

**AMENDMENT #1**  
**CLEARINGHOUSE SERVICES ONLY (OPTION 1)**  
**Utah Health Information Network**  
**ELECTRONIC COMMERCE AGREEMENT (v.4.1)**

This amendment (“Amendment #1”) to the Utah Health Information Network Electronic Commerce Agreement version 4.1 (“Agreement” or “ECA”) is entered into between Member (as indicated in the signature block) and the Utah Health Information Network, Inc. (“UHIN”). Member has selected option 1 on the cover signature page of the ECA for Administrative Messages only. This Amendment #1 is effective as of the date Member signs it (the “Amendment Effective Date”). For purposes of this Amendment #1, all capitalized terms that are not defined in this Amendment #1 will have the same meaning as those defined in the Agreement. Member and UHIN are each a “party” and collectively the “parties” to the Agreement and this Amendment #1.

**RECITALS**

- A. The parties desire to clarify UHIN’s obligations as a Business Associate (or Subcontractor Business Associate) of Members that are Covered Entities or Business Associates under the HIPAA Regulations.
- B. The parties desire to clarify the parties’ obligations with respect to a Member who uses the Network and receives Services related to Administrative Messages only.
- C. The parties desire to make technical changes to harmonize provisions and provide greater clarity in the Agreement.

**AMENDMENT**

For good and valuable consideration, the receipt of which is acknowledged, the parties agree to amend the Agreement effective as of the Amendment Effective Date as follows:

1. **The cover signature page to the Terms of Use is amended to delete the stricken text and add the double underlined text:**
2. Scope. This Agreement documents the party’s assurances that it will use Message Content as provided for in this Agreement ~~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”).

**2. Section 2.2 is amended to delete the stricken text:**

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 ~~as specified in Section 11.8 to Member’s designated email address for receipt of notifications~~ and/or by ~~Additionally, UHIN shall posting~~ notice on its website. ~~of proposed changes and final Requirements at <http://www.uhin.org/>.~~

**3. Section 2.5(a) is amended to delete the stricken text:**

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;

**4. Section 3.2 is deleted in its entirety and replaced as follows:**

3.2. Managing Messages and Message Content. UHIN shall process and manage Messages in accordance with: (a) the Requirements; (b) 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, if and when applicable; and (c) Applicable Law, including any operational purposes or audit requirements imposed by the aforementioned. UHIN may combine Administrative Messages with Clinical Messages and other data sources in order to provide the Services covered by this Agreement including, if applicable, the Business Associate Addendum attached as Attachment B.

**5. Sections 5.2 is deleted in its entirety and replaced as follows:**

5.2. Use and Disclosure of Patient Data.

(a) UHIN's Obligations Regarding Patient Data. UHIN agrees to comply with Applicable Law and the Requirements with respect to safeguarding, using and disclosing Patient Data. When UHIN is acting in the capacity of a Business Associate or Subcontractor Business Associate, it also agrees to comply with the terms of the Business Associate Addendum, attached as Attachment B.

(b) Member's Obligations Regarding Patient Data. Member agrees to comply with Applicable Law and the Requirements with respect to safeguarding, using and disclosing Patient Data. Member understands and agrees that it will be solely responsible for its own compliance with any Applicable Law related to the privacy and security of its own Patient Data.

(c) Subpoenas and Court Orders. UHIN will notify Member upon UHIN's receipt of any subpoena or court order for Member's Patient Data relating to this Agreement. UHIN and Member agree to cooperate in challenging a subpoena or court order for information generated by or disclosed through the Network which, pursuant to Utah Code Ann. § 26-1-37 or other Applicable Law, is not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.

(d) Incorporation of Additional Requirements; Construction. The requirements of Applicable Law pertaining to Patient Data—to the extent not adequately provided for in this Section 5.2, the Business Associate Addendum or elsewhere in this Agreement—are incorporated by reference and will become a part of this Agreement. This Agreement and

this Section 5.2 will be construed as broadly as necessary to implement and comply with Applicable Law. This Section 5.2 is intended to document the assurances and other requirements governing the use and disclosure of Patient Data under Applicable Law, and will be modified as appropriate from time to time to comply with Applicable Law.

