

## Utah Health Information Network ELECTRONIC COMMERCE AGREEMENT

<p><b>“MEMBER”</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Phone: _____</p> <p>Fax: _____</p> <p>Email: _____</p> <p>EIN: _____</p> <p>Renewal HT # _____</p> <p>Organization NPI _____</p>	<p><b>“UHIN”</b></p> <p><b>Utah Health Information Network, Inc.</b></p> <p>1226 E 6600 S</p> <p>Salt Lake City, UT 84121</p> <p>Phone: (801) 466-7705</p> <p>Fax: (801) 466-7169</p> <p>Email: enrollment@uhin.org</p> <p>EIN: 87-0520249</p>
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**BACKGROUND:**

UHIN provides a telecommunications network (**Network**) that links health care community participants (health care providers, hospitals, health plans and state government). UHIN also establishes standards and guidance for use of the Network. Definitions for terms used appear in the Definitions section at the end of this Agreement.

<p><b>Specify Service Desired (CHECK ONE):</b></p> <p><b>Member desires to use the Network to Transact:</b></p>	<p><input type="checkbox"/> <b>1. Administrative Messages,</b></p> <p><input type="checkbox"/> <b>2. Clinical Messages</b> (only for HIPAA Covered Entities, Business Associates, or Public Health Authorities for Permitted Purposes), <b>or</b></p> <p><input type="checkbox"/> <b>3. Both.</b></p>
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**AGREEMENT:**

1. **Services.** UHIN shall manage and administer the Network and its use in accordance with all Applicable Laws and the Requirements. During the term of this Agreement, UHIN shall provide the Network and Services as long as Member complies with this Agreement and the accompanying Terms of Use, which are incorporated herein by reference (collectively, this “Agreement” or “ECA”).
2. **Scope.** This Agreement documents the party’s assurances that it will use Message Content for Permitted Purposes only and in accordance with the party’s legal obligations under Applicable Laws. Notwithstanding any other provision of this Agreement, this Agreement does not impose the obligations of a Covered Entity or Business Associate on a Member to which HIPAA Regulations do not apply. This Agreement is effective only upon the execution by both the Member and UHIN (“Effective Date”).

<p><b>MEMBER:</b></p> <p>_____</p> <p>Print Member Company Name Here</p> <p>_____</p> <p>Sign Here (Stamped signature is not acceptable)</p> <p>_____</p> <p>Print Name of Signer <span style="float: right;">Date</span></p> <p>_____</p> <p>Title of Signer (if any)</p>	<p><b>UHIN:</b></p> <p><b>UTAH HEALTH INFORMATION NETWORK</b></p> <p>_____</p> <p><u>Brian Chin</u></p> <p>Name of Signer <span style="float: right;">Date</span></p> <p><b>CFO</b></p> <p>Title of Signer</p>
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# Terms of Use

## 1. SERVICES

1.1. Availability. This Agreement applies to the Network and use of the Services described on schedules, attachments or addenda hereto, as modified and supplemented from time to time (“Services”). Unless otherwise indicated in the related description, Network access is available to Member twenty-four (24) hours a day, seven (7) days a week. UHIN may temporarily suspend access to the Network and Services for maintenance purposes, and when reasonably possible it shall give reasonable advance notice to Member of the suspension. UHIN shall use its best efforts to reestablish Network access and Services quickly in the event of unscheduled interruptions.

1.2. Training and Support. UHIN shall provide training in the use of Services and may publish a schedule and charge fees related to this training and support. UHIN shall provide support and help desk services to Member between 8:00 a.m. and 5:00 p.m. (Mountain Time), Monday through Friday, excluding holidays, and limited support services on holidays, weekends and off-hours. Support services and terms are described at <http://www.uhin.org>. Any changes to the terms of service become effective in accordance with Section 2.2. UHIN or its contractors may provide on-site support requested by Member, for which UHIN may bill at its rates then in effect.

1.3. Software and Systems. From time to time, UHIN may provide Member with the use of software applications, computer programs, digital content, interfaces, and other intangible information technology assets to access and use the Services. Because technology, health care practices, UHIN policies, and other factors will change over time, the capabilities of and the software necessary to use the Services may change from time to time. Member shall comply with the terms, conditions, restrictions, limitations, or other documentation applicable to any software that it licenses from UHIN or its third party licensors, to the extent the same are not inconsistent with this Agreement.

1.4. Data Storage/Retention. UHIN shall maintain an encrypted backup of Messages as required or permitted by Applicable Law and the Requirements. If Member is unable to reconstruct Messages from its own or other available resources, UHIN, upon Member’s request and at UHIN’s rates then in effect, shall assist Member in recovering Messages from backups, provided that UHIN still maintains them.

1.5. System Monitoring. UHIN may monitor and audit all access to and use of the Network and Services for system administration, security, and other legitimate purposes in accordance with the Requirements. UHIN shall conduct system monitoring and audits in a manner that causes the least amount of disruption of operations and prevents the improper disclosure or use of information.

## 2. MEMBERSHIP AND GOVERNANCE

2.1. Fees. Member shall pay UHIN membership fees and fees for any subscribed Services as set forth in Attachment A, in

schedules, or in the addenda applicable to such Services, plus applicable taxes. The membership fee is non-refundable--there is no minimum level-of-use threshold, and Member is free to use or not to use the Network in its discretion. UHIN may from time to time change the amount of, or basis for, fees charged. Fees are due and payable in full, without deduction or offset, within thirty (30) days from receipt of an accurate invoice. Amounts not paid when due may be subject to interest at the rate set by UHIN’s Board of Directors. UHIN may suspend Member’s Network access and Services for nonpayment pursuant to section 9.3. UHIN shall communicate any changes in fees on a revised Attachment A, which shall be effective sixty (60) days after notice to Member.

2.2. Use Governed by the Requirements. This Agreement and the Requirements govern UHIN, Member, and contractor activity on the Network, and include operating rules, services descriptions, definitions, standards, and details for the content and transaction of Messages on the Network. The UHIN Board may change the Requirements from time to time to reflect the availability of new equipment, systems or functionality, changes in Applicable Law, or other circumstances affecting the Network or the Services. Member should participate in and provide input regarding the Requirements. Requirements become effective and are binding on Member and Other Members thirty (30) days after adoption, unless the UHIN Board prescribes an earlier effective date when reasonably necessary to address legal requirements, network security, or exigent circumstances. Promptly following the adoption or modification of a Requirement by the UHIN Board, UHIN shall provide e-mail notice to Member’s designated email address for receipt of notifications. Additionally, UHIN shall post notice of proposed changes and final Requirements at <http://www.uhin.org/>.

