

SIMPLY CONNECT PARTICIPATION AGREEMENT

This **PARTICIPATION AGREEMENT** (the “**Agreement**”) is made and entered into effective as of _____ (the “**Effective Date**”) by and between **Simply Connect, LLC**, located at 5610 Rowland Road, Suite 120 Minnetonka, Minnesota 55343 (“**Simply Connect**”) and _____, located at _____, _____, _____ (“**Participant**”).

RECITALS

WHEREAS, Simply Connect provides health information exchange (“**HIE**”) services to providers of health care and health care services to consumers; and

WHEREAS, the HIE is designed to connect participating entities with interoperable health information technology for the purposes of supporting the need for care coordination and other functions; and

WHEREAS, Participant desires to exchange health information and participate in the HIE in accordance with applicable Minnesota state law and the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

DEFINITIONS. The following capitalized terms shall have the meanings ascribed to them below.

“**Breach**” shall have the meaning set forth in HIPAA Regulations (currently at 45 CFR § 164.402).

“**Business Associate**” shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.

“**Business Associate Agreement**” shall mean that form of agreement required by 45 CFR §§ 164.502(a)(3), 164.5032(e) and 164.504(e), as applicable.

“**Confidential Information**” includes, but is not limited to, the following information: (a) any designs, drawings, procedures and trade secrets, including any specifications and documentation; (b) a party’s research and development, pricing and new product and marketing plans, unless and until publicly disclosed; (c) nonpublic financial and administrative information concerning a party; (d) a party’s confidential information, records and other material regarding its business and its clients, residents, physicians, providers, provider groups, members, employees, vendors, products, methods, processes, systems, business plans or marketing methods and strategies, and costs; and (e) any other non-public information of a party, including the terms and conditions of this Agreement and any password or other identifier issued by Simply Connect. “**Confidential Information**” will not include PHI or any information which: (a) is or becomes known publicly through no fault of the receiving party; (b) is learned by the receiving party from a third party entitled to disclose it; or (c) is already known to the receiving party before receipt from the disclosing party as shown by the receiving party’s written records; or (d) must be disclosed under operation of law, provided that the disclosing party gives the other party reasonable notice to allow the non-disclosing party to object to such disclosure and such disclosure is made to the minimum extent necessary to comply with the law.



“**Dispute**” shall mean any controversy, dispute, or disagreement arising out of or relating to this Agreement or the use of the HIE.

“**End User**” shall mean the specific employee(s), agent(s) or contractor(s) who are members of Participant’s Workforce and have been authorized by Participant to use the HIE Technology pursuant to this Agreement.

“**Health Care Operations**” shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

“**Health Care Provider**” shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.

“**Health Plan**” shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.

“**HIE Content**” shall mean information that is accessed through the HIE, including, but not limited to and as applicable, Protected Health Information and other data, such as the Continuity of Care Document (CCD).

“**HIE Technology**” shall mean the technology made available by Simply Connect or a third party technology provider to facilitate the use of the HIE by Participant. The HIE Technology includes, the functionality to access the Simply Connect Record Locator Service, query for HIE Content, and receive HIE Content.

“**HIPAA**” shall mean, collectively, the Health Information Portability and Accountability Act of 1996 and its implementing regulations, including, without limitation, the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 (the “**Privacy Rule**”) and the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160, 162 and 164 (the “**Security Rule**”) both promulgated by HHS; the Health Information Technology for Economic and Clinical Health Act under the American Recovery and Reinvestment Act of 2009 (the “**HITECH Act**”); and the HIPAA/HITECH Act Final Omnibus Rule at 45 CFR Parts 160 and 164, as each of them is in effect at the time in question, including any amendment, modification or renumbering thereof or any successor law or regulation.

“**Individual**” shall mean a person who is the subject of Protected Health Information, as set forth at 45 CFR § 160.103.

“**Protected Health Information**” or “**PHI**” shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.

“**Record Locator Service**” shall have the meaning set forth in Minnesota Statute 144.291, Subdivision 2(i).

“**Participants**” shall mean, collectively, Participant and any other party which has been accepted as a Participant and entered into a Participation Agreement with Simply Connect under Section 14.03.