**6. Section 5.3 is deleted in its entirety and replaced as follows:**

5.3. Breach Reporting.

(a) Member Breach Reporting to UHIN. If Member discovers a Breach of PHI associated with the Network or Services, Member will report the Breach to UHIN as soon as reasonably practical, but in no case later than the timeframe specified in the Requirements. Member will supplement the information contained in the report as it becomes available and cooperate with UHIN and Other Members affected by the Breach in accordance with this Agreement, the Requirements and Applicable Law.

(b) UHIN Breach Reporting to Member. If UHIN discovers a Breach of PHI associated with the Network or Services, UHIN will report the Breach to the Source Member (or Other Member) that supplied the PHI to UHIN as soon as reasonably practical, but in no case later than the timeframe specified in the Requirements. UHIN will supplement the information contained in the report as it becomes available and cooperate with Source Members and/or Other Members affected by the Breach in accordance with this Agreement (including the Business Associate Addendum, if applicable), the Requirements and Applicable Law. Member acknowledges and agrees that if Member uses a Business Associate or other contractor to transmit Patient Data to the Network on behalf of Member, in a manner such that UHIN cannot determine that Member is the source of the Patient Data, UHIN is hereby directed to submit the Breach report to Member's Business Associate or other contractor and such reporting will satisfy its reporting obligation to Member. UHIN does not assume any responsibility for Member's Business Associate's or other contractor's actions with respect to Breach reporting to Member.

(c) 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 will 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 will make all reasonable efforts to accommodate the other party's and the Other Members' schedules and reasonable operational concerns.

(d) 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.

(e) The parties will comply with all Requirements regarding Breach and Security Incident reporting. Compliance with Breach and Security Incident reporting under this Agreement may not relieve a party from its obligations under Applicable Law, including, but not limited to, state or federal breach notification laws.

**7. Section 6.3 is amended to delete the stricken text and add the double underlined text:**

6.3. ~~Agreements with~~ Business Associates, Contractors, and Technology Partners.

(a) 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. The requirements of this Section supplement the parties' obligation under any applicable Business Associate agreement with respect to the use of Business Associates.

(b) To the extent Member is a Business Associate or other contractor that is transmitting, accessing or receiving Patient Data through the Network to provide services to, or on behalf of, a Another Member, Covered Entity or other Business Associate, Member: (i) will give written notice to UHIN identifying each Other Member, Covered Entity and/or other Business Associate it is providing services to, or acting on behalf of, in connection with Member's use of the Network; (ii) represents and warrants that it has a written agreement in place with each Other Member, Covered Entity or other Business Associate that satisfies the requirements of Applicable Law and the terms of this Agreement; and (iii) acknowledges and agrees that UHIN may satisfy its Breach reporting obligations in Section 5.3 to a Source Member, for which Member is acting as a Business Associate, by providing the Breach report to Member and Member will provide that Breach report to the Source Member. Member will immediately notify UHIN in writing when Member is no longer providing services to, or on behalf of, a previously identified Other Member, Covered Entity or other Business Associate. UHIN may terminate this Agreement immediately upon notification that Member is no longer providing services to, or on behalf of, any Other Member, Covered Entity or Business Associate.

**8. Section 6.5 is amended to delete the stricken text:**

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.~~

**9. Section 8.3 is deleted in its entirety.**

**10. Section 9.4 is amended to delete the stricken text:**

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.~~

**11. Section 11.10 is amended to add the double underlined text:**

11.10. Survival. The provisions of Sections 5 through 11 and, if applicable, the Business Associate Addendum attached as Attachment B shall survive the termination of this Agreement.

**12. Section 11.12 is amended to delete the stricken text and add the double underlined**

**text:** 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)(e), 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.

**13. Section 11 is amended to add a new Section 11.13:**

11.13. Antitrust Compliance. Member agrees not to use the information available through the Network or to which it has access under this Agreement to evaluate or set its own prices for services, or otherwise in violation of state or federal antitrust laws and regulations. Member also agrees not to discuss prices with other individuals and entities that participate in the Network, or to make any effort collectively to establish prices with Other Members or others in violation of law.

14. **The following definitions in Section 12 are amended to delete stricken text and add the double underlined text:**

“**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 under the terms of this Agreement. ~~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”.~~

“**Breach**” ~~is defined as it is in~~ will have the meaning given to it under Applicable Law, including 45 C.F.R. § 164.402 and Utah Code § 13-44-102.

