

# PARTICIPATION AGREEMENT

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THIS PARTICIPATION AGREEMENT ("PARTICIPATION AGREEMENT") IS MADE BY AND BETWEEN MINNESOTA STATEWIDE HEALTH INFORMATION NETWORK AND EXCHANGE ("MNSHINE") AND \_\_\_\_\_ ("PARTICIPANT"). THE EFFECTIVE DATE FOR THIS PARTICIPATION AGREEMENT IS \_\_\_\_\_ ("EFFECTIVE DATE").

MNSHINE will provide, and Participant accepts services described in Exhibits A-E, as applicable. Participants in the network include data recipients that will access data through MNSHINE and data suppliers that will provide data through MNSHINE.

Participant will participate in the transmission of data through MNSHINE and the submission or use of such data, as applicable, subject to this Participation Agreement and its Exhibits.

This Participation Agreement includes, and incorporates by reference:

Exhibit A – Terms and Conditions of Participation;

Exhibit B – Primary Contacts and Address for Notice;

Exhibit C – HIPAA Business Associate Agreement;

Exhibit D – Annual Participation Fees;

Exhibit E – MNSHINE Available Services;

MNSHINE Policies and Standards found at:

[https://mncmsecure.org/website/HIE/MNSHINE\\_HIE\\_Services\\_Policies\\_and\\_Procedures\\_Manual.pdf](https://mncmsecure.org/website/HIE/MNSHINE_HIE_Services_Policies_and_Procedures_Manual.pdf)

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**PARTICIPANT**

BY: \_\_\_\_\_ [CEO SIGNATURE or Individual Authorized to sign on behalf of Participant]

\_\_\_\_\_ [TYPED OR PRINTED NAME]

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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**MNSHINE**

BY: \_\_\_\_\_ [SIGNATURE of Individual Authorized to sign on behalf of MNSHINE]

\_\_\_\_\_ [TYPED OR PRINTED NAME]

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## EXHIBIT A – TERMS AND CONDITIONS OF PARTICIPATION

### SECTION 1 - DEFINITIONS

Terms used, but not otherwise defined, in this Participation Agreement shall have the same meaning as those terms in 45 C.F.R § 160.103; 45 C.F.R. §164.501; 42 U.S.C §300jj; 45 C.F.R. §171.102; and 45 C.F.R. § 171.103.

1.1 "21st Century Cures Act" means 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program published May 1, 2020.

1.2 "Administrative User" means an individual who is an employee, business associate, or other agent of MNSHINE authorized to perform services necessary for operating and maintaining MNSHINE Health Information Exchange (HIE).

1.3 "Advisory Committee" means the MNSHINE HIE Advisory Committee established by the MNSHINE Board of Directors.

1.4 "Authorized User" means those employees, agents, contractors and any other persons associated with a Participant having access to the MNSHINE HIE by virtue of their relationship with Participant who are individually authorized by Participant to have access to the MNSHINE HIE to assist Participant with respect to the permitted uses as provided herein, and to whom Participant has assigned a unique identifier for access to the MNSHINE HIE.

1.5 "Breach" means a breach as defined in 45 C.F.R § 164.402.

1.6 "Confidential and Proprietary Information" means, proprietary or confidential materials or information of a Participant or MNSHINE in any medium or format that Participant or MNSHINE labels as such upon disclosure. Message Content and HIE Data is excluded from the definition of Confidential and Proprietary Information because other provisions of this Participation Agreement and the DURSA address the appropriate protections for Message Content and HIE Data. Notwithstanding any label to the contrary, Confidential and Proprietary Information does not include Message Content; any information which is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it; is already known to a Receiving Party before receipt from a Participant as documented by Receiving Party's written records; or, is independently developed by Receiving Party without reference to, reliance on, or use of, Participant's Confidential and Proprietary Information.

1.7 "Data Use and Reciprocal Support Agreement (DURSA)" means the second restatement of the multiparty legal agreement that established a trust framework between the participants of the nationwide eHealth Exchange that was updated on August 13, 2019. The MNSHINE HIE is a participant of the eHealth Exchange (including CareQuality).

1.8 "Health Insurance Portability and Accountability Act of 1996 (HIPAA)" means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act, the regulations promulgated thereunder, including the Privacy Rule and the Security Rule, and all future changes or amendments to HIPAA or the regulations promulgated thereunder.

1.9 "HIE Data" shall mean the clinical and demographic data submitted to, exchanged and stored by MNSHINE together with such other PHI or individually identifiable information as may be necessary or proper to achieve the purposes of MNSHINE.

1.10 "HITECH Act" means Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA),

Pub. L. No. 111-5 (Feb. 17, 2009), the regulations promulgated thereunder, and all future changes or amendments to the HITECH Act or the regulations promulgated thereunder.

1.11 "Information Blocking" means a practice defined under 45 C.F.R. § 171.103. Generally, Information Blocking shall include practices by a health IT developer of certified health IT, health information network, health information exchange, or health care provider that, except as required by law or specified by the Secretary of Health and Human Services (HHS) as a reasonable and necessary activity, is likely to interfere with access, exchange, or use of electronic health information (EHI).

1.12 "Intellectual Property Rights" means patent rights, copyrights, trade secrets, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.13 "Message Content" means information which is requested or sent by a Participant. This includes, but is not limited to, Protected Health Information (PHI), de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. § 164.514), pseudonymized data, metadata, Digital Credentials, and schema.

1.14 "MNSHINE Policies" means the policies and procedures of the practice and use of MNSHINE HIE as may be amended under Section 5.2 of this Participation Agreement. 1.15 "Participant" means an authorized organization (including but not limited to, healthcare provider, hospital, health plan, and state government) that has voluntarily agreed to enter into this Participation Agreement to access or use the MNSHINE HIE. Participants of MNSHINE HIE include data recipients that will access data through MNSHINE and data suppliers that will provide data through MNSHINE.

1.16 "Participant Data" mean the information and data transmitted by a Participant through MNSHINE HIE.

1.17 "Participation Fees" means the fees set forth in Exhibit D for MNSHINE HIE services.

"Patient Data" means the data and electronic health information of an individual.

1.18 "Protected Health Information (PHI)" has the meaning set forth in the HIPAA privacy rule, 45 C.F.R. § 160.103, and includes any other Individually Identifiable Health Information relating to the past, present, or future physical or mental health of an Individual; the provision of health care to the Individual; or the payment for health care that is maintained by any medium and transmitted by electronic media or in any other form or medium.

1.19 "Public Health Activities" means the activities included and defined under 45 C.F.R § 164.512(b).

1.20 "Receiving Party" the receiving party refers to the specific entity gaining access to PHI or confidential data, who is legally bound to safeguard it and restrict its use to the permitted scope of the agreement.

1.21 "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information while in transit via the MNSHINE HIE, or while being stored within MNSHINE systems, or interference with MNSHINE operations.

1.22 "Services" means the type of data transactions facilitated through MNSHINE HIE. 1.23 "Treatment, Payment and Healthcare Operations (TPO)" has the meaning as such terms are defined in the Privacy Rule at 45 C.F.R § 164.501.

1.24 "Workforce" means employees, volunteers, trainees, contractors, subcontractors, and other persons or entities whose conduct, in the performance of work for a covered entity, is under the control of such entity, whether or not they are paid by the covered entity.

## SECTION 2 - GRANT OF RIGHTS TO USE SERVICES

2.1 During the Term, MNSHINE grants to Participant and Participant accepts:

- a) a non-exclusive, nontransferable (except as provided herein) right to access and use MNSHINE HIE, and
- b) a non-exclusive, nontransferable (except as provided herein), limited license to use MNSHINE HIE software furnished by MNSHINE.