“**Payment**” shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

“**Senior Living Community**” shall mean the building or set of buildings where services are provided to Individuals.

“**Workforce**” shall have the meaning set forth at 45 CFR § 160.103.

1. **HEALTH INFORMATION EXCHANGE.**

General. In general, Simply Connect uses HIE Technology managed by or on behalf of Simply Connect to facilitate the provision of the HIE through which Participants and End Users may access and exchange health information about Individuals for purposes permitted under federal and state law. Simply Connect shall use commercially reasonable efforts to facilitate the development, launch, promotion and ongoing maintenance of the HIE and to perform the services set forth elsewhere in this Agreement.

1.01 **HIE TECHNOLOGY.**

- (a) **HIE Services.** The description of the HIE services (“HIE Services Description”) is set forth as Attachment 1. Among other things, the HIE Services Description includes each party’s obligations with respect to the activities in the HIE Services Description. The HIE Services Description may not be amended or revised without the written agreement of Simply Connect and Participant and any and all such amendments shall

also automatically become part of this Agreement and be attached hereto as Attachment 1. Participant shall perform the obligations set forth in the HIE Services Description (and any amendments thereto) by the timeframes set forth therein.

(b) **Specifications.**

- (i) **Technical Specifications.** Attachment 2 sets forth the Technical Specifications required for HIE participation. Participant shall comply with the Technical Specifications and be responsible for assuring End Users' compliance with the Technical Specifications. The Technical Specifications may be amended from time to time by Simply Connect.
- (ii) **Participant Systems.** As between Participant and Simply Connect, Participant shall procure, configure, and maintain any software and/or hardware controlled by Participant that is necessary to use the HIE and on which Participant stores HIE Content and/or through which Participant transmits data to the HIE. Participant shall be responsible for assuring that its participant systems and related hardware or software complies with the Technical Specifications.

1.02 **Security.**

- (a) **Enterprise Security.** Simply Connect and Participant shall each maintain a secure environment that supports the operation and continued development of the HIE. Such environment shall comply with the HIPAA Security Rule and all Simply Connect information security policies.
- (b) **Passwords and Other Credentials.** Participant shall not share any information, including, without limitation, passwords and user names, with any third party or person other than its End Users to the extent necessary for them to use the HIE as permitted under this Agreement.

Protection against Viruses and Malicious Software. Participant shall not upload, store, distribute, or otherwise transmit through or introduce into the HIE or the HIE Technology any programming devices (e.g., viruses, key locks, back doors, worms, unauthorized cookies, Trojans, malicious software, "malware," trap doors, time out or any similar or other type of disabling device, routine, subroutine, data or characteristic, etc.) which would (i) disrupt the use or operation of the HIE, the HIE Technology or any system, equipment, program or software that is networked, interfaced or connected to the HIE or the HIE Technology, (ii) destroy or damage data (including HIE Content) or make data inaccessible or delayed, or (iii) cause any HIE Content, the HIE or the HIE Technology or any portion thereof to be improperly accessed, destroyed, damaged or otherwise made inoperable or unavailable to any Participant or Simply Connect upon a certain event, the passage of time or the taking of or failure to take any action. Participant will use all reasonable practices and security procedures necessary to avoid insertion of such devices into the HIE and the HIE Technology (including using current anti-virus software), and will remove any such devices introduced by Participant at Participant's sole cost and expense.

Notice. Participant shall inform Simply Connect within twenty-four hours (24) if it becomes aware of activity that would jeopardize the security or integrity of the HIE or the HIE Content located within. Similarly, Simply Connect shall inform participant within twenty-four (24) hours if it becomes aware of activity that would jeopardize the security or integrity of the HIE or the HIE Content located within.

1.03 **End Users.**

- (a) **Access by End Users.** Participant shall determine which members of its Workforce shall be its End Users in accordance with the terms of this Agreement. Participant shall maintain a list of all of its End Users and shall provide such list promptly to Simply Connect upon its request. Simply Connect reserves the right to terminate, suspend or restrict any End User's access to the HIE if it has reason to believe that there is a threat to the security of the HIE, the HIE Technology or a breach of this Agreement.

