannot take any action that appears to bind GLHC.
- If there is any direct conflict between this Access Agreement and the Data Transmission Services Agreement regarding access to the GLHC HIE, the terms and conditions of this Access Agreement shall control.

Understanding that compliance with the foregoing is a condition of use of the GLHC HIE and rights to transmit and/or access to data via Great Lakes Health Connect and the GLHC HIE, and that violation of the foregoing may result in termination of access privileges, termination of my business relationship with Great Lakes Health Connect, or other adverse consequences, (including, but not limited to, civil or criminal liability) I agree to comply with the foregoing and all applicable policies and procedures established by Great Lakes Health Connect.

EXHIBIT B

HIPAA Business Associate Addendum

THIS HIPAA BUSINESS ASSOCIATE ADDENDUM (the "BAA") is entered into effective as of the Effective Date of the Agreement by and between Great Lakes Health Connect ("Business Associate") and _____, on behalf of itself and its affiliates, if any (individually and collectively, the "Covered Entity") and amends the Data Transmission Services Agreement entered into between Business Associate and Covered Entity (the "Agreement"). This BAA supersedes and replaces any prior Business Associate Agreement or Addendum between the parties.

Business Associate is a health information exchange and will be involved in the use, disclosure, transmission, and/or maintenance of protected health information created or received by Business Associate on behalf of Covered Entity ("PHI"). Therefore, Business Associate agrees to the following terms and conditions as set forth in this HIPAA Business Associate Addendum.

- 1. Definitions.** For purposes of this BAA, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").
- 2. Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective dates, Business Associate shall comply with its obligations under this BAA and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this BAA is executed and as they are amended, for so long as this BAA is in place.
- 3. Permissible Use and Disclosure of PHI.** Business Associate may use and disclose PHI as necessary to carry out its duties to Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.
- 4. Limitations on Use and Disclosure of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by this BAA or that would violate Subpart E of 45 CFR 164 ("Privacy Rule") if done by Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule, other than (a) disclosures or requests transmitted for or on behalf of healthcare providers for treatment purposes; (b) uses or disclosures made to the individual to whom the information relates; (c) uses or disclosures under an authorization; (d) disclosures to the Secretary; (e) uses or disclosures required by law; and (f) other uses or disclosures required for compliance with the HIPAA Rules.
- 5. Required Safeguards To Protect PHI.** Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 ("Security Rule") with respect to electronic PHI, to

prevent the use or disclosure of PHI other than as permitted by law and pursuant to the terms and conditions of this BAA.

6. **Reporting to Covered Entity.** Business Associate shall promptly report to Covered Entity: (a) any use or disclosure by Business Associate of PHI not provided for by this BAA of which it becomes aware; (b) any breach of unsecured PHI by Business Associate in accordance with 45 CFR Subpart D of 45 CFR 164 ("Breach Notification Rule"); and (c) any security incident suffered by Business Associate of which it becomes aware.
7. **Mitigation of Harmful Effects.** Business Associate agrees to reasonably mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of law.
8. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to such PHI.
9. **Access to PHI.** To the extent Business Associate retains PHI in a Designated Record Set, within ten (10) days of a request by Covered Entity for access to PHI about an individual contained in such Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 CFR 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) days forward such request to Covered Entity.
10. **Amendment of PHI.** To the extent Business Associate retains PHI in a Designated Record Set, within ten (10) days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set, Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 CFR 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five (5) days forward such request to Covered Entity.
11. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 and HITECH.
12. **Accounting of Disclosures.** Within ten (10) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity information to permit Covered Entity to respond to the request for an accounting of disclosures of PHI from Business Associate, as required by 45 CFR 164.528 and HITECH.
13. **Other Obligations.** To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to Covered Entity in the performance of such obligations.
14. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Business

Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within five (5) days of receipt of such request.

15. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
16. **Effect of Termination of Agreement.** Upon the termination of the Agreement or this BAA for any reason, Business Associate shall return to Covered Entity or, at Covered Entity's direction, destroy all PHI received from Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. If return or destruction of the PHI is not feasible, Business Associate shall limit the use and disclosure of the PHI to the purposes that make the return or destruction infeasible, and continue to extend the protections of this BAA to such PHI until such time as the PHI can be returned to Covered Entity or destroyed.
17. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of Covered Entity.
18. **Third Party Rights.** The terms of this BAA do not grant any rights to any parties other than Business Associate and Covered Entity.
19. **Independent Contractor Status.** For the purposes of this BAA, Business Associate is an independent contractor of Covered Entity, and shall not be considered an agent of Covered Entity.
20. **Changes in the Law.** The parties shall amend this BAA to conform to any new or revised legislation, rules and regulations to which either party is subject now or in the future including, without limitation, HIPAA, HITECH, and the HIPAA Rules.
21. **Conflicts.** If there is any direct conflict between the Agreement and this BAA regarding privacy or security of PHI, the terms and conditions of this BAA shall control.