Such access and use is subject to Participant's compliance with all applicable laws and regulations, the terms and conditions set forth in this Participation Agreement and the MNSHINE Policies.

Participant shall obtain no rights to MNSHINE HIE except for the limited rights to use MNSHINE HIE expressly granted by this Participation Agreement.

2.2 Participant shall not: (a) make MNSHINE HIE or services, in whole or in part, available to any other person, entity or business other than as set forth in this Participation Agreement; (b) reverse engineer, decompile or disassemble the software as a service provided by MNSHINE, in whole or in part, or otherwise attempt to discover the source code to the software used in MNSHINE HIE; or (c) modify the MNSHINE HIE or combine the MNSHINE HIE with any other software or services not provided or approved by MNSHINE; or (d) modify any security procedures or security software of or for MNSHINE HIE.

2.3. The term of this Participation Agreement ("Term") shall begin as of the Effective Date and shall end as of \_\_\_\_\_. The Term shall be automatically extended for one year periods unless either party provides written notice of non-renewal to the other party at least ninety (90) days prior to the end of the current applicable Term.

## SECTION 3 – ACCESS TO MNSHINE HIE

3.1 Subject to the terms of this Participation Agreement, MNSHINE authorizes Participant to access MNSHINE HIE and to use the Services for the purposes of TPO and public health reporting as authorized or required by applicable law. At no time may a Participant or Authorized User access or use MNSHINE HIE in violation of this Participation Agreement or any applicable law.

3.2 Participant agrees not to access MNSHINE HIE or use the Services for any other purpose other than as set forth in Section 3.1 above. In particular:

- (a) Participant shall not knowingly reproduce, publish or distribute content in connection with MNSHINE HIE that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy or other personal or proprietary right;
- (b) Participant shall be responsible for its own compliance, including its Authorized User's compliance, with all MNSHINE Policies, applicable laws, including laws related to interoperability, Information Blocking, maintenance of privacy, security, and confidentiality of patient and other health information and the prohibition on the use of telecommunications facilities to transmit illegal, obscene, threatening, libelous, harassing or offensive messages or otherwise unlawful material;
- (c) Participant shall not knowingly: (i) abuse or misuse MNSHINE HIE or the services, including gaining or attempting to gain unauthorized access to MNSHINE HIE or altering or destroying information in MNSHINE HIE, except in accordance with accepted practices; (ii) use MNSHINE HIE or services in such a manner that interferes with other Authorized Users use of MNSHINE HIE; (iii) permit the introduction into MNSHINE HIE of any program, routine, subroutine, or data that does or may

disrupt or in any way impede the operation of the MNSHINE HIE, or alter or destroy any data within it;

(d) Participant shall not use MNSHINE HIE or Services for the purpose of exploiting the health data of other Participants for Participant's own personal gain or commercial purposes, including aggregating health data from other Participants for commercial use or exploitation by third parties;

(e) Participant shall not use MNSHINE HIE or the Services in violation of the established MNSHINE Policies or any applicable laws of the state or federal governments.

(f) Subpoenas and Aggregation:

(i) Participant shall not use MNSHINE HIE to create, produce or compile records or health data of other Participants for the purpose of furnishing copies of aggregated records to third parties, except for purposes of the Participant's TPO to the extent such uses are permitted under HIPAA or other applicable federal or state law, or as is otherwise required by law;

(ii) If Participant is subpoenaed or otherwise ordered to use MNSHINE HIE for the purpose of compiling the health data of other Participants that are not already contained in Participant's records, Participant shall immediately notify MNSHINE so that MNSHINE, and such other Participants or interested parties as it may determine, might have an opportunity to appear or intervene and protect their respective interests;

(iii) Neither Participant nor MNSHINE shall be required to contest any such subpoena or order and shall not be required to incur any expense in connection with legal proceedings or processes, whether initiated by MNSHINE or any other interested party, with respect thereto.

### 3.3 Participant's Records.

(a) Participant shall be solely responsible for compliance with any applicable regulatory requirements related to the preservation, privacy and security of its own records, including, without limitation, data backup, disaster recovery, and emergency mode operation. Participant acknowledges that MNSHINE does not undertake to provide such services.

(b) Participant may access and use the electronic health information as permitted in this Participation Agreement and may merge relevant parts of such electronic health information into its own.

(c) Nothing in this Section 3 or elsewhere in this Participation Agreement is intended or shall be deemed to limit the Participant's use of its own patient information in any way.

### 3.4 Privacy and Security Safeguards.

(a) Participant and MNSHINE shall implement and maintain reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, privacy, security, integrity and availability of electronic health information accessible through MNSHINE HIE, to protect it against reasonably anticipated threats or hazards, and to prevent its use or disclosure otherwise than as permitted by this Participation Agreement or required by law. To that end, each Participant and MNSHINE shall:

(i) provide for appropriate identification and authentication of their Authorized Users and Administrative Users, respectively;

- (ii) provide appropriate access authorization;
- (iii) guard against unauthorized access to or use of protected health information; and
- (iv) provide appropriate security audit controls and documentation.

Such safeguards shall comply with HIPAA, all applicable federal, state, and local requirements, and MNSHINE Policies.

(b) Participant and MNSHINE shall each maintain reasonable and appropriate security practices, in accordance with at least the minimum standards and guidelines in the MNSHINE Security Policies with regard to all personnel, systems, physical and administrative processes used by each party to transmit, store and process electronic health information through the use of MNSHINE HIE. Participant and MNSHINE each shall be responsible for establishing and maintaining their respective security management procedures, security incident procedures, contingency plans, audit procedures, facility access controls, workstation use controls and security, device and media controls, authentication procedures, and security policies and procedures to protect electronic health information accessible through MNSHINE HIE.

(c) Participant shall notify MNSHINE within three (3) days of Participant's receipt of any adverse audit findings related to Participant's participation in MNSHINE HIE and the resolution of such findings. As required through the Business Associate Agreement (Exhibit C), Participant shall notify MNSHINE of any Security Incident relating to MNSHINE HIE interface or connection of which Participant becomes aware, or any unauthorized use or disclosure of information within or obtained from MNSHINE HIE within five (5) days and shall cooperate with MNSHINE in investigating the incident and shall take such action to mitigate any breach or suspected breach. MNSHINE shall notify Participant of any Security Incident relating to the Participant's shared PHI of which MNSHINE becomes aware, or any unauthorized use or disclosure of Participant's PHI within, or obtained from, MNSHINE HIE of which MNSHINE becomes aware, within five (5) days of MNSHINE becoming aware of either the Security Incident or unauthorized use or disclosure of Participant's PHI, and shall cooperate with Participant in investigating the Security Incident and shall take such action to mitigate any breach or suspected breach.

(d) When Transacting Message Content over the nationwide eHealth Exchange through MNSHINE HIE, Participant shall (i) comply with all applicable laws; (ii) reasonably cooperate with MNSHINE on issues related to this Participation Agreement and with the eHealth Exchange DURSA; (iii) Transact Message Content only for permitted purposes as outlined in Restatement II of the DURSA (FINAL August 13, 2019); (iv) use Message Content received from another Participant in accordance with the terms and conditions of this Participation Agreement; (v) Participant agrees to the Adverse Security Event Notification requirements outlined in the Restatement II of the DURSA (Final August 13, 2019) and associated eHealth Exchange Performance and Service Specifications and the Operating Policies and Procedures; (vi) refrain from disclosing to any other person any passwords or other security measures issued to the Authorized User by MNSHINE or the Participant Account Administrator; and (vii) comply with the provisions outlined in Restatement II of the DURSA (FINAL August 13, 2019) and the eHealth Exchange Performance and Service Specifications and the Operating Policies and Procedures. These policies are available at the eHealth Exchange website available here: <https://ehealthexchange.org/policies/>.