2.3. Grant of Authority to UHIN Board. Member grants to the UHIN Board the right to provide oversight, facilitation, and support related to Messages Transacted between Member and Other Members and to conduct activities including, but not limited to: (a) determining whether to admit Another Member; (b) developing and maintaining the Requirements; (c) receiving reports of Breaches and acting upon such reports appropriately; (d) suspending or terminating Member and Other Members; (e) resolving disputes between Member and Other Members involving use of Network or Services; (f) managing this Agreement and amendments hereto; (g) evaluating, prioritizing, and adopting new Requirements; (h) maintaining a process for managing versions of the Requirements, including migration planning; (i) evaluating requests for introducing new Requirements into the production environment used by Member and Other Members to Transact Message Content; (j) coordinating with third parties on interoperability nationally; (k) auditing Member’s and Other Members’ use of the Network; and (l) fulfilling other UHIN Board responsibilities.

2.4. Use. Member agrees and represents that its use of the Network and Services does not violate Applicable Law and that it shall access and use the Network and Services only as specified in

this Agreement and in a manner consistent with the Requirements and Applicable Law. By signing this Agreement, Member becomes part of UHIN and Member agrees to comply with the Requirements adopted by the UHIN Board. The adoption of Requirements necessarily requires the interpretation of complex laws. Member, however, should not infer from the UHIN Board's adoption of the Requirements that they are adequate to meet Member's obligations under Applicable Law, so Member should seek and obtain the advice of its own attorneys in evaluating the legal efficacy of the same. If Member's use of the Network or a Service will cause Member to violate Applicable Law, Member should not use the Network or that Service.

2.5. Member's Responsibilities Related to its Use. Member has the following responsibilities related to use of the Network and the Services:

- (a) to ensure that its use and the use of its employees, contractors, and agents are for a Permitted Purpose and comply with this Agreement, the Requirements, and Applicable Law;
- (b) to install, maintain, and operate its System in accordance with this Agreement, the Requirements, and Applicable Law;
- (c) to address problems related to unauthorized use by it or its employees, contractors, or agents;
- (d) to promptly correct all of its data errors known to Member;
- (e) to pay all charges incurred for its use; and
- (f) to not sell, resell, use, or access the Network or Services to perform services for third parties (except a parent, subsidiary, or affiliate) without UHIN's prior written consent.

### 3. RELIANCE ON THE NETWORK

3.1. Message Transmission. UHIN shall transmit Messages in a timely manner in accordance with the Requirements. Member is solely responsible for properly identifying each intended Recipient of its Messages. If a Message is undeliverable, UHIN shall notify the Submitting Member. Except as provided in this Section 3, UHIN shall not be responsible for misaddressed Messages, or faulty original Message Content. If a Recipient receives any Message that is unintelligible, garbled, or not compliant with the Requirements, the Recipient shall promptly notify UHIN. UHIN shall provide the support described in Section 1.2 to assist Member in fulfilling its obligations hereunder.

3.2. Managing Messages and Message Content. UHIN shall process Messages in accordance with: (a) the Requirements, or its obligations as a Participant under the Data Use and Reciprocal Support Agreement (DURSA) of the Office of the National Coordinator for Health Information Technology, as the case may be; and (b) Applicable Law, including any operational purposes or audit requirements imposed by the aforementioned. UHIN shall manage Messages for other purposes requested by Member that are approved by the UHIN Board.

3.3. Re-formatting/Re-coding Messages. At any time, UHIN may check formatting, perform data validation, mapping and translation, and resolve patient identities associated with Patient

Data to facilitate the exchange of Patient Data. At the request of a Member, UHIN shall re-format or re-code Message Content to comply with the Requirements. In such case, UHIN shall have no liability for Member's provision of erroneous data to UHIN, and UHIN relies on Member's representation that, to Member's knowledge, the data from the Member is valid and accurate.

3.4. Source Data. The Member shall retain the data that support the Messages that the Member Transacts, ensure that its Messages are an accurate representation of the information contained in the data, and make data available to the Recipient/User Member for verification upon reasonable request.

### 4. OBLIGATIONS OF MEMBERS SUPPLYING cHIE DATA OR USING cHIE SERVICES

4.1. Use of cHIE Services. The provisions of this Section 4 apply only to a Member that has elected option 2 or option 3 on the cover signature page of the ECA in order to: use the cHIE Services; access or use Patient Data for Treatment; provide or request Patient Data for a Permitted Purpose; or allow their Authenticated Users to provide, request, access, or use Patient Data. All access or use of the cHIE Services, Data Repositories, and Patient Data must comply with UHIN's then-current policies, procedures, and guidelines for the security, protection, access and use of Patient Data and the systems used to store, protect, and transmit the Patient Data.

4.2. Patient Data Made Available through a Source Member's Data Repository.

(a) All Patient Data made available by a Source Member through its Data Repository pursuant to this Agreement still remains under the Source Member's control while stored in that Source Member's Data Repository.

(b) A Source Member retains all rights and interests in the Patient Data stored in its Data Repository; to the extent that the Source Member has not granted those rights or interests to a third party pursuant to this Agreement.

(c) A Source Member may elect to withhold certain Patient Data from the Source Member's Data Repository such that the Patient Data will not be available through the cHIE Services.

4.3. Source Member's Provision of Patient Data. A Source Member agrees that whenever it provides Patient Data to its Data Repository it does so in compliance with Applicable Law, this Agreement, and the Requirements, including that:

(a) sufficient, appropriate legal authority exists for making the Patient Data available including, but not limited to, any consent or Authorization, if required by Applicable Law; and

(b) it shall exercise reasonable efforts to ensure that the Patient Data are an accurate representation of the data contained in or available through, its System at the time of submission, but Source Member is not responsible or liable for Patient Data supplied by third parties.

4.4. Allowed Use; Restricted Use of Information. A User Member and its Authenticated Users may access or use a Source Member's Patient Data only if Applicable Law and the

Requirements authorize or permit the User Member and its Authenticated Users to access or use that Patient Data for a Permitted Purpose.

(a) User Member, and its Authenticated Users, may access or use a Patient's Data for the following purposes only:

- (i) that Patient's treatment; and
- (ii) to the minimum extent necessary, payment and health care operations.

(b) (i) A Source Member may provide Patient Data originating only from its Data Repository for any disclosure to Public Health Authorities pursuant to 45 C.F.R. 164.512.

(ii) A User Member may not obtain Patient Data from a Source Member for the purpose of disclosing Patient Data pursuant to 45 C.F.R. 164.512 [Public Health Section of HIPAA], unless the User Member has obtained the prior written Authorization, to use that Source Member's Patient Data for purposes of 45 C.F.R. 164.512.

(iii) Except as permitted by the Requirements or a separate agreement with the Source Member, a User Member may not access Patient Data for research or any other purpose not qualifying as a Permitted Purpose.