“**HIPAA Regulations**” means 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~~ Health Insurance Portability and Accountability Act (“HIPAA”) Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E (“Privacy Rule”) and the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (“Security Rule”), and the HIPAA Breach Notification Rule, 45 C.F.R. Part 164, Subpart D (“Breach Notification Rule”), all as amended from time to time.

“**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 and personal information as defined in Utah Code 13-44-102.



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

“**Recipients**” are Member, Other Members, or Authenticated Users that receive Message Content through a Message from a Source Member or Submitting Member ~~for a Permitted Purpose under the terms of this Agreement~~. 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.

“**Requirements**” are those Standards, Specifications, ~~P~~olicies, ~~and P~~rocedures and guidelines adopted by the UHIN Board in accordance with Section 2 and made available to Member and Other Members ~~at <http://www.uhin.org/>~~. Requirements may be accessible on UHIN’s website.

“**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 under the terms of this Agreement~~. The term “User Member” includes a User Member’s Authenticated Users ~~acting within the course and scope of their employment for that User Member~~.

15. **The Business Associate Addendum attached hereto as Exhibit A is added to the Agreement as Attachment B.**
16. **All other remaining terms and conditions of the Agreement will remain in full force and effect and are not changed by this Amendment #1. If a conflict between this Amendment #1 and the Agreement exists, the terms of this Amendment #1 will control. If a conflict between the Agreement (as modified by this Amendment #1) and the Business Associate Addendum exists, the terms of the Business Associate Addendum will control.**

*[Signature Pages To Follow]*

IN WITNESS WHEREOF, the parties have executed this Amendment #1 as of the Amendment Effective Date. Each person signing this Amendment #1 represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Amendment #1. Each party represents and warrants to the other that the execution and delivery of this Amendment #1 and the performance of such party's obligations hereunder have been duly authorized and the Amendment #1 is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**MEMBER**

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

Trading Partner  
Number: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

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

**UHIN**

Printed Name: Brian Chin

Signature: \_\_\_\_\_

Title: CFO

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

Please download the form before completing and submitting.

Digital form will be submitted to the UHIN team  
as an email attachment.

## **EXHIBIT A TO AMENDMENT #1**

### ATTACHMENT B:

#### BUSINESS ASSOCIATE ADDENDUM

When UHIN is acting in the capacity of a Business Associate or Subcontractor Business Associate, UHIN and Member agree to the terms and conditions of this Business Associate Addendum in order to comply with the rules on handling of Protected Health Information (“PHI”), as defined in 45 C.F.R. § 160.103, under the HIPAA Regulations.

1. **DEFINITIONS.** Unless otherwise provided, all capitalized terms in this Business Associate Addendum will have the same meaning as provided in the Electronic Commerce Agreement (the “Agreement”), or the HIPAA Regulations. For purposes of this Business Associate Addendum, PHI includes only Individually Identifiable Health Information provided to UHIN by Member for the Services the covered by the Agreement, or that was otherwise created or received by UHIN on behalf of Member.
2. **USES AND DISCLOSURES OF PHI.** UHIN will use or disclose PHI only for those purposes necessary to perform Services under the Agreement, as otherwise expressly permitted in the Agreement, or as Required by Applicable Law, and will not further use or disclose PHI. UHIN agrees that anytime it provides PHI to a Subcontractor to perform Services or that creates, receives, maintains or transmits PHI on behalf of UHIN, UHIN first will ensure that each such Subcontractor agrees to substantially the same terms, conditions, and restrictions on the use and disclosure of PHI as contained in this Business Associate Addendum. To the extent UHIN is to carry out Member’s obligations under the Privacy Rule, UHIN will comply with the requirements of the Privacy Rule that apply to Member’s compliance with such obligations.
3. **UHIN’S USE OR DISCLOSURE FOR UHIN’S OWN PURPOSES.** UHIN may use PHI for UHIN’s management and administration, or to carry out UHIN’s legal responsibilities. UHIN may disclose PHI to a third party for such purposes only if: (1) the disclosure is Required by Applicable Law; or (2) UHIN secures written assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) use or disclose the PHI only as Required by Applicable Law or for the purposes for which it was disclosed to the recipient; and (iii) notify UHIN of any breaches in the confidentiality of the PHI.
4. **DATA AGGREGATION AND DE-IDENTIFICATION SERVICES.** UHIN may use PHI to perform Data Aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including Data Aggregation services involving both Administrative Messages and Clinical Messages. UHIN also may de-identify PHI and disclose de-identified PHI in accordance with 45 C.F.R. § 164.514, as permitted in Section 4 or if requested by Member. UHIN may also use or disclose such de-identified data for its own purposes, including (i) to perform

management and administrative functions, and (ii) internally for the development of improved or future functionality of the Network.