(e) Qualified Service Organization Agreement. If, through a Participant's use of MNSHINE HIE, MNSHINE's performance of its responsibilities described in MNSHINE Policies causes MNSHINE to act

as a "Qualified Service Organization" (as defined in 42 C.F.R. Part 2), the Participant and MNSHINE shall enter into a separate Qualified Service Organization Agreement.

### 3.5 Authorized Use.

(a) MNSHINE authorizes Participant and MNSHINE's Administrative Users to access and use MNSHINE HIE. Participant authorizes its Authorized Users and obtains a unique ID for each of its Authorized Users. Participant shall adopt and maintain reasonable security precautions for Participant's and its Authorized Users' IDs to prevent their disclosure to or use by unauthorized persons; MNSHINE shall do the same with respect to MNSHINE's Administrative Users. Each Authorized User shall have and use the Authorized User ID assigned to them.

(b) Participant may permit Participant's Authorized Users to access and use MNSHINE HIE and the Services on behalf of Participant, subject to the terms of this Participation Agreement. Participant shall:

(i) Provide the appropriate level of access to MNSHINE HIE based on the role or function of the Authorized User in Participant's Workforce;

(ii) Require that its Authorized Users agree to the same restrictions and conditions that apply to the Participant with respect to health information;

(iii) Train all Authorized Users regarding the privacy, security and confidentiality requirements of this Participation Agreement, the MNSHINE Policies, and applicable law relating to their access to and use of MNSHINE HIE and the Services. Participant shall be responsible for their compliance with such requirements;

(iv) Take such disciplinary action as it may deem appropriate against any Authorized User who violates the confidentiality provisions of this Participation Agreement or MNSHINE Policies; and

(v) Notify MNSHINE within 24-hours of the termination, revocation or restriction of employment or right of access of any Authorized User (or if the individual is not an employee, of the termination of the relationship with Participant which granted the individual access to MNSHINE HIE).

3.6 Termination of Participant Access. Following written notice to a Participant, MNSHINE may terminate a Participant's access to MNSHINE HIE on a temporary or permanent basis for privacy or security breaches, breaches of the terms and conditions of this Participation Agreement, default in payment of Participation Fees, or failure to take reasonable remedial action when a Breach is discovered, including, without limitation: (i) failure to cooperate in mitigating damages, (ii) failure to appropriately discipline an Authorized User or other person under the Participant's control for security or privacy violations, or (iii) other actions that undermine the confidence of other Participants in the effectiveness of MNSHINE safeguards. When terminating access, MNSHINE shall explain to Participant the basis and shall provide support for its action. A permanent termination of access shall be followed by termination of this Participation Agreement. If this Participation Agreement is terminated by MNSHINE pursuant to this subsection 3.6, Participant shall not be entitled to a refund of Participation Fees for the unexpired term.

3.7 Professional Responsibility. Participant or Authorized User shall be solely responsible for the medical, professional and technical services it provides. MNSHINE makes no representations concerning the completeness, accuracy or utility of any information in MNSHINE HIE or concerning the qualifications or

competence of individuals who placed it there. MNSHINE has no liability for the consequences to Participant, Authorized User or Participant's patients of Participant's use of MNSHINE HIE or the Services.

3.8 Cooperation. MNSHINE Administrative Users and Participant Authorized Users shall cooperate with the reasonable audit and investigation of potential violations of law or the terms of this Participation Agreement, including but not limited to compliance investigations and privacy and security breaches.

#### **SECTION 4 - INFORMATION AVAILABLE THROUGH MNSHINE**

4.1 Accuracy and Format of Health Information. Participant shall use reasonable efforts to ensure that Participant's shared Information:

- (a) Is current, accurate and (subject to any restrictions imposed by law or this Participation Agreement, including Section 3.2 (e)) complete; and
- (b) Complies with any requirements of MNSHINE Policies as to format or content.

4.2 Use and Disclosure of Participant's shared Information.

- (a) Participant authorizes MNSHINE to facilitate the exchange of Participant's shared Protected Health Information to Other Participants for purposes of TPO and Public Health Activities, to the extent such exchange would be required or authorized by law if done by Participant.
- (b) MNSHINE may use, maintain and disclose Participant's shared Protected Health Information to carry out MNSHINE's duties under MNSHINE policies, including without limitation, system administration, testing, problem identification and resolution, management of MNSHINE HIE, facilitate Minnesota Public Health Reporting, and data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as MNSHINE determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state and local laws and regulations.

4.3 Reliance on Representations. Participant acknowledges that in granting access to MNSHINE HIE for the purposes as set forth in this Participation Agreement, MNSHINE will rely on the assurances of all other Participants as to (i) their identity and credentials, (ii) the purposes for which they are accessing MNSHINE HIE, and (iii) the nature and extent of the information to which they will have access. Participant acknowledges that, while MNSHINE HIE will contain certain technical safeguards against misuse of MNSHINE HIE, it will rely to a substantial extent on the representations and undertakings of other Participants and their Authorized Users. Participant agrees that MNSHINE shall not be responsible for any unlawful access to or use of Participant's shared Protected Health Information by any other Participants resulting from misrepresentation to MNSHINE, breach of a participation agreements, or violation of MNSHINE Policies, unless such unlawful access to or use of Participant's shared Information is due to MNSHINE's or its agent's gross negligence, recklessness, or willful misconduct or omission.

4.4 Individuals' Rights. Participant is solely responsible for ensuring that Participant's shared Information may properly be disclosed for the purposes set forth in this Participation Agreement. In particular, Participant shall:

- (a) Obtain any necessary consents, authorizations or releases from individuals required by agreement or by federal and Minnesota law for making their health information available in MNSHINE HIE, to include taking all necessary action in the event that consent, authorization or releases are revoked, expired or having other conditions; and

(b) Include such statements (if any) in Participant's Notice of Privacy Practices as may be required in connection with Participant's use of MNSHINE.

(c) MNSHINE and Participant shall be responsible for affording individuals their rights with respect to the individual's electronic health information as required in the HIPAA Privacy Rules, HITECH Act, and 21st Century Cures Act.

4.5 Rights to Health Information. If Participant Data has been used or disclosed for public health reporting, public health activities or TPO, it may thereafter be integrated into the records of the Participant.

## **SECTION 5 - ESTABLISHMENT OF MNSHINE POLICIES**

5.1 Generally. MNSHINE Policies shall apply to the operation of MNSHINE HIE, the services provided by MNSHINE HIE, and the relationships among MNSHINE and Participants. MNSHINE and each Participant agrees to comply with MNSHINE Policies, which can be found at, [MNSHINE policy URL], applicable to the Participant, and, subject to the provisions of Section 5.2 of this Participation Agreement, with any amendments to MNSHINE Policies.