4.5. Reliance on Message Content; Completeness and Accuracy of Information; Patient Care. Each User Member agrees and acknowledges that:

- (a) the Patient Data provided by, or through, the cHIE Services may be drawn from numerous sources;
- (b) a Source Member may withhold certain Patient Data such that Patient Data stored in Data Repositories or available for exchange among Members may not include the individual's full, complete, or accurate medical record or history;
- (c) Patient Data made available through the cHIE Services or stored in Data Repositories may not be complete, accurate, or correlated with the correct individual;
- (d) Patient Data provided by the cHIE is not a substitute for obtaining whatever information is necessary for the proper Treatment of the Patient;
- (e) it may not rely solely on Patient Data accessed through the cHIE in providing health care to a Patient, but must exercise professional judgment and responsibility in evaluating the Patient Data;
- (f) it remains solely responsible for that professional judgment as well as for the decisions and actions taken or not taken involving patient care, utilization management, and quality management for the Patient resulting from, or in any way related to, the use of the Network, Services, the Requirements, this Agreement, Message Content, or Patient Data made available thereby;
- (g) neither UHIN, nor any of the Members, by virtue of executing this Agreement, assumes any role in the care of any Patient; and

(h) it shall advise its Authenticated Users of the limitations on the uses of Patient Data as set forth in this Section 4.

4.6. Other Representations Prohibited. Member agrees on behalf of it and its Authenticated Users not to make any representation to any Patient or other person or entity that is inconsistent with the provisions of this Section 4.

## 5. CONFIDENTIALITY, PRIVACY, AND SECURITY

### 5.1. Use and Disclosure of Confidential Information.

A Receiving Party shall safeguard Confidential Information with the same degree of care that it exercises with respect to its own information of like import, but in no event less than reasonable care, and shall utilize appropriate safeguards and otherwise exercise reasonable precautions to prevent the unauthorized disclosure of Confidential Information, and to ensure that its employees, agents and contractors also comply with the provisions of this Section 5.1. A Receiving Party may re-disclose Confidential Information only to the extent permitted under the terms of this Agreement or as required by Applicable Law, provided that the Receiving Party immediately notifies the Disclosing Party of the existence, terms and circumstances surrounding any such required disclosure and allow the Disclosing Party the opportunity to exercise its rights related to the disclosure. If the Receiving Party is still required by Applicable Law to disclose the Confidential Information after the Disclosing Party has exercised its rights, it shall do so only to the minimum extent necessary to comply with the law and shall request that the Confidential Information continue to be treated as such.

### 5.2. Use and Disclosure of Protected Health Information.

(a) Member and UHIN shall each comply with Applicable Laws and this Agreement in safeguarding and using Protected Health Information (PHI).

(b) UHIN Obligations Regarding PHI. UHIN is a Covered Entity as well as a Business Associate to multiple Covered Entities and at all times shall comply with all Applicable Laws applicable to Business Associates that perform services for Covered Entities. In addition to those obligations regarding PHI listed in subsection (c):

(i) UHIN shall notify Member upon UHIN's receipt of any request or subpoena for Member's information relating to this Agreement. UHIN and Member agree to cooperate in challenging a request or subpoena for information generated by or disclosed through the Network which, pursuant to Utah Code Ann. § 26-1-37(6), is not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.

(ii) UHIN shall comply with 45 C.F.R. § 164.524 (HIPAA Privacy Regulations) concerning designated record sets and other requirements of Applicable Law, and if a Patient requests that UHIN make PHI available for review or amendment, UHIN shall refer the Patient to the Member, and shall not make PHI available to the Patient under 45 CFR § 164.524.

(iii) UHIN shall not, and shall require that its directors, officers, employees, contractors and agents do not, use or disclose PHI obtained from Member in any manner that would constitute a violation of law if so used or disclosed by Member.

(iv) UHIN shall require any third parties, including agents and contractors, to whom it discloses or re-discloses PHI received from, or created or received on behalf of Member, to comply with the same obligations, restrictions, and conditions that UHIN has with respect to PHI.

(c) Other Obligations Regarding PHI. UHIN and Member each agrees that:

(i) it may not use or further disclose PHI obtained through the Network or Services in a manner that violates Applicable Laws;

(ii) it may not use or further disclose PHI other than (A) as permitted or required by this Agreement or supplemental agreements now or hereafter existing which govern its business relationship or arrangement with other Members or (B) as required by Applicable Law;

(iii) it shall implement and maintain written privacy and security policies and procedures that comply with Applicable Law and the Requirements, including (A) protections from Malicious Software, (B) regular reviews of information system activity as described in the Requirements, (C) procedures for notifying the other party and the appropriate affected third parties of Security Incidents involving the Network, the Services, or PHI, of which it becomes aware, and (D) other safeguards to protect the confidentiality, integrity, and availability of the Network, the Services, and PHI and to prevent and mitigate the unauthorized use or disclosure of PHI;

(iv) it shall account for all of its disclosures of PHI and provide an accounting of such disclosures upon request;

(v) it shall make its internal practices, books and records (including its policies and procedures and any agreements required by Applicable Law that it has with subcontractors and other agents) relating to the use and disclosure of PHI (whether received from the other party or created for the other party's behalf) available to the other party's auditors for purposes of determining its compliance with Applicable Law pertaining to PHI. If Member is a Covered Entity or Business Associate, then the Secretary shall also have such audit rights. Member agrees that UHIN's continuous EHNAC accreditation satisfies any initial UHIN obligation to make such information available to the other party's auditors under this subsection (v); and

(vi) at termination of this Agreement, if feasible, UHIN or Member shall return or destroy all PHI received from the other that it still maintains in any form and retain no copies of the information or, if a return or destruction is not feasible, extend the protections of this Agreement and this Section 5.2 to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(d) Incorporation of Additional Requirements; Construction. The requirements of Applicable Laws pertaining to PHI are, to

the extent not adequately provided for in this Section 5.2 or elsewhere in this Agreement, hereby incorporated by reference and shall become a part of this Agreement. This Agreement and this Section 5.2 shall be construed as broadly as necessary to implement and comply with Applicable Laws. This Section 5.2 is intended to document the assurances and other requirements respecting the use and disclosure of PHI under Applicable Laws, and will be modified as appropriate from time to time to comply with Applicable Laws.

5.3. Breach and Breach Notification.

(a) UHIN and Member each agree that it shall promptly, but in no case later than when specified by the Requirements, act in accordance with the Requirements and Applicable Law when determining that a Breach of Unprotected PHI ("Breach") has occurred. The party shall supplement the information contained in the notification as it becomes available and cooperate with the other party and with Other Members in accordance with this Agreement, the Requirements, and Applicable Law.

(b) Subject to a party's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting the confidentiality of information, each party agrees to provide information and assistance to the other party and to Other Members in the investigation of a Breach. In no case shall a party be required to disclose Message Content in violation of Applicable Law. In seeking the other party's or other Members' cooperation, each party shall make all reasonable efforts to accommodate the other party's and the Other Members' schedules and reasonable operational concerns.

(c) Information exchanged pursuant to this Section 5.3, except Message Content, is Confidential Information whether identified as such or not. UHIN and Member each agree to treat the Confidential Information in accordance with Section 5.1.

(d) Compliance with breach and security incident reporting under this Agreement does not relieve a party from its obligations under Applicable Law, including, but not limited to, state or federal breach notification laws.

5.4. System Access, User Authentication, and Digital Credential Management.

(a) Access to the Network and use of Services require an electronic identification, which may consist of user names, passwords, symbols, or codes ("Digital Credentials"). UHIN shall employ a process by which it verifies the Digital Credential issued to the Authenticated User prior to enabling the Authenticated User's access to the Network or Services. Member may not allow persons who are not Authenticated Users to access or use the Network or Services.