5. **MINIMUM NECESSARY REQUIREMENTS.** As applicable and to the extent practicable, UHIN will make reasonable efforts to limit requests for and the use and disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of such use, disclosure or request in accordance with the Privacy Rule.
6. **SAFEGUARDS.** UHIN will implement and maintain appropriate safeguards to help prevent any use or disclosure of PHI for purposes other than those permitted by the Agreement and this Business Associate Addendum. UHIN also will implement administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any Electronic PHI that UHIN creates, receives, maintains, and transmits on behalf of Member. UHIN will comply with the applicable requirements of the Security Rule.
7. **REPORTING UNAUTHORIZED USES OR DISCLOSURES, SECURITY INCIDENTS AND BREACHES.**
  - (a) Reporting Unauthorized Uses and Disclosures. UHIN will report in writing to Source Member (or Other Member that is a Covered Entity or Business Associate and supplied the PHI to UHIN) any use or disclosure of PHI for purposes other than those permitted by the Agreement and this Business Associate Addendum. UHIN will make this report promptly, but in no case later than the timeframe specified in the Requirements.
  - (b) Reporting Security Incidents. UHIN will report in writing to a Source Member (or Other Member that is a Covered Entity or Business Associate and supplied the PHI to UHIN) any Security Incident of which UHIN becomes aware in accordance with this Business Associate Addendum and the Requirements. UHIN will report successful Security Incidents promptly, but in no case later than the timeframe specified in the Requirements. UHIN also will report the aggregate number of Unsuccessful Security Incidents upon request; provided such requests are made no more than once per month. If the definition of Security Incident under the HIPAA Regulations is amended to remove the requirement for reporting unsuccessful attempts to use, disclose, modify or destroy Electronic PHI, the portion of this subsection addressing the reporting of Unsuccessful Security Incidents will no longer apply as of the effective date of such amendment.
  - (c) Reporting Breaches of Unsecured PHI. If UHIN discovers a Breach of Unsecured PHI that UHIN accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses, UHIN will report such Breach as required by the Breach Notification Rule and as provided in Section 5.3 of the Agreement and the Requirements.

8. **INDIVIDUAL ACCESS TO PHI.** UHIN will make PHI available in accordance with 45 C.F.R. § 164.524.
9. **AMENDMENT OF PHI.** UHIN will make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.
10. **ACCOUNTING OF DISCLOSURES.** UHIN will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
11. **ACCESS TO BOOKS AND RECORDS.** UHIN will make its internal practices, books and records on the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services to the extent required for determining Member's compliance with the Privacy Rule. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by UHIN or Member as a result of this Section.
12. **TERMINATION.** Either party may terminate the Agreement and this Business Associate Addendum in accordance with Section 9 of the Agreement. Member may also terminate the Agreement and this Business Associate Agreement if UHIN breaches a material term of this Business Associate Addendum and fails to cure the breach within thirty (30) days of the date of notice of the breach. Further, Member will have all termination rights as required and set forth at 45 C.F.R. §§ 164.504(e)(1) and 164.314(a)(1).
13. **RETURN OR DESTRUCTION OF PHI.** Upon termination of the Agreement, if feasible, UHIN will return or destroy all PHI received from, or created or received by UHIN on behalf of Member that UHIN still maintains in any form and retain no copies of such information. Notwithstanding the foregoing, Member understands that PHI provided to the Network may be integrated into the medical record of Other Members that access the Network, and into records maintained by UHIN, and it may not be feasible for UHIN to return or destroy PHI that has been thus integrated upon termination of the Agreement. If UHIN does not return or destroy PHI upon termination, UHIN will continue to follow the provisions of this Business Associate Addendum and will limit its use or disclosure of PHI to those purposes that make the return or destruction of PHI infeasible.