5.2 Amendment of MNSHINE Policies.

5.2.1 Procedures for Amendment of MNSHINE Policies. MNSHINE is solely responsible for the development of MNSHINE Policies, and may amend, or repeal and replace, MNSHINE Policies at any time as MNSHINE determines is appropriate. MNSHINE shall notify all Participants and the HIE Advisory Committee of any changes to MNSHINE Policies and Procedures at least thirty (30) days prior to the implementation of the change; provided that, if the change requires modifications to the Participant's system or may otherwise materially affect the Participant's operations or obligations under the Participation Agreement, MNSHINE shall notify the Participant and the HIE Advisory Committee at least sixty (60) days prior to the implementation of the change. The HIE Advisory Committee may provide non-binding input to MNSHINE's Board of Directors or officers, as appropriate, regarding any intended change. Notwithstanding the foregoing, if the change is required in order for MNSHINE or the Participants to comply with applicable laws or regulations, MNSHINE may implement the change within a shorter period of time as MNSHINE reasonably determines is appropriate under the circumstances; provided that MNSHINE shall provide the Participants with as much notice of any such change as reasonably possible.

5.2.2 Any change to MNSHINE Policies shall automatically be incorporated by reference into this Participation Agreement and be legally binding upon MNSHINE and the Participant, as of the effective date of the change.

## **SECTION 6 - SOFTWARE AND HARDWARE**

6.1 Description. Participant acknowledges that in order to access and use MNSHINE HIE, it may be necessary for Participant to acquire, install, configure and maintain hardware, software and communication systems in order to connect to MNSHINE HIE and comply with this Participation Agreement. The parties acknowledge that the Participant will be responsible for all costs associated with any modifications to its internal systems to enable its connection to MNSHINE HIE. Participant acknowledges that amendments to the configuration of its systems and technical environment may impact the MNSHINE HIE Services.

6.2 Open-Source Software. Nothing in MNSHINE Policies may be construed to limit any use of open-source software in accordance with the applicable open source software license.

## SECTION 7 - OTHER PARTICIPANT OBLIGATIONS

7.1 Indemnification. Participant is responsible for its own compliance with the terms of this Participation Agreement, HIPAA, the MNSHINE Policies, and all applicable laws and regulations. Participant shall be solely responsible for the use of MNSHINE HIE by Participant and its workforce. Participant will defend, indemnify and hold MNSHINE, its officers, directors, agents, and employees, harmless against any and all claims, liabilities, damages, judgments or expenses (including attorneys' fees) asserted against, imposed upon or incurred by MNSHINE, that arise out of the willful misconduct or negligent acts or omissions of Participant or its employees, agents, or representative including claims brought by third parties arising out of Participant's use, or distribution, of any data obtained through the use of MNSHINE's services. Any indemnification under this Section 7.1 shall be limited if required under applicable laws.

### 7.2 Other Resources.

- a) Each Participant is responsible for providing such other resources as may be reasonably necessary in connection with the implementation of the MNSHINE HIE, including making available such Participant staff members as may be necessary for these purposes.
- b) Each Participant shall, at its own expense, utilizing the user manuals and other resources provided by MNSHINE, provide to all Authorized Users appropriate and adequate training regarding, without limitation, access to and use of MNSHINE Services, privacy and security of Patient Data obtained using the MNSHINE Services, and applicable MNSHINE policies.

## SECTION 8 - MNSHINE'S OPERATIONS AND RESPONSIBILITIES

8.1 Execution of Participation Agreement. MNSHINE shall require that all Participants enter into a Participation Agreement and Business Associate Agreement, as applicable, prior to being granted access to and use of MNSHINE HIE and Services.

8.2 Participant Training. MNSHINE shall provide training to each Participant regarding access and use of MNSHINE and Services, including such user manuals and other resources as MNSHINE determines appropriate so that the Participant may train all of its Authorized Users regarding access to and use of MNSHINE HIE Services, privacy and security of Patient Data, and applicable MNSHINE Policies as required under Section 7.2 of this Participation Agreement.

8.3 Telephone and/or E-Mail Support. MNSHINE shall provide, directly or through a business associate or other agent, by telephone or e-mail, support and assistance in resolving technical issues in accessing and using MNSHINE HIE and Services, in accordance with MNSHINE Policies.

8.4 Access Monitoring. Each party represents that, through its agents, employees and independent contractors, it shall have the ability to monitor and audit all access to and use of its System related to this Agreement, for system administration, security and other legitimate purposes. Each party shall perform those monitoring activities required by the MNSHINE Policies and Procedures.

8.5 Compliance with Laws and Regulations. Without limiting any other provision of this Participation Agreement and MNSHINE Policies relating to the parties' compliance with applicable laws and regulations, MNSHINE agrees to comply with applicable federal, state, and local laws relating to its operation of MNSHINE HIE.

8.6 Viruses and Other Threats. MNSHINE shall use reasonable efforts to ensure that MNSHINE HIE does not include, and will not introduce, any program, routine, subroutine, or data that will disrupt the proper operation of any hardware or software used by a Participant in connection with MNSHINE HIE and Services.

8.7 Intellectual Property Rights. Subject to compliance by the Participant with the provisions of this Participation Agreement, MNSHINE warrants that it has all rights and licenses necessary to provide MNSHINE HIE and Services to the Participant without violating any intellectual property rights of any third party.

## **SECTION 9 – PARTICIPATION FEES**

9.1 Annual Participation Fees. In consideration for MNSHINE providing Participant with the Services, Participant agrees to pay the annual Participation Fees as adopted by the MNSHINE Board of Directors after considering the recommendations of the Advisory Committee and specified in Exhibit D. MNSHINE shall notify all Participants of its intent to modify fees in writing at least sixty (60) days prior to the implementation of the change.

9.2 Payment. The Participation Fees shall be due and payable to MNSHINE within thirty (30) days of invoice. Failure to pay the annual Participation Fees within such time shall constitute a material breach of this Participation Agreement.

9.3 Taxes. All charges and fees shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and Participant agrees to pay any tax that MNSHINE may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and Services purchased under this Participation Agreement.

9.4 Other Fees. Participant is responsible for any charges Participant incurs to use MNSHINE, such as interface fees, network and equipment charges, and fees charged by Participant's third-party vendors of products and services.

## **SECTION 10 – CONFIDENTIAL AND PROPRIETARY INFORMATION**

10.1 Scope of Confidential and Proprietary Information. In the performance of their respective responsibilities pursuant to this Participation Agreement, MNSHINE and Participants may come into possession of certain Confidential and Proprietary Information of the other party.

10.2 Nondisclosure of Confidential and Proprietary Information. MNSHINE and the Participant each (i) shall keep and maintain the confidentiality of all Confidential and Proprietary Information received from the other, or from any of the other's employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under this Participation Agreement; (ii) may not use, reproduce, distribute or disclose any such Confidential and Proprietary Information except as necessary to carry out its duties under this Participation Agreement or as required by law; and (iii) shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure of Confidential and Proprietary Information, except in connection with the performance of their respective obligations under this Participation Agreement.

## **SECTION 11 - DISCLAIMERS, EXCLUSIONS OF WARRANTIES, LIMITATIONS OF LIABILITY**

11.1 Carrier lines. Participant acknowledges that access to the MNSHINE HIE is to be provided over various facilities and communications lines, and information may be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and internet service providers, all of which are beyond MNSHINE's control. MNSHINE is not liable for any damages relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to

transmission on the carrier lines. Use of the carrier lines is solely at the Participant's or Authorized User's risk and is subject to all applicable local, state, national, and international laws.

11.2 NO WARRANTIES. EXCEPT AS SET FORTH IN THIS SECTION, MNSHINE HIE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON MNSHINE HIE OR THE INFORMATION IN THE SYSTEM, INCLUDING INACCURATE OR INCOMPLETE INFORMATION.

IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF THOSE DAMAGES OCCURRING.

EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE HOSTED SYSTEM.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS PARTICIPATION AGREEMENT, MNSHINE'S TOTAL AND AGGREGATE LIABILITY TO A PARTICIPANT FOR ANY DAMAGES ARISING OUT OF, BASED ON, OR RELATING TO THIS PARTICIPATION AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, OR ANY OTHER LEGAL THEORY (AND NOT OTHERWISE DISCLAIMED), MAY NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY THE PARTICIPANT UNDER THIS PARTICIPATION AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE ACTS OR OMISSIONS GIVING RISE TO THE CLAIM.

11.3 Other Participants. Participant acknowledges that other Participants have access to the MNSHINE HIO and are receiving services. The other Participants have agreed to comply with MNSHINE Policies, concerning use of the information made available through MNSHINE; however, the actions of these other parties are beyond the control of MNSHINE. Accordingly, MNSHINE does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the system resulting from any Participant's actions or failures to act, except when MNSHINE has been notified in writing of such a participant's actions or failures to act and has failed to take action to prevent further noncompliance with MNSHINE Policies by that Participant.

#### 11.4 Unauthorized Access; Lost or Corrupt Data.

11.4.1. As between a Participant and MNSHINE, the Participant is solely responsible for validating the accuracy of all output and reports.

11.4.2. The Participant waives any claims against MNSHINE for damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, use of third party software, or any other cause unless such damages are caused by MNSHINE's or its agent's gross negligence, recklessness, or willful misconduct or omission.

11.4.3. MNSHINE is not responsible for the content of any information transmitted or received through MNSHINE's provision of the Services.

11.4.4. Without limiting any other provision of this Participation Agreement or limiting any provision of MNSHINE's Policies, MNSHINE has no responsibility for or liability related to any unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using MNSHINE HIE or for unauthorized access to, or alteration, theft, or destruction of the Participant's data files, programs, procedures, or information through MNSHINE, whether by accident, fraudulent means or devices, or any other method.

11.5 Inaccurate Data. All Patient Data to which access is made through MNSHINE originates initially from Participants and is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. MNSHINE does not monitor the specific content of data being transmitted. Without limiting any provision of any other section of this Participation Agreement or MNSHINE's Policies, MNSHINE has no responsibility for or liability related to the accuracy, content, currency, completeness, content or delivery of any data either provided or used by a Participant, except to the extent that any such liability is the direct result of MNSHINE's gross negligence, recklessness, or willful misconduct or omission.

11.6 Patient Care. Participant is solely responsible for all decisions and actions taken or not taken by the Participant or the Participant's Authorized Users involving patient care, utilization management, and quality management for its patients resulting from or in any way related to the use of MNSHINE or the data made available by the Services. Participant waives any claims against MNSHINE, for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of MNSHINE or the data made available by the Services related to patient care, utilization management, and quality management for its patients.

11.7 Liability of Other Parties. Nothing in this Section may be construed as a limitation on any claims by MNSHINE or any Participant against a telecommunications carrier or other third-party vendor.

## **SECTION 12 - INSURANCE**

12.1 Insurance. Participant agrees to obtain and maintain in full force and effect during the Term of this Participation Agreement insurance or self-insurance, including cybersecurity coverage, to insure itself and its Workforce, authorized users, agents, and contractors for liability arising out of activities to be performed under, or in any manner related to, this Participation Agreement. Such policy or policies shall be provided within ten (10) business days of written request by MNSHINE.

## **SECTION 13 - TERMINATION**

13.1 Termination without Cause. Either party may terminate this Participation Agreement without cause upon sixty (60) days prior written notice to the other party.

13.2 Termination for Cause. MNSHINE shall have the right to terminate this Participation Agreement for cause as provided in Section 3.6 of this Participation Agreement. The Participant shall have the right to terminate this Participation Agreement in the event of a material breach of this Participation Agreement by MNSHINE which is not cured within sixty (60) days of delivery of written notice of the breach; provided that, if the breach is capable of cure but not within sixty (60) days, this Participation Agreement shall not be terminated as long as MNSHINE commences to cure the breach within sixty (60) days, provides appropriate notice to participant, and diligently pursues the cure to completion.

13.3 Effect of Termination. Upon any termination of this Participation Agreement with respect to a Participant, neither the Participant nor its Authorized Users have any rights to use MNSHINE HIE and neither MNSHINE nor any of the other Participants may have any further access to Patient Data of that Participant through MNSHINE HIE. This section does not apply to the duty of a Participant that ceases operations to

store, make arrangements to store, or make available to patients the Participant's Patient Data which is subject to other law.

13.4 Survival Provisions. Any provision of this Participation Agreement that contemplates or requires performance subsequent to any termination of this Participation Agreement survives any termination of the Participation Agreement, including, but not limited to, Section(s) 3.4, 7.1, 10, 11, Exhibit C, and this Section.

## **SECTION 14 - GENERAL PROVISIONS**

14.1 Applicable Law and Jurisdiction. This Participation Agreement shall be governed by the laws of Minnesota, without reference to the principles of Minnesota law respecting conflicts of laws. Any action or other proceeding arising under or in connection with this Participation Agreement, must be adjudicated exclusively in a Minnesota District Court or a federal court in Minnesota.

14.2 Non-Assignability. The rights of either party under this Participation Agreement may not be assigned or transferred by a party, either voluntarily or by operation of law, without the prior written consent of the other party, which that party may withhold in its sole discretion. The restriction under this Section shall not apply to any assignment or transfer by MNSHINE to an affiliate or successor in connection with merger, reorganization, or sale of substantially all relevant assets, provided the assignee assumes the obligations in writing and assignment does not diminish privacy or security protections.

14.3 Supervening Circumstances. Neither the Participant nor MNSHINE may be considered in violation of any provision of this Participation Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences, including health pandemics; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control other than a lack of financial resources. This Section does not apply to obligations imposed under applicable laws and regulations.

14.4 Severability. Any provision of this Participation Agreement or MNSHINE Policies that proves to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Participation Agreement and MNSHINE Policies, and all such other provisions shall remain in full force and effect.

14.5 Notices. Any and all notices required or permitted under this Participation Agreement shall be considered to have been properly given when delivered if delivered in person; upon receipt if mailed by first class mail, postage, prepaid; within five (5) business days if mailed by certified or registered mail, return receipt requested; or within one (1) business day if delivered by commercial courier that can confirm delivery, and when addressed to the parties as specified in Exhibit B, or as the parties may otherwise specify in accordance with this provision.

14.6 Waiver. No provision of this Participation Agreement shall be considered waived and no breach excused, unless the waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, does not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

14.7 Injunctive Relief. Each of the parties acknowledges and agrees that nothing in this Participation Agreement shall interfere with any right of the other party or the other Participants to injunctive or other equitable relief.

14.8 Third Party Beneficiaries. Except as expressly provided in Section 14.7 (with respect to injunctive relief), there are no third-party beneficiaries of this Participation Agreement.

14.9 Complete Understanding. This Participation Agreement, together with the Business Associate Agreement and any exhibits in effect between the parties and MNSHINE Policies, contains the entire understanding of the parties to this Participation Agreement, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Participation Agreement other than those contained or referenced in the Participation Agreement. All amendments to this Participation Agreement, except as provided in Sections 5.1 and 9.1, shall be in writing and signed by all parties.

14.10 Publicity. No public announcements, media releases, press conferences, advertising or similar publicity in any form relating to the name, image, or logo of either party or any of its affiliates shall be made without the prior written consent of the other party, except as required for operation of the HIE, as for example, for publishing a list of Participants or as otherwise contemplated by this Agreement or as required by all applicable laws. The limitations set forth in this Section do not apply to any documents that either party may be required to provide to a federal, state, or local governmental agency.