(b) MEMBER SHALL SAFEGUARD THE CONFIDENTIALITY AND CONTROL THE USE OF ITS AND ITS AUTHENTICATED USERS' DIGITAL CREDENTIALS.

(c) Member may not use Another Member's Routing Identifiers (which identify the intended recipient of a Message) except as allowed by the Requirements.

(d) Member is responsible for the Transaction of all Message Content accessed through its Account and for managing and ensuring that each of its Authenticated Users complies with this Agreement.

(e) Member shall:

(i) Screen and Train Authenticated Users - review, train, and approve its employees, agents, and contractors before allowing them to become Authenticated Users, to access or use the Network or Services (including Patient Data), or to transact Message Content;

(ii) Identify Users and Verify Roles and Access Rights - employ a process by which the Member, or its designee, validates sufficient information to uniquely identify each person seeking to become an Authenticated User prior to allowing the issuance of Digital Credentials that would grant the person access to the Network or Services and verify the roles and access rights of Authenticated Users by applicable category or position, e.g., M.D., P.A., A.P.R.N., clinician, support staff, etc.;

(iii) Register Authenticated Users with UHIN - complete and submit required forms, applications, and authorizations for Authenticated Users to use the Network or Services;

(iv) Keep Track of Authenticated Users - maintain a list of all employees, agents, and contractors who may utilize the Network or Services as Authenticated Users;

(v) Discipline Non-Compliance - take and enforce prompt and appropriate disciplinary action for an Authenticated User's non-compliance with the Requirements by imposing restrictions or discipline commensurate with the seriousness of the violation, and implement procedures to help prevent future violations; and

(vi) Revoke Digital Credentials - immediately revoke or request revocation of the Digital Credentials and access of an Authenticated User who ceases to be employed or engaged by the Member or who no longer requires access to the Network or Services as part of his or her employment or engagement.

5.5. Governmental Entities. Members that are Utah governmental entities may be subject to the Government Records Access and Management Act (Utah Code Ann. (1953), §§ 63G-2-101 et seq., as amended, "GRAMA"). Under GRAMA, certain records within a governmental entity's possession or control may be subject to public disclosure. Notwithstanding anything to the contrary in this Agreement, a Member that is a Utah governmental entity subject to GRAMA may disclose information to the extent required by GRAMA or as otherwise required by Applicable Law.

## **6. REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

UHIN and Member each represent and warrant as follows:

6.1. Execution of this Agreement. Each party affirms that it has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals or consents in order for it to execute this Agreement. The representative signing this Agreement on behalf

of a party affirms that he or she has been properly authorized and empowered to enter into this Agreement on behalf of the party.

6.2. Compliance with this Agreement. Except to the extent prohibited by Applicable Law, each party shall comply fully with all provisions of this Agreement applicable to the party. To the extent that a party delegates its duties under this Agreement to a third party (by contract or otherwise) and the third party may have access to Patient Data or Message Content, that delegation shall be in writing and require the third party, prior to accessing Patient Data or Transacting Message Content with any Member, to agree to the same restrictions and conditions that apply through this Agreement to the party desiring to delegate its duties.

6.3. Agreements with Business Associates, Contractors, and Technology Partners. To the extent that a party uses Business Associates, subcontractors, or technology partners in connection with this Agreement, the party affirms that it remains primarily responsible for the performance of and compliance with this Agreement and further affirms that it has valid and enforceable agreements with each such third party, that require the third party to, at a minimum: (i) comply with Applicable Law; (ii) safeguard any Message Content or Patient Data to which it has access; (iii) as soon as reasonably practicable after determining that a Breach occurred, report the Breach to the party; and (iv) reasonably cooperate with the party on issues related to this Agreement, under the direction of the party.

6.4. Compliance with Requirements. Each party affirms that it fully complies with the Requirements, including those applicable to formatting Messages, Transacting Messages, and implementing safeguards and procedures (including audit trails) to satisfy its particular requirements for the security, privacy and accuracy of Messages and Patient Data.

6.5. Compliance with Laws. Each party affirms that, at all times, it fully complies with all Applicable Law relating to this Agreement, the transaction of Message Content, and the use of Patient Data for Permitted Purposes.

## **7. FORCE MAJEURE, DELAYS, AND TRANSMISSION ERRORS**

7.1. Force Majeure. No party shall be liable for any failure to perform its obligations hereunder, where the failure results from any act of God or other cause beyond the party's reasonable control (including, without limitation, any mechanical, electronic or communications failure).

7.2. Transmission Errors and Delays. Each party acknowledges that various facilities, communications lines, routers, switches, and other devices owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers enable use of the Network and Services, including the transaction of Message Content. A party is not liable for any delay, failure, interruption, interception, loss, transmission, or corruption of any Message Content or other information transmitted over carrier lines that are beyond the party's control. This disclaimer is not intended to diminish or limit in any way the other representations and

warranties that the parties make in this Agreement. It is intended to recognize that the overall performance of the Network and Services is beyond the power of UHIN or any particular Member to control. Provided a party uses reasonable security measures, no less stringent than those in the Requirements, that party is not liable for damages relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted over those carrier lines.

7.3. Disclaimer of Warranties. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, UHIN MAKES NO WARRANTIES REGARDING THE NETWORK, THE SERVICES, MESSAGE CONTENT, OR PATIENT DATA, EACH OF WHICH IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. UHIN DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION, COMPATIBILITY WITH ANY PARTICULAR HARDWARE OR SOFTWARE, OR INTER-CONNECTIBILITY WITH OTHER NETWORKS OR SERVICES. UHIN DISCLAIMS LIABILITY RELATING TO ITS OR ITS MEMBERS' CONNECTION TO THE INTERNET OR INTERNET SERVICE PROVIDERS.

7.4. Remedy. UHIN warrants that it will transmit Messages promptly and in a timely manner. If an error occurs in a transmission through no fault of Member, UHIN shall credit Member's account with the amount of the Transaction Fee actually charged, which credit may be used only to offset other fees (UHIN will not provide cash refunds). The foregoing credit is Member's sole remedy for breach of the foregoing warranty.

7.5. EXCLUSION OF CERTAIN KINDS OF DAMAGES. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL MEMBER OR UHIN BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF INFORMATION OR DATA, DAMAGE TO BUSINESS REPUTATION OR GOODWILL, OR SIMILAR DAMAGES, WHETHER A CLAIM OF LIABILITY OR FOR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF UHIN OR THE MEMBER HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF LIABILITY OR DAMAGES.