- (b) **Disabling Access to End Users.** In the event Participant believes or has reason to believe that any of its End Users or any other individual has violated the terms and conditions of this Agreement, Participant shall promptly inform Simply Connect and terminate the individual's access. Upon termination of employment or contract of an End User, Participant shall promptly inform Simply Connect and terminate the End User's access.
- (c) **Monitoring Use by End Users.** Participant shall require that End Users use the HIE and HIE Technology only in accordance with the terms and conditions of this Agreement. Participant shall be responsible for all acts and omissions of its End Users.

1.04 **Participant Policies.** Participant shall maintain and practice internal policies and procedures that demonstrate organizational compliance with HIPAA, applicable state information privacy laws, and use of the HIE and HIE Content.

2. **CONSENT MODEL AND USE OF DATA.**

2.01 **Participant entity as PHI Source.**

- (a) Participant shall be responsible for obtaining any consent or authorization required for the inclusion of PHI in HIE. Participant is also responsible for administering any Individual request for opt-out from the Record Locator Service, if required under applicable state law, including taking appropriate steps to ensure the Individual's opt-out request information is appropriately tracked in the HIE Technology in accordance with the Simply Connect Policy Manual.
- (b) If the Participant is a Health Care Provider, the conditions applicable to Health Care Providers under this Section also apply to the Participant.

2.02 **Health Care Provider as PHI Source.** If the Participant is a Health Care Provider, Participant may authorize inclusion of PHI in the Simply Connect of an Individual for disclosure of the PHI for Treatment, Payment and Health Care Operations purposes, provided that the Participant shall ensure that it has obtained any consent or authorization required for the disclosure of the PHI for such purposes required by applicable state law, if any.

2.03 **Health Care Payer as PHI Source.** If the Participant is a Health Plan, Participant may authorize inclusion of PHI in the Simply Connect of an Individual for disclosure of the PHI for Treatment, Payment and Health Care Operations purposes if permitted by applicable state law, provided that the Participant shall ensure that it has obtained any consent or authorization required for the disclosure of the PHI for such purposes required by applicable state law, if any. Participant must honor all individual requests for opt-out from the Record Locator Service, if required under applicable state law. To this extent, Participant maintains responsibility for taking appropriate steps to ensure the Individual's opt-out request information is appropriately tracked in the HIE Technology in accordance with the Simply Connect Policy Manual.

2.04 **Business Associate as PHI Source.** If the Participant is the Business Associate of a Health Care Provider or Health Plan which is a Participant, Participant may authorize inclusion of PHI in the Simply Connect of an Individual for disclosure of the PHI for Treatment, Payment and Health Care Operations purposes, provided that the Participant shall ensure that such inclusion is permitted by its Business Associate Agreement with the applicable Health Care Provider or Health Plan; that any consent or authorization required for the disclosure of the PHI for such purposes required by applicable state law, if any, has been obtained; and that the Individual has not requested to opt-out from the Record Locator Service, if applicable.

2.05 **Permitted Purposes.** Participant may use the HIE to access HIE Content solely for purposes permitted under HIPAA and applicable state law ("Permitted Purposes"). Participant represents and warrants that any requests by Participant or its End Users to access HIE Content shall be: (i) solely for a Permitted Purpose; (ii) supported by appropriate legal authority for obtaining the HIE Content, including any minimum necessary requirements to the extent they apply; and (iii) submitted by an End User with legal authority to make such a request.

2.06 **Disclosure Compelled by Legal Process.** In the event Participant receives a subpoena, court order or other demand for a compulsory disclosure (collectively, “Subpoena”) of PHI or other data originating with another Participant, Participant shall, unless prohibited by applicable law from doing so, promptly notify the other Participant of the Subpoena. Participant shall cooperate with the other Participant in contesting disclosure if requested to do so. In the event Participant is notified by another Participant that the other Participant has received a Subpoena concerning PHI or other data originating from Participant, Participant shall cooperate with such other Participant in responding to the Subpoena or contesting disclosure. With respect to Subpoenas or other matters concerning a party’s litigation with a third party, Simply Connect shall have the right to charge an hourly rate and be reimbursed for expenses incurred for assistance to the extent it becomes involved in facilitating communication between the Participants hereunder and in connection with responding to the Subpoena.