14.11 Independent Contractors. The parties to this Participation Agreement are separate and independent entities. Nothing in this Participation Agreement may be construed or be considered to create a relationship of employer and employee, principal and agent, partnership, joint venture, or any relationship other than that of independent entities who have entered into this Participation Agreement solely for the purposes provided.

14.12 Counterparts. The parties may execute this Participation Agreement in counterparts, each of which is considered an original and all of which only constitute one original. Electronic signatures, DocuSign, and electronically transmitted signature pages have the same effect as originals.

## EXHIBIT B - PRIMARY CONTACTS AND ADDRESS FOR NOTICE

**Addresses for Notice:** Participant is required to provide information in the Contact fields below.

### Participant Primary Contact

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Organization Phone: \_\_\_\_\_

### MNSHINE Address for Notice

MNSHINE Attn: Legal  
1915 Highway 36 West, Suite 123  
Roseville MN 55113  
(612) 746-4522

### Other Participant Contacts

**Billing Contact:** \_\_\_\_\_ Email: \_\_\_\_\_

Phone: \_\_\_\_\_

If different than Primary **(All invoices are sent via e-mail)**

**Technical Contact** \_\_\_\_\_ Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**Privacy Officer** \_\_\_\_\_ Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**Security Officer** (If different than Privacy Officer) \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement"), effective \_\_\_\_\_ ("Effective Date"), is entered into by and between Minnesota Statewide Health Information Network and Exchange (MNSHINE) (the "Business Associate") and \_\_\_\_\_ (the "Covered Entity") (each a "Party" and collectively the "Parties").

The Parties have entered into a Participation Agreement (the "Services Agreement") pursuant to which Business Associate is providing Health Information Exchange Services (HIE) "Services" to the Covered Entity that require the disclosure and use of Protected Health Information. Both Parties are committed to complying with the Privacy Rule, the Security Rule, and the Breach Notification Rule promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

This Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is created or received by and/or maintained by the Business Associate from or on behalf of the Covered Entity, will be handled between the Business Associate and the Covered Entity and with third parties during the term of the Services Agreement and after its termination.

### **1. DEFINITIONS**

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the 1996 HIPAA Privacy and Security Rule (45 C.F.R. § Parts 160 and 164):

1.1 Breach. "Breach" has the same meaning as the term "breach" in 45 C.F.R. § 164.402, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.2 Designated Record Set. "Designated Record Set" has the same meaning as the term "designated record set" in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.3 Electronic Protected Health Information. "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103, maintained, and/or transmitted, but limited to the information created, received, maintained, and/or transmitted by Business Associate from or on behalf of Covered Entity, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.4 HITECH Act. "HITECH Act" means the Health Information and Technology for Economic and Clinical Health Act, as codified at 42 U.S.C. § 1790, which was adopted as part of the American Recovery and Reinvestment Act of 2009 on February 17, 2009.

1.5 Individual. "Individual" has the same meaning as the term "individual" in 45 C.F.R. § 160.103, as such provision is currently drafted and as it is subsequently updated, amended or revised, and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.6 Privacy Rule. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

1.7 Protected Health Information. "Protected Health Information" or "PHI" has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created, received, maintained, and/or transmitted by Business Associate from or on behalf of Covered Entity, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.8 Required by Law. "Required by Law" has the same meaning as the term "required by law" in 45 C.F.R. § 164.103, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.9 Secretary. "Secretary" means the Secretary of the Department of Health and Human Services or or the Secretary's designee.

1.10 Security Incident. "Security Incident" has the same meaning as the term "security incident" in 45 C.F.R. § 164.304, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.11 Security Rule. "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. parts 160, 162 and 164, subpart C.

1.12 Sensitive Personal Information. "Sensitive Personal Information" means: (1) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (a) social security number; (b) driver's license number; (c) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or (2) PHI.

1.13 Unsecured PHI. "Unsecured PHI" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services in the guidance issued under section 13402(h)(2) of [Public Law 111-5](#).

## **2. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION**

2.1 Services. Pursuant to the Services Agreement, Business Associate provides Services for the Covered Entity that involve the creation, receipt, maintenance, and/or transmission of Protected Health Information. Except as otherwise specified herein, the Business Associate may make any and all uses of Protected Health Information necessary to perform its obligations under the Services Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose Protected Health Information for the purposes authorized by this Agreement only (1) to its employees, subcontractors and agents, in accordance with Sections 3.1(g) and 3.1(n); (2) as directed by the Covered Entity; (3) as required by any applicable regulation or law; or (4) as otherwise permitted by the terms of this Agreement including, but not limited to, Section 2.2(b) below. Even when PHI has been de-identified in accordance with the requirements of 45 C.F.R. § 164.514(b), Business Associate may not disclose de-identified data for purposes unrelated to performance of the Services without prior approval by the Covered Entity.

2.2 Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may:

a. use the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws, and that all Protected Health Information will be held confidentially and used only for such purposes as described under this Section.

b. disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to the Covered Entity, in writing, that (i) the disclosures are Required by Law; or (ii) the Business Associate has entered into a Business Associate Agreement containing substantially similar (or more stringent) terms as this Agreement

with any third party that creates, receives, maintains, or transmits PHI on behalf of the Business Associate.

c. use and/or disclose Protected Health Information as permitted under 45 C.F.R. § 164.512 except that uses or disclosures for research are not permitted without prior approval by the Covered Entity.

d. Receive, maintain, and share demographic information necessary for adequate patient matching for Minnesota Public Health Reporting.

2.3 Additional Activities of Business Associate. In addition to using the Protected Health Information to perform the Services set forth in Section 2.1 of this Agreement, Business Associate may:

a. aggregate the Protected Health Information in its possession with the Protected Health Information of other covered entities that the Business Associate has in its possession through its capacity as a business associate to those other covered entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses relating to the Health Care Operations of the Covered Entity.

b. de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that the Covered Entity maintains the documentation required by 45 C.F.R. § 164.514(b) which may be in the form of a written assurance from the Business Associate. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement.

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION**

3.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of Protected Health Information, the Business Associate will:

a. comply with the portions of the HIPAA Privacy Rule and Security Rule applicable to Business Associates;

b. use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as Required by Law and to use appropriate safeguards to prevent impermissible use or disclosure of PHI.

c. report to the designated Privacy Officer of the Covered Entity, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Business Associate becomes aware within three (3) business days of the Business Associate's discovery of such unauthorized use and/or disclosure.

d. mitigate, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information or other Sensitive Personal Information of which the Business Associate becomes aware and/or reports to the Covered Entity.

e. implement Administrative, Physical and Technical Safeguards consistent with the HIPAA security rule and industry standards that reasonably and appropriately maintain the security of, prevent unauthorized use and/or disclosure of, and protect the confidentiality, integrity, and availability of any Electronic Protected Health Information or other Sensitive Personal Information it creates, receives, maintains, or transmits on behalf of Covered Entity.

f. at a minimum, Business Associate shall employ Safeguards that are compliant with 45 C.F.R. Part 164, Subpart C and furthermore, to the extent feasible, the National Institute of Standards and Technology ("NIST") guidelines concerning the protection of identifiable data such as PHI.

g. require all of its subcontractors and agents that create, receive, maintain, or transmit Protected Health Information under this Agreement to agree, in the form of a Business Associate Agreement that meets the requirements at 45 C.F.R. § 164.314(a), to adhere to substantially similar or more stringent restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to the Business Associate pursuant to Section 3 of this Agreement.

h. ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.

i. make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary, in the time and manner designated by the Secretary, for purposes of the Secretary's determination that the Covered Entity and Business Associate have complied with the Privacy Rule, subject to attorney-client and other applicable legal privileges.

j. within fourteen (14) days of receiving a written request from the Covered Entity, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information for purposes of enabling the Covered Entity to determine the Business Associate's compliance with the terms of this Agreement.

k. within fifteen (15) days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by an Individual for an accounting of the disclosures of the Individual's Protected Health Information in accordance with 45 C.F.R. § 164.528.

l. to the extent that Business Associate is obligated to carry out one or more of Covered Entity's obligations under the Privacy Rule, comply with the Privacy Rule requirements that apply to the Covered Entity in the performance of such obligations;

m. subject to Section 5.4 below, inform the Participant as to the retrievability status of the data that was originally submitted by the Participant until which time the data can be destroyed;

n. disclose to its subcontractors, agents or other third parties only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted under the Services Agreement or this Agreement.

o. report to the designated Privacy Officer of the Covered Entity, in writing, any Security Incident or unintentional use or disclosure of Unsecured PHI, attempted, identified, or suspected internal/external breach of data, or disaster occurrence of which Business Associate becomes aware within three (3) business days of the Business Associate's discovery of such incident. A Business Associate may aggregate the reporting of any incidents described in the preceding sentence as appropriate. The Business Associate must include the following information, to the extent known, when reporting a breach:

- (i) Identification of the individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during a breach;
- (ii) Circumstances of the breach;
- (iii) Date of the breach;
- (iv) Date of the discovery;
- (v) Type of PHI involved (such as full name, Social Security number, date of birth, home address, account number, or medical record number); and
- (vi) Any other additional information the Covered Entity requests.

This Section 3.1 will survive the termination of this Agreement solely with respect to the Protected Health Information that Business Associate retains in accordance with Section 5.4 below because it is not feasible to return or destroy such Protected Health Information.

3.2 Responsibilities of the Covered Entity. With regard to the use and/or disclosure of Protected Health Information by the Covered Entity to the Business Associate or the use and/or disclosure of Protected Health Information by the Business Associate, the Covered Entity will:

- a. provide Business Associate with a copy of its notice of privacy practices (the "Notice") that the Covered Entity provides to Individuals pursuant to 45 C.F.R. §164.520.
- b. notify the Business Associate, in writing, of any changes in, or revocation of, the consent or authorization provided to the Covered Entity by Individuals pursuant to 45 C.F.R. §164.506 or §164.508, to the extent such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. parts 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by the Business Associate under this Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 agreed to by the Covered Entity, to the extent such restrictions may affect Business Associate's use or disclosure of Protected Health Information.
- d. not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

#### **4. ADDITIONAL RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION**

4.1 Responsibilities of the Business Associate with Respect to Handling of Designated Record Set. In the event that the Parties mutually agree in writing that the Protected Health Information constitutes a Designated Record Set, the Business Associate will:

- a. within fifteen (15) days of receipt of a written request by the Covered Entity, provide access to the Protected Health Information to the Covered Entity or the Individual to whom such Protected Health Information relates or his or her authorized representative in order to meet a request by such Individual under 45 C.F.R. § 164.524.
- b. within fifteen (15) days of receipt of a written request by Covered Entity, make any amendment(s) to the Protected Health Information that the Covered Entity directs pursuant to 45 C.F.R. § 164.526.

Provided, however, that the Covered Entity makes the determination that the amendment(s) are necessary because the Protected Health Information that is the subject of the amendment(s) has been, or could foreseeably be, relied upon by the Business Associate or others to the detriment of the Individual who is the subject of the Protected Health Information to be amended.

4.2 Responsibilities of the Covered Entity with Respect to the Handling of the Designated Record Set. In the event that the Parties mutually agree in writing that the Protected Health Information constitutes a Designated Record Set, the Covered Entity will:

- a. notify the Business Associate, in writing, of any Protected Health Information that Covered Entity seeks to make available to an Individual pursuant to 45 C.F.R. § 164.524 and the time, manner and form in which the Business Associate will provide such access.
- b. notify the Business Associate, in writing, of any amendment(s) to the Protected Health Information in the possession of the Business Associate that the Business Associate will be required to make and inform the Business Associate of the time, form and manner in which such amendment(s) will be made.

4.3 HITECH Act Obligations. Business Associate acknowledges that:

- a. Sections 164.306, 164.308, 164.310, 164.312, 164.314 and 164.316 of title 45 of the Code of Federal Regulations (regarding administrative, physical and technical security standards) apply to Business Associate in the same manner in which such sections apply to Covered Entity. The provisions of the HITECH Act that impose additional requirements and standards on Covered Entities with respect to health information security are also applicable to Business Associate and are hereby incorporated into the Agreement.
- b. the HITECH Act requires it to use or disclose PHI only if such use or disclosure is in compliance with all applicable requirements of Section 164.504(e) of the Privacy Rule. The additional requirements of the HITECH Act that impose requirements and standards on Covered Entities with respect to privacy are also applicable to Business Associate and are hereby incorporated into the Agreement.

4.4 Survival. Sections 4.1 and 4.2 of this Agreement will survive the termination of this Agreement, provided that Covered Entity determines that the Protected Health Information being retained pursuant to Section 5.4 below constitutes a Designated Record Set.

## **5. TERM AND TERMINATION**

5.1 Term. This Agreement will become effective on the Effective Date and will continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 5. In addition, certain provisions and requirements of this Agreement will survive its expiration or other termination in accordance with Section 5.4 herein.

5.2 Termination by the Covered Entity. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement and any Services Agreement if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with thirty (30) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate must cure said breach within thirty (30) days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement and any Services Agreement. Nothing contained in this Section 5.2 will be deemed to require

the Covered Entity to terminate this Agreement and the Services Agreement upon breach by Business Associate of a material term of this Agreement if termination is not feasible, and the Covered Entity will have the right to report any such breach to the Secretary as provided for under 45 C.F.R. § 164.504(e)(1)(ii).

5.3 Termination by Business Associate. If the Business Associate makes the determination that a material condition of performance has changed under any Services Agreement or this Agreement, or that the Covered Entity has breached a material term of this Agreement, Business Associate may provide thirty (30) days written notice of its intention to terminate this Agreement and the Services Agreement. Business Associate agrees, however, to in good faith cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it will not terminate this Agreement so long as any Services Agreement is in effect.

5.4 Effect of Termination. Upon termination of a Services Agreement, Business Associate will return or destroy all Protected Health Information pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J), if it is feasible to do so. Prior to doing so, the Business Associate will recover any Protected Health Information in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said Protected Health Information, the Business Associate will notify the Covered Entity in writing. The notification will include: (i) a statement that the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession; and (ii) the specific reasons for such determination. Business Associate will extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any Protected Health Information retained after the termination of this Agreement and limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible. If it is not feasible for the Business Associate to obtain, from a subcontractor or agent any Protected Health Information in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement and its Business Associate Agreements with the subcontractors and agents to the subcontractors' and/or agents' use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible. Business Associate's obligations under this Section 5.4 will not apply to Protected Health Information that is the subject of other agreements between Covered Entity and Business Associate to the extent those other agreements survive the termination, and Business Associate may retain any Protected Health Information necessary to Business Associate's services under any other agreements with Covered Entity.