## 8. INDEMNIFICATION

8.1 By UHIN. UHIN shall indemnify and defend, with counsel of UHIN's choosing, Member, against all claims that the use of Services by Member infringes any patent, copyright or trademark, or is a misappropriation of any trade secret. Subject to the limitations set forth in Sections 7.5, and 8.5 through 8.7, UHIN

shall also indemnify and defend, with counsel of UHIN's choosing, Member, its employees, directors, agents and contractors for, from and against all claims as detailed in (a) through (c) below, to the extent caused by UHIN's own negligent act or omission or breach of this Agreement, including any privacy or security violation. Subject to the foregoing, UHIN shall pay (a) all reasonable breach notification costs which are required by Applicable Law and incurred as the result of its Breach under Section 5.3, (b) all court costs, fines, damages and attorney's fees finally awarded against Member as a result of the claim, and (c) any settlement of the claim, provided that Member notifies UHIN in writing promptly upon discovery of the claim, and gives UHIN complete authority and control of, and fully cooperates with UHIN in, the defense and settlement of the claim. UHIN shall have no liability or obligation for third party claims based on (i) Member's use of the Network or Services not in compliance with the Requirements or (ii) UHIN's provision of Patient Data or Message Content that is in accordance with the Requirements. Nothing in this section 8 is intended to: (i) create any liability on UHIN for the acts or omissions of the Member or any other Member; or (ii) restrict Member from participating in the defense or settlement of any claim at Member's own cost. UHIN is not liable for the failure of a Member to comply with this Agreement, the Requirements, Applicable Law, or HIPAA Regulations, including any Message Content, Patient Data, Message, or use thereof not complying with the same.

8.2 By Member. Subject to the limitations set forth in Sections 7.5, and 8.5 through 8.7, Member agrees to indemnify and defend, with counsel of Member's choosing, UHIN, its employees, directors, agents and contractors for, from and against all claims as detailed in (a) through (c) below, that result from the claims of a third party to the extent caused by the Member's own negligent act or omission or breach of this Agreement, including any privacy or security violation. Subject to the foregoing, Member shall pay (a) all reasonable breach notification costs which are required by Applicable Law and incurred as a result of its Breach under Section 5.3; (b) all court costs, fines, damages and attorney's fees finally awarded against UHIN as a result of the claim; and (c) any settlement of the claim; provided that UHIN notifies Member in writing promptly upon discovery of the claim, and gives Member complete authority and control of, and fully cooperates with Member in, the defense and settlement of the claim. Nothing in this section 8.2 is intended to: (i) create any liability on Member for the acts or omissions of UHIN or any other Member; or (ii) restrict UHIN from participating in the defense or settlement of any claim at UHIN's own cost.

8.3 Member-to-Other-Member Indemnification - Administrative Messages. Subject to the limitations set forth in Sections 7.5, and 8.5 through 8.7, each Member that Transacts Administrative Messages agrees to indemnify and defend, with counsel of Member's choosing, each Other Member, its employees, directors, agents and contractors for, from and against all claims as detailed in (a) through (c) below that result from, and to the extent caused by, Member's own negligent act or omission or breach of this Agreement, including without limitation any

privacy or security violation, any breach of Section 5.2 through 5.4, or any breach of warranty made in Section 6.2 through 6.5. Subject to the foregoing, Member shall pay (a) all reasonable breach notification costs which are required by Applicable Law and incurred as a result of its Breach under Section 5.3, (b) all court costs, fines, damages and attorney's fees finally awarded against the Other Member as a result of the claim, and (c) any settlement of the claim, provided that the Other Member notifies Member in writing promptly upon discovery of the claim, and gives Member complete authority and control of, and fully cooperates with Member in, the defense and settlement of the claim. Nothing in this section 8.3 is intended to: (i) create any liability on the Member for the acts or omissions of UHIN or any Other Member; (ii) restrict any Other Member from participating in the defense or settlement of any claim at the Other Member's own cost; or (iii) prevent Member, as the third party beneficiary to an ECA entered into between UHIN and any Other Member, from recovering its damages, costs, and attorney's fees resulting from the Other Member's breach of its ECA.

**8.4 User-Member-to-Source-Member Indemnification – Clinical Messages.** Subject to the limitations set forth in Sections 7.5, and 8.5 through 8.7, a User Member that Transacts Clinical Messages agrees to indemnify and defend, with counsel of User Member's choosing, the Source Member from which the User Member obtained Patient Data, and such Source Member's employees, directors, agents and contractors for, from and against all claims as detailed in (a) through (c) below that result from, and to the extent caused by, User Member's or its Authenticated User's negligent act or omission in the use of that Source Member's Data Repository; User Member's or its Authenticated User's medical malpractice resulting from the use of that Source Member's Data Repository; or User Member's or its Authenticated User's breach of this Agreement, including without limitation Section 4, Section 5.2 through 5.4, Section 6.2 through 6.5, or any violation of Applicable Law by User Member or its Authenticated User. Subject to the foregoing, User Member shall pay (a) all reasonable breach notification costs which are required by Applicable Law and incurred as a result of its Breach under Section 5.3; (b) all court costs, fines, damages and attorney's fees finally awarded against the Source Member as a result of a claim; and (c) any settlement of the claim, provided that the Source Member notifies User Member in writing promptly upon discovery of the claim, and gives User Member complete authority and control of and fully cooperates with User Member in the defense and settlement of the claim. Nothing in this Section 8.4 is intended to: (i) create any liability on either a User Member or a Source Member for the acts or omissions of UHIN or any other Source Member, User Member, or Authenticated User; (ii) restrict any Source Member or other Member from participating in the defense or settlement of any claim at that Member's own cost; or (iii) prevent any Member, as the third party beneficiary to an ECA entered into between UHIN and Another Member, from recovering its damages, costs, and attorney's fees resulting from the Other Member's breach of its ECA.

**8.5 Utah Governmental Immunity Act.** If Member is a Utah governmental entity under the Utah Governmental Immunity Act (Utah Code Ann. (1953) §§ 63G-7-101, et seq., as amended, the "Act"), it does not waive any rights or defenses available to the governmental entity under the Act, and its indemnity obligations shall be subject to the Act, to the extent it is determined that the Act is applicable. If the Member that is a governmental entity asserts against UHIN or Another Member a claim that would otherwise qualify for limited liability under the Act, then UHIN's or the Other Member's liability is limited to the liability cap under the Act for that claim as if UHIN or the Other Member were a governmental entity. The parties acknowledge that under the Act, immunity is waived as to any contractual obligation. Notwithstanding Member's assertion that the Act applies to it, nothing in this Agreement shall be construed as a waiver by UHIN or Another Member of any of its rights—under common law, statute, or other law—to indemnification, to challenge the applicability of the Act to UHIN or the Member asserting that the Act applies to it, or to assert any other legal rights.

**8.6 Federal Member Liability.** Claims and disputes alleging that a Federal Member has caused damage or injury attributable to its use of the Network or Services, the Federal Member's privacy or security violation, or the Federal Member's own breach of the Agreement that cannot be resolved through non-binding mediation pursuant to Section 16 shall be resolved through the U.S. Court of Claims, or other appropriate venue as determined under the Contract Disputes Act (41 U.S.C. §§ 601, et seq.) or the Federal Tort Claims Act (28 U.S.C. §§ 2671, et seq.), as the case may be. Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341, there is no right of indemnification from a Federal Member because indemnification would create an uncertain, open-ended future obligation that could exceed that Federal Member's appropriations from Congress.