3. **PRIVACY AND SECURITY.**

3.01 **HIPAA Privacy and Security.**

- (a) **Applicability of HIPAA.** The HIE Content exchanged through the HIE in accordance with this Agreement is expected to contain PHI. HIPAA therefore applies as follows:
- (i) If Participant is a Covered Entity, Simply Connect is a Business Associate of Participant, to the extent Simply Connect is receiving, using or disclosing PHI on behalf of Participant or as part of services provided to Participant.
 - (ii) If Participant is a Business Associate, Simply Connect is a Subcontractor which is a Business Associate of Participant, to the extent Simply Connect is receiving, using or disclosing PHI on behalf of Participant or as part of services provided to Participant.
 - (iii) Participant shall not become a Business Associate or Subcontractor of any other Participant by virtue of signing this Agreement or by exchanging HIE Content with any other Participant unless Participant engages in such exchange on behalf of the other Participant or for purposes of services it is providing to the other Participant. As between Participant and Simply Connect, Participant shall be solely responsible for ensuring that it has entered into any Business Associate Agreement required for purposes of its exchange of HIE Content with any other Participant.
 - (iv) To support the privacy, confidentiality, and security of the HIE Content and the HIE, Participant shall at all times comply with HIPAA.
- (b) **Business Associate Addendum.** The parties agree to the terms of the Business Associate Addendum attached hereto as [Attachment 3](#). In the event of a conflict or inconsistency between the other terms of this Agreement and the terms of the Business Associate Addendum, the terms of the Business Associate Addendum shall govern to the extent of such conflict or inconsistency.
- (c) **Amendment of Individual Records.** If Participant corrects an Individual’s records with information subject to exchange through the HIE, it may do so only on a prospective basis. Participants should not expect the HIE Technology to delete old or incorrect data as a result of such a correction or that any alerts will be generated by the correction.
- (d) **Self-Paid Treatment.** *Under HIPAA, Individuals have the right to have information about Health Care services they have paid for out-of-pocket excluded from information which a Health Care Provider provides to a Health Plan, upon request. The HIE Technology does*

not provide such filtering so as between Participant and Simply Connect compliance with this requirement is solely Participant's responsibility.

- (e) **Breach Notification.** In addition to the breach notification requirements imposed upon Simply Connect in the Business Associate Addendum, as soon as reasonably practicable, but no later than five (5) business days after becoming aware of a potential Breach with respect to the HIE or HIE Technology, Participant shall notify Simply Connect of such Breach. The Participant shall cooperate with request of information from Simply Connect to help Simply Connect analyze and investigate the potential Breach.

4. **CONFIDENTIAL INFORMATION.**

4.01 **Treatment of Confidential Information.** Each party may use the other party's Confidential Information only as permitted hereunder (including performance of its obligations hereunder) and shall prevent unauthorized use, dissemination and disclosure of the other party's Confidential Information during the Term and thereafter. Each party shall confine knowledge of the other party's Confidential Information to its employees, agents and contractors who require such knowledge and use it in the ordinary course and scope of their employment or retention in a manner consistent with the terms and conditions of this Section 4, and to such other persons who have a need to know such materials and information, in all cases in connection with the purposes of this Agreement. Each party shall have the right to require the return or destruction of its Confidential Information at any time except as necessary for Simply Connect to maintain reasonable audit trails and other evidence of compliance and as otherwise expressly permitted in this Agreement.

4.02 **Antitrust.** Participant may not use the HIE for exchange of financial information among Participants if such disclosure would violate applicable law, including, without limitation, antitrust laws.

4.03 **No Marketing or Fundraising.** Participant shall not use or allow any of its End Users or any other person or entity that it employs or otherwise contracts with to use the HIE to obtain HIE Content or other information about Individuals, other Participants (or any of their affiliates), End Users, insurers, other payers, accountable care organizations or other entities for marketing, promotion, fundraising or any purpose other than a Permitted Purpose.

5. **FEES.** Participant shall pay Simply Connect all fees set forth in Attachment 4 within thirty (30) days after receipt of an invoice from Simply Connect. If Participant does not pay all amounts when due, Simply Connect may also charge a late fee of 8% per year on the unpaid amounts.

6. **TERM, SUSPENSION AND TERMINATION.**

6.01 **Term.** Unless earlier terminated as provided herein, this Agreement shall commence upon the Effective Date and continue in full force and effect through one (1) year (the "Initial Period"). Upon the expiration of the Initial Period, this Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Period" and together with the Initial Period, the "Term") unless either party has provided the other party at least ninety (90) days written notice of its intent not to renew.

6.02 **Suspension by Simply Connect.** Simply Connect may suspend immediately Participant's access to the HIE: (a) if Participant's acts or omissions are jeopardizing or are reasonably likely to jeopardize the security of the HIE, (b) if Participant's acts or omissions result in or create a threat of irreparable material harm to Simply Connect, the HIE or another Participant, or (c) in emergency circumstances. If such circumstances are not resolved within thirty (30) days after the commencement of suspension, Simply Connect may terminate this Agreement upon written notice.

6.03 **Termination by Simply Connect.**

- (a) **Termination for Material Breach.** Simply Connect may terminate this Agreement if Participant is in material breach of this Agreement and such breach has not been cured within thirty (30) days following receipt by Participant of written notice thereof from Simply Connect.
- (b) **Termination for Compliance Failure.** Simply Connect may terminate this Agreement immediately upon written notice to the Participant in the event that Participant or any of its End Users improperly used HIE Content, the HIE or otherwise failed to comply with applicable law in connection with performance under this Agreement.
- (c) **Termination Due to Technology Providers.** Simply Connect may terminate this Agreement immediately by providing written notice to Participant in the event any agreement by and between Simply Connect and a third party vendor that provides technology required to operate or maintain the HIE expires or terminates for any reason.
- (d) **Termination for Convenience.** Simply Connect may terminate this Agreement for any reason or no reason at all by providing Participant with one hundred twenty (120) days written notice setting forth the effective day of such termination.
- (e) **Termination for Other Reasons.** Simply Connect may terminate this Agreement by providing a minimum of thirty (30) days written notice to Participant due to changes in applicable law that make operation of the HIE illegal or impractical.

6.04 **Termination by Participant.**

- (a) Participant may terminate this Agreement if Simply Connect is in material breach of this Agreement and such breach has not been materially cured within thirty (30) days following receipt by Simply Connect of written notice thereof from Participant.
- (b) Participant may terminate this Agreement for any reason or no reason by providing Simply Connect with one-hundred-twenty (120) days written notice setting forth the effective date of such termination.
- (c) **Termination for Other Reasons.** Participant may terminate this Agreement by providing a minimum of thirty (30) days written notice to Simply Connect due to changes in applicable law that make Participant's participation in the HIE illegal or impractical.
- (d) **Termination for Compliance Failure.** Participant may terminate this Agreement immediately upon written notice to Simply Connect in the event Simply Connect (or any of the other Participants or their End Users) improperly used Participant's HIE Content or otherwise failed to comply with applicable law with respect to Participant's HIE Content.

6.05 **Effect of Suspension or Termination.**

- (a) **No Right to Use HIE.** Upon the expiration or termination of this Agreement or upon the suspension of Participant's access to the HIE, Simply Connect shall revoke Participant's access (including all End Users) as of the effective date of such expiration, termination or suspension, and Participant and End Users shall not have any rights to use the HIE.
- (b) **Claims Concerning Data.** In the event another Participant relies on PHI or other data provided by Participant for Treatment or Payment for Treatment of an Individual and such data later becomes relevant to a claim brought against the other Participant related to such Treatment or Payment, Participant shall

cooperate with the other Participant facing the claim and provide access to such data, subject to applicable law.

- (c) **Notice to Other Participants.** Upon the revocation of Participant's access for any reason whatsoever, Simply Connect may provide notice of such revocation to other Participants.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Agreements with End Users. Participant represents and warrants that it has valid and enforceable agreements with each End User that require the End User to, at a minimum: (a) comply with all applicable law; (b) cooperate with Participant and to the extent necessary, Simply Connect and/or other Participants, on issues related to this Agreement; (c) if any professional licensure requirements apply to any of Participant's End Users for purposes of any access to, receipt of, use or disclosure of PHI to or from the HIE, maintain such licensure at all times when the End User is authorized to use the HIE; (d) use the HIE in accordance with this Agreement and access, use and disclose HIE Content only for Permitted Purposes; and (e) refrain from disclosing to any other person any passwords or other security measures issued to the End User.

7.01 HIE Content.

- (a) **Accuracy of HIE Content.** Participant represents and warrants that at the time of transmission, the HIE Content it submits to the HIE is an accurate representation of the information contained in its clinical and business records and provided in a timely manner and in accordance with the Simply Connect Documentation.
- (b) **Use of HIE Content.** Participant represents and warrants that it shall use, and shall cause End Users to use, the HIE Content only in accordance with the provisions of this Agreement. Participant further represents and warrants that it shall follow the consent procedures described in Section 2 as applicable, and that any notices required to be given and any consents and authorizations required by HIPAA and other applicable law have been obtained.

7.02 Actions.

- (a) **Absence of Final Orders.** Participant represents and warrants that, as of the Effective Date, it is not subject to a final order issued by any Federal, State, local or international court of competent jurisdiction or regulatory or law enforcement organization, which shall materially impact Participant's ability to fulfill its obligations under this Agreement. Participant shall inform Simply Connect if at any point during its participation in the HIE it becomes subject to such an order.
- (b) **Federal Program Participation and Good Standing.** Participant represents and warrants that it is not excluded, debarred, or otherwise ineligible from participating in any Federal contracts, subcontracts, grants, non-procurement transactions and other programs (collectively, "Federal Programs"). Participant shall immediately provide written notice to Simply Connect if it is suspended, proposed for debarment or other exclusion, or otherwise disqualified or declared ineligible from participating in a Federal Program for any reason, or is a party to a legal proceeding that may result in any such action.

- 7.03 **Authority.** Each party represents and warrants that: (a) it is organized and validly existing under the laws of the state of its organization and has full power and authority to enter into this Agreement and to carry out the provisions hereof; (b) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder; (c) this Agreement is a legal and valid obligation binding upon it and enforceable according to its terms; (d) the execution, delivery, and performance of this Agreement does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any applicable law; and (e) it has taken whatever measures necessary to obtain all required approvals or consents in order for it to execute this Agreement.

7.04 **Compliance with Laws by Participant.** Participant represents and warrants that it shall comply, at all times, with all applicable laws relating to this Agreement, the exchange of HIE Content for Permitted Purposes and the use of HIE Content. In addition, Participant represents and warrants that each of its End Users who access the HIE or HIE Technology is, if required by applicable law, duly licensed pursuant to all federal, state, and local laws, ordinances, rules and regulations that apply to each such End User.

Compliance with Laws by Simply Connect. Simply Connect represents and warrants that it shall comply, at all times, with all applicable laws relating to this Agreement and its activities hereunder.

8. **DISCLAIMERS AND RESPONSIBILITIES.**

8.01 **Use of HIE.** Participant is solely responsible for its use of the HIE and the HIE Technology and for the accuracy of the information and data (including, without limitation, the HIE Content) that Participant furnishes for processing using the HIE Technology.

8.02 **HIE Content.**

(a) **Reliance on Other Participants.** Participant acknowledges that access to the HIE by other Participants may be activated, suspended or revoked at any time and without notice to Participant. Therefore, Participant may not rely upon the availability of HIE Content with respect to an Individual.

(b) **Incomplete Individual Record.** Participant acknowledges that HIE Content may not include the individual's full and complete medical record or history, payment or other information. HIE Content shall only include that data which is available for exchange in the HIE pursuant to this Agreement and applicable federal and state law.

(c) **Responsibility for Individual Care.** If Participant is a Health Care Provider, Participant acknowledges that HIE Content and other PHI obtained through the HIE is not a substitute for Participant, by and through its professional Workforce as applicable, obtaining whatever information is deemed necessary, in the exercise of professional judgment, for the proper treatment of an Individual or other purposes permitted under this Agreement. As between Simply Connect and Participant, Participant and its professional Workforce shall be responsible for determining the adequacy of any HIE Content for purposes of Individual Treatment, Payment, and Health Care Operations, as well as any and all decisions and actions taken or not taken involving Individual Treatment or Payment, utilization management, and