## **6. ACKNOWLEDGEMENTS**

Each Party acknowledges and agrees that:

- a. it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.
- b. neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. Each Party certifies to the other

Party that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.

c. it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.

d. all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or will be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations to which the Covered Entity has agreed to adhere regarding the use and disclosure of Protected Health Information of any Individual that materially affect and/or limit the uses and disclosures that are otherwise permitted under the Privacy Rule will be communicated to the Business Associate, in writing, and in a timely fashion.

e. it will reasonably cooperate with the other Party in the performance of their mutual obligations under this Agreement and their respective obligations under HIPAA.

## **7. MISCELLANEOUS**

7.1 Business Associate. For purposes of this Agreement, Business Associate will include the named Business Associate herein. However, in the event that the Business Associate is otherwise a covered entity under the Privacy Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.105(a), as the Business Associate for purposes of this Agreement.

7.2 Amendments; Waiver. This Agreement may not be modified, nor will any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, and the HITECH Act. A waiver with respect to one event will not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

7.3 No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

7.4 Notices. Any notices to be given under this Agreement will be made via U.S. Mail or express courier to such Party as provided in Exhibit B of Participation Agreement. Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

7.5 Counterparts; Facsimiles or Scanned Documents. This Agreement may be executed in any number of counterparts, each of which will be deemed an original. Facsimile copies or scanned documents hereof will be deemed to be originals.

7.6 Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties will make good faith efforts to resolve such matters informally.

7.7 Interpretation. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the Security Rule.

7.8 Relationship of Parties. Business Associate, in furnishing services to Covered Entity, is acting as an independent contractor, and Business Associate has the sole right and obligation to supervise, manage,

contract, direct, procure, perform or cause to be performed, all work to be performed by Business Associate under this agreement. Business Associate is not an agent of Covered entity and has no authority to represent Covered Entity as to any matters, except as expressly authorized in this Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

*COVERED ENTITY*

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*BUSINESS ASSOCIATE*

MNSHINE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT D – ANNUAL PARTICIPATION FEES

The annual participation fee schedule for MNSHINE Participants is identified below. These fees do not include implementation interface costs, if applicable.

### ANNUAL FEE SCHEDULE

<sup>1</sup>Per individual who has prescribing authority.

<sup>2</sup>If part of a hospital, the fee is included in the hospital net patient revenue identified above. These fees are for independent provider organizations.

| Participant Type                                 | Fee Calculation                     | 2025           | 2026           | 2027           |
|--------------------------------------------------|-------------------------------------|----------------|----------------|----------------|
| Hospitals/Health Systems                         | <b>Based on Net Patient Revenue</b> |                |                |                |
|                                                  | 0 - \$10,000,000                    | \$2,000.00/YR  | \$2,000.00/YR  | \$2,000.00/YR  |
|                                                  | \$10,000,001 - \$25,000,000         | \$4,000.00/YR  | \$4,000.00/YR  | \$4,000.00/YR  |
|                                                  | \$25,000,001 - \$100,000,000        | \$6,000.00/YR  | \$6,000.00/YR  | \$6,000.00/YR  |
|                                                  | \$100,000,001 and above             | \$10,000.00/YR | \$10,000.00/YR | \$10,000.00/YR |
| Clinics                                          | Per Provider <sup>1</sup>           | \$300.00/YR    | \$300.00/YR    | \$300.00/YR    |
| Long Term Care                                   | Facility                            | \$500.00/YR    | \$500.00/YR    | \$500.00/YR    |
| Pharmacies                                       | Facility <sup>2</sup>               | \$300.00/YR    | \$300.00/YR    | \$300.00/YR    |
| Home Health Agency                               | Facility <sup>2</sup>               | \$500.00/YR    | \$500.00/YR    | \$500.00/YR    |
| Laboratories                                     | Facility <sup>2</sup>               | \$500.00/YR    | \$500.00/YR    | \$500.00/YR    |
| Radiology                                        | Facility <sup>2</sup>               | \$500.00/YR    | \$500.00/YR    | \$500.00/YR    |
| Local Public Health/Co. Social Services Agencies | Per Political Subdivision           | \$188.00/YR    | \$188.00/YR    | \$188.00/YR    |
| Government Agencies                              | Contact MNSHINE                     |                |                |                |
| HDIs                                             | Contact MNSHINE                     |                |                |                |
| Payers/IHP                                       | Contact MNSHINE                     |                |                |                |
| Other Facility/Organization                      | Contact MNSHINE                     |                |                |                |
| Direct Secure Messaging (DSM)                    | Per Mailbox                         | \$100.00/YR    | \$100.00/YR    | \$100.00/YR    |

## EXHIBIT E – MNSHINE AVAILABLE SERVICES

MNSHINE reserves the right to amend, terminate, or add additional HIE services at any time. The availability of MNSHINE Services to individual Participants is dependent on the State of Minnesota HIE certification, the technical capabilities of MNSHINE HIE and Participant's organization.

| Service                                                                                    | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Direct Secure Messaging (DSM)<br>- Web-based and XDR                                       | If requested, MNSHINE can provide Authorized Users with an ONC-compliant (Direct Trust-accredited) Direct Secure Messaging service. Each Authorized User will be provided a unique address assigned in the MNSHINE Direct domain. MNSHINE maintains a Provider Directory Address Book of Direct Addresses in the MNSHINE Health Internet Services Provider (HISP) that is connected with a national directory provided by DirectTrust. Please see fee schedule for web-based and XDR based DSM fees.                                                                                                                                                                                                                                                         |
| Clinical Portal/Query-based Exchange                                                       | MNSHINE provides Authorized Users access to MNSHINE Clinical Portal. This Portal can be used to view the longitudinal/community patient record, set alerts and notifications, and utilize other MNSHINE Services, including initiating a query of the eHealth Exchange to access additional clinical information that may be contained in other HIEs or Participants of the eHealth Exchange, including CareQuality members.                                                                                                                                                                                                                                                                                                                                 |
| Alerts and Notifications                                                                   | The MNSHINE Alerts and Notifications tools distribute relevant alerts and clinical information about pre-defined events such as hospital admissions, discharges, or finalized laboratory results available for review. As new event messages flow through MNSHINE HIE, they may generate real-time notifications for delivery to subscribed users. Panel/roster-based Notifications are also available, ideal for Integrated Health Partnership care coordinators and for other use cases focused on attributed population-level use cases. Utilizing MNSHINE for Notifications services can support Hospital Participants to meet the CMS ADT event notification conditions of participation required under 42 C.F.R. §§ 482.24(d), 482.61(f), 485.638(d)). |
| eHealth Exchange                                                                           | MNSHINE HIE is a Participant of the eHealth Exchange and a member of Carequality and is a bi-directional Participant of the eHealth Exchange Central Hub. This enables Participants to query the eHealth Exchange through the MNSHINE Clinical Portal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Minnesota Department of Health – HIE Gateway (Registries and other MDH Reporting Services) | MNSHINE HIE maintains a "public health gateway" with the Minnesota Department of Health (MDH) to enable integration with various MDH registries and reporting services. MNSHINE staff works closely with MDH to assist Participants with integration and onboarding and manages day-to-day operations for these transactions from Participant to/from MDH. <b>Some of these services include, but are not limited to:</b><br><b>Electronic Lab Orders/Results</b> (Infectious Disease Lab): Multiplex Orders (COVID + Influenza)<br><b>Electronic Lab Reporting</b><br>Bidirectional connection to <b>Immunization Registry</b> (MIIC)<br><b>electronic Case Reporting</b> (eCR) – AIMS Platform (CDC)                                                       |