**8.7 Illegal Interception.** Except as expressly set forth herein or unless otherwise required by Applicable Law, if UHIN, Member, or Another Member has implemented Reasonable and Appropriate Administrative, Physical and Technical Safeguards to prevent the unauthorized use or disclosure of Message Content, then it is not liable for the illegal interception of, or access to, Messages carried on the Network or deposited in a Data Repository (except through the negligence or willful misconduct of its own employees, agents or contractors).

## **9. TERM, SUSPENSION, AND TERMINATION**

**9.1. Term.** The initial term of this Agreement shall be for a period of one year commencing on the Effective Date. Upon the expiration of the initial term, this Agreement shall automatically renew for successive one-year terms unless terminated pursuant to this Section.

**9.2. By Either Party without Cause.** This Agreement shall remain in effect until terminated by either party, without cause, with not less than one hundred twenty (120) days prior notice, if terminated by UHIN, or sixty (60) days, if terminated by the Member.



9.3. By UHIN for Cause. UHIN may terminate this Agreement (a) if Member fails to comply with any of its material terms or conditions, and fails to cure the non-compliance within sixty (60) days of notice, or (b) if Member uses or attempts to use the Network or Services for any fraudulent or illegal purpose, or (c) if Member fails to comply with the Requirements and fails to cure the non-compliance within sixty (60) days of notice, or (d) Member fails to pay an amount past due sixty (60) days that is not being contested in good faith. UHIN may immediately suspend Member's access to the Network and Services, with or without terminating this Agreement if UHIN determines any of the following: (i) Member uses or attempts to use the Network or Services for any fraudulent or illegal purpose, or (ii) Member fails to comply with any of the Requirements, or (iii) the Authenticated User's or Member's acts or omissions create an immediate threat or may cause material harm to any person including, but not limited to: Another Member, an Authenticated User, the integrity or operations of the Network or Services, or a Patient whose Patient Data is made available through the Network or Services.

9.4. By Member. Within thirty (30) days of any fee increase or material change to the Requirements, Member may terminate this Agreement on thirty (30) days notice to UHIN providing as the basis for termination that UHIN has increased a fee listed in the fee schedule (Attachment A) or that there has been a material change to the Requirements. Member may also terminate this Agreement immediately if UHIN materially breaches an obligation under Section 5 or is in violation of HIPAA Regulations or Applicable Laws.

9.5. Remedies on Breach. A non-breaching party in its sole discretion may take, but is not obligated to take, reasonable steps to cure the other party's breach; terminate this Agreement; and seek other legal remedies.

9.6. Obligations on Termination. Upon notice of termination for a reason other than stated in Section 9.3, UHIN and Member shall agree on a reasonable time, not to exceed sixty (60) days, within which Member may pursue alternatives to the Services. During this time period, Member may continue to use the Network and Services in accordance with this Agreement, and the parties shall be subject to this Agreement for that time period. The effective date of termination shall be the date on which Member ceases to use the Network and Services or sixty (60) days following notice of termination, whichever first occurs. Member shall, within thirty (30) days of the effective date of termination, turn over to UHIN or, if agreed by UHIN, certify the destruction of, all property belonging to or provided by UHIN.

## 10. MEDIATION

Any claim, dispute or controversy between the parties arising in connection with or relating to this Agreement shall, if not settled by negotiation, be submitted to non-binding mediation under the rules of the American Arbitration Association then in effect, or under other rules and procedures as the parties may agree. Any demand for mediation shall be made in writing and served upon the other party in the same manner as otherwise provided for

notice in this Agreement. The demand shall set forth with reasonable specificity the basis of the dispute and the performance or relief sought. The parties shall, within thirty (30) days of receipt of a demand to mediate, confer and select a mediator. The mediation shall take place at a time and location mutually agreeable to the parties and the mediator, but not later than sixty (60) days after a demand for mediation is received. Each party shall bear its own costs of mediation. Compliance with this mediation process shall be a condition precedent to the right of either party to commence legal action in connection with this dispute, except that a party may, before or during any mediation, apply to a court having jurisdiction for a temporary restraining order or injunction where it believes the relief is necessary to protect its interests or rights.

## 11. GENERAL PROVISIONS

11.1. Assignment. Neither UHIN nor Member may transfer or assign its rights or obligations under this Agreement without the prior written consent of the other, except upon thirty (30) days prior notice prior to a transfer or assignment to a parent, subsidiary or affiliate, or an entity with which it is merged or consolidated, or the purchaser of all or substantially all of its assets, provided that the transferee assumes all its obligations under this Agreement.

11.2. Attorney's Fees. The prevailing party in any legal action concerning this Agreement is entitled to recover its reasonable attorney's fees and costs following a final judgment.

11.3. Independent Contractors. UHIN and Member are independent contractors, and neither UHIN nor Member is the employee, agent (actual or ostensible), partner or joint venturer of the other in performing this Agreement. While UHIN provides specific Network services to Member, it is not the Member's agent and does not act for Other Members as a general matter.

11.4. Construction; Severability. To the maximum extent possible, this Agreement and its provisions shall be interpreted consistently with Applicable Law. Any provision of this Agreement that is determined to be invalid or unenforceable shall be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of the remaining provisions. The words "law" or "laws" shall have the broadest meaning in the context used, and shall generally refer to U.S. state and federal laws, rules and regulations.

11.5. Entire Agreement; Modification; and Waiver. This Agreement contains the parties' entire agreement respecting the subject matter hereof, supersedes and replaces all prior agreements between UHIN and Member and may be modified only as provided herein or by a signed written document. The Requirements may be modified as provided in Section 2.1. This Agreement may not be contradicted by evidence of any alleged oral agreement. No course of dealing or failure or delay in exercising any right, privilege, remedy or option shall operate as a waiver of any right, privilege, remedy or option under this Agreement. This Agreement does not affect more specific

obligations of confidentiality between Member or Other Members or any other agreements relating to the handling of Patient Data.

11.6. **Governing Law.** Irrespective of the place of performance of this Agreement or the geographical location of Patient Data or Message Content, this Agreement shall be construed, interpreted, and enforced in accordance with the substantive laws of the State of Utah, without regard to its or any other jurisdiction's conflicts of law principles. In the event of a dispute involving a Federal Member, this Agreement shall be interpreted consistent with applicable U.S. state and federal laws. Otherwise, this Agreement is governed solely by the state and federal laws applicable in the State of Utah, excluding laws pertaining to choice of law. The parties agree that this choice of Utah law as the governing law is a necessary, essential, and fundamental term of this Agreement and that but for the application of the laws of the State of Utah to this Agreement, Member would not make Patient Data available to Other Members through the Network.

11.7. **Headings.** Section headings are for convenience and shall not affect the construction or interpretation of any provisions of this Agreement.

11.8. **Notice.** Except as otherwise specified herein, all notices hereunder shall be by e-mail or in writing sent by United States mail, postage prepaid, to the address of the other party which is set forth in this Agreement, or to other addresses as the other party may designate in writing. Any notice shall be deemed to be effective upon delivery. Notice may be waived by mutual written consent of the parties.

11.9. **Ownership.** Member has no rights of ownership or other property rights in the Requirements or other materials furnished by UHIN in connection with this Agreement.

11.10. **Survival.** The provisions of Sections 5 through 11 shall survive the termination of this Agreement.

11.11. **Limitation of Action.** No action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has arisen, or in the area of nonpayment, more than two years from the date of last payment.

11.12. **Third Party Rights.** Each Other Member is an intended third party beneficiary of this Agreement and may enforce the terms, conditions, rights, and obligations applicable to the Other Member against the Member. Except to the extent that each Other Member is a beneficiary of Sections 2.3 through 2.5, 3.4, 4, 5.2 through 5.3(d), 6, 8.3, and 8.4, this Agreement does not establish a contractual relationship among Member and Other Members. If this Agreement and an agreement between Member and Other Members conflict, the terms of the other agreement govern except (a) as to Member's obligations under this Agreement with respect to the Transaction of Messages using the Network or Services; or (b) where inconsistent with the Requirements. This Agreement does not confer any rights or remedies under or by reason of this Agreement on any other persons, nor is anything in this Agreement intended to relieve or

discharge the obligation or liability of any third parties to any party to this Agreement, nor shall any provision give any third party any right of subrogation or action against any party to this Agreement except as expressly provided in this Section.

## 12. DEFINITIONS

**"Account"** means the access management mechanism that UHIN provides to Member through which Member and its Authenticated Users authenticate themselves in order to access or use the Network or Services.

**"Administrative Message"** means a Message having Message Content for the performance of financial or administrative activities related to health care, including but not limited to the types of information listed in subsections (1) through (10) of the definition of "transaction" found in 45 C.F.R. § 160.103 and in Utah Admin. Rule R590-164. [Source: 45 C.F.R. § 160.103.]

**"Another Member"** or **"Other Member"** means another organization or person, not the Member, that (i) meets the UHIN requirements for membership and participation as established by the UHIN Board of Directors; and (ii) is a signatory to an ECA with UHIN.

**"Applicable Law or Laws"** includes applicable state and federal statutes, rules, and regulations.

**"Authenticated User"** means a natural person (not a corporation, limited liability company, partnership, association, or other entity) who is a Member or who Member identified and authorized with permission to use the Network to access or use Patient Data or to Transact Message Content for a Permitted Purpose. A natural person who is not a Member and who accesses or uses the Network or Message Content without a Permitted Purpose or outside of that person's course and scope of employment for a Member is not an "Authenticated User".

**"Authorization"** has the meaning and includes the requirements set forth at 45 C.F.R. § 164.508 and includes any similar but additional requirements under Applicable Law.

**"Breach"** is defined as it is in 45 C.F.R. § 164.402.

**"Business Associate"** is defined as it is in 45 C.F.R. § 160.103.

**"cHIE"** or **"cHIE Service"** means the UHIN Service that indexes and makes Patient Data stored in the Data Repositories of Source Members locatable for use by User Members and their Authenticated Users.

**"Clinical Message"** means a Message Transacted through the cHIE that contains the confidential health care history, diagnosis, condition, treatment, or evaluation of an individual, including Message Content that includes Protected Health Information and those identified in Utah Admin. Rule R380-70.

**"Confidential Information"** means proprietary or confidential materials or information disclosed in any medium or format that a party designates as such. Confidential Information includes, but is not limited to: (i) designs, drawings, procedures, trade secrets, processes, specifications, source code, system architecture, processes and security measures, research and development, including, but not limited to, research protocols

and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information; (iii) Digital Credentials; and (iv) other information or reports provided to a Receiving Party pursuant to this Agreement which by their nature or the circumstances of disclosure would normally be considered confidential. Notwithstanding any label to the contrary, Confidential Information does not include Message Content and PHI (which are governed in greater specificity by the entirety of this Agreement); any information which is or becomes known publicly through no fault of a recipient; is disclosed by a third party entitled to disclose it; is already known by the recipient before receipt by the Receiving Party as documented by the Receiving Party's written records; or, is independently developed or discovered without reference to, reliance on, or use of, the Confidential Information.

**"Covered Entity"** is defined as it is in 45 C.F.R. § 160.103.

**"Data Repository"** means a Source Member's System containing Patient Data.

**"De-identified protected health information"** is defined as it is in 45 C.F.R. § 164.514.

**"Designated Record Set"** is defined as it is in 45 C.F.R. § 164.501.

**"Digital Credentials"** means mechanisms that enable Member, Other Members, and their Authenticated Users to electronically prove identity, authenticate themselves, and demonstrate that they have permission to transact Message Content with Member or Other Members and their Authenticated Users.

**"Disclosing Party"** means UHIN, the Member, or Another Member that is the source of the Confidential Information.

**"Disclosure"** means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information. [Source: 45 C.F.R. § 160.103]

**"Electronic Health Record"** means an electronic record of health-related information on an Individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff. [Source: 42 U.S.C. §17921]

**"Federal Member"** means a Member that is a Federal agency.

**"Governmental Members"** mean collectively those Members that are State entities or Federal Members.

**"Health Care"** is defined as it is in 45 C.F.R. § 160.103.

**"Health Care Operations"** is defined as it is in 45 C.F.R. § 164.501.

**"Health Care Provider"** is defined as it is in 45 C.F.R. § 160.103.

**"Health information"** is defined as it is in 45 C.F.R. § 160.103.

**"Health plan"** is defined as it is in 45 C.F.R. § 160.103.

**"HIPAA Regulations"** mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the

Health Insurance Portability and Accountability Act (HIPAA) of 1996, including as they exist on the date of adoption of this document and as they may be amended, modified, or renumbered.

**"Individual"** is defined as it is in 45 C.F.R. § 164.501 and includes a Person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

**"Individually identifiable health information"** is defined as it is in 45 C.F.R. § 160.103.

**"Malicious Software"** means viruses, worms, unauthorized cookies, Trojans, malicious software, "malware," or other program, routine, subroutine, or data designed to disrupt the proper operation of a System or any part thereof or any hardware or software used by UHIN, Member, or Another Member in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause a System or any part thereof or any hardware, software or data used by UHIN, Member, or Another Member in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable.

**"Meaningful Use"** shall have the meaning assigned to it in the regulations promulgated by the Department of Health and Human Services pursuant to 42 U.S.C. §§ 300jj-11, et seq.

**"Member"** means the party other than UHIN that is a signatory to this Agreement and not Other Members or Another Member.

**"Message"** means any type of electronic transmission of Message Content transacted between Members using the Requirements, and includes all types of electronic transactions as specified in the Requirements, including the Message Content transmitted with those transactions.

**"Message Content"** is the information contained within a Message or accompanying a Message using the Requirements. This information includes, but is not limited to, Protected Health Information (PHI); Patient Data; de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. § 164.514); individually identifiable information; depersonalized data; metadata; Digital Credentials; and schema.

**"Network"** means the wired or wireless interconnection of one or more computers facilitated by UHIN, including Member's Systems and the Systems of other Members.

**"Other Member(s)"**- see **"Another Member"** above.

**"Other Party"** means UHIN (when Party refers to the Member) or the Member entering into the Agreement (when Party refers to UHIN) and not Other Members.

**"Patient"** means an individual who is the subject of the Message Content or Patient Data.

**"Patient Data"** means information containing the confidential health care history, diagnosis, condition, treatment, or evaluation of an individual and includes Protected Health Information.

**"Payment"** is defined as it is in 45 C.F.R. § 164.501.

**"Permitted Purpose"** means one of the following reasons for which UHIN, Member, Other Members, or their Authenticated

Users may legitimately access or use Patient Data or Transact Message Content:

1. Treatment of the Patient who is the subject of the Patient Data;
2. To the minimum extent necessary, for Payment activities of the Health Care Provider for the Patient who is the subject of the Patient Data, which includes, but is not limited to, Transacting Message Content in response to or to support a claim for reimbursement submitted by a Health Care Provider to a Health Plan;
3. To the minimum extent necessary, for Health Care Operations of either (a) a Covered Entity; or (b) a Recipient/User Member if (i) the Recipient/User Member is a Health Care Provider who has an established Treatment relationship with the individual who is the subject of the Message or the Recipient/User Member is Transacting Message Content on behalf of the Health Care Provider; and (ii) the purpose of the Transaction is for those Health Care Operations listed in paragraphs (1) or (2) of the definition of Health Care Operations in 45 C.F.R. § 164.501 or health care fraud and abuse detection or compliance of the Health Care Provider;
4. Only a Source Member may provide Patient Data originating only from its Data Repository for any disclosure to Public Health Authorities pursuant to 45 C.F.R. 164.512, and reporting as permitted by Applicable Law, including the HIPAA Regulations at 45 C.F.R. § 164.512(b) or 164.514(e), unless pursuant to Section 4.4 the Source Member has given express prior written authorization to the User Member to use Patient Data for the disclosure;
5. Any purpose to demonstrate Meaningful Use of certified electronic health record technology by the (i) Source Member, (ii) Recipient/User Member, or (iii) a Covered Entity on whose behalf the Source Member or the Recipient/User Member may properly access Patient Data or Transact Message Content, provided that the purpose is not otherwise described in subsections 1-4 of this definition and the purpose is permitted by Applicable Law, including but not limited to the HIPAA Regulations. “Meaningful use of certified electronic health record technology” shall have the meaning assigned to it in the regulations promulgated by the Department of Health and Human Services pursuant to 42 U.S.C. §§ 300jj-11, et seq.;
6. Uses and disclosures pursuant to an Authorization provided by the individual who is the subject of the Message/Patient Data or the individual’s personal representative as described in 45 C.F.R. § 164.502(g) of the HIPAA Regulations; or
7. Other use approved by the UHIN Board, provided that the Source Member has given its consent and the use is allowed under Applicable Law.

“**Person**” means not only a natural person, but also a corporation, limited liability company, trust, partnership, unincorporated body, sole proprietorship, and any other entity recognized by law.

“**Protected Health Information**” or “**PHI**” shall have the broadest meaning given to it under all Applicable Law, including

but not limited to the definition found in 45 C.F.R. § 160.103 and all individually identifiable health information transmitted or maintained in any form or medium by a Covered Entity or Business Associate.

“**Public Health Authority**” is defined as it is in 45 C.F.R. § 164.501.

“**Reasonable and Appropriate Administrative, Physical and Technical Safeguards**” means those safeguards identified in the most-current UHIN Security Specification, the HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and C, as safeguards, standards, ‘required’ implementation specifications, and ‘addressable’ implementation specifications to the extent that the ‘addressable’ implementation specifications are reasonable and appropriate for the given environment. If an ‘addressable’ implementation specification is not reasonable and appropriate in a particular environment, then the party must document why it would not be reasonable and appropriate to implement the implementation specification and implement an equivalent alternative measure if reasonable and appropriate.

“**Receiving Party**” means UHIN or the Member receiving Confidential Information pursuant to Section 5.1 or Section 5.3(c).

“**Recipients**” are Member, Other Members, or Authenticated Users that receive Message Content through a Message from a Source or Submitting Member for a Permitted Purpose. For purposes of illustration only, Recipients include, but are not limited to, Member, Other Members, or their Authenticated Users who receive queries, responses, subscriptions, publications or unsolicited Messages.

“**Required By Applicable Law**” is defined as “Required by Law” is in 45 C.F.R. § 164.501.

“**Requirements**” are those Standards, Specifications, Policies, and Procedures adopted by the UHIN Board in accordance with Section 2 and made available to Member and Other Members at <http://www.uhin.org/>.

“**Routing Identifier**” is a unique alphanumeric character sequence assigned by UHIN to Member or Another Member to uniquely identify Member or the Other Member on the Network.

“**Secretary**” means the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.

“**Security Incident**” is defined as it is in 45 C.F.R. § 164.304.

“**Services**” means any and all services provided by UHIN pursuant to this Agreement or at the direction of the UHIN Board, including but not limited to the provisioning of protocols, equipment, software, and human resources by UHIN to Member relating to the use of, access to, or interaction with, Systems connected to the Network.

“**Source Member**” means Member or Another Member that maintains a Data Repository on the cHIE containing Patient Data or that submits Message Content through a Message on the cHIE Network.

**“Specifications”** are specific requirements or instructions that are specific to use of the UHIN Network or Services that UHIN, Member, and Other Members must follow.

**“Standard”** means a UHIN data exchange directive which has been adopted by the State of Utah through formal Rule Making processes.

**“Submitting Member”** means Member or Another Member that sends a Message to a Recipient.

**“System”** means the software, portal, platform, or other electronic medium controlled by a Person through which the Person conducts its health information exchange related activities. It includes Data Repositories of Patient Data compiled by Source Members and made available to User Members through the cHIE Services. For purposes of this definition, it shall not matter whether the Member controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.

**“Transact”** means to send, request, receive, assert, respond to, submit, route, subscribe to, or publish Message Content through

electronic means and also includes the access, review, or use of Patient Data from a Source Member’s Data Repository by a User Member’s Authenticated Users.

**“Treatment”** is defined as it is in 45 C.F.R. § 164.501.

**“UHIN Board”** means the UHIN Board of Directors.

**“Unsecured Protected Health Information”** or **“Unsecured PHI”** is defined as it is in 45 C.F.R. § 164.402.

**“Use”** is defined as it is in 45 C.F.R. § 160.103.

**“User Member”** is the Member or Another Member when receiving Message Content through a Message or Patient Data from the Data Repository of a Source Member for a Permitted Purpose or that is granted access to Patient Data for a Permitted Purpose. The term “User Member” includes a User Member’s Authenticated Users acting within the course and scope of their employment for that User Member.

**“Utah Governmental Entity”** has the same meaning as “governmental entity” defined in Utah Code § 63G-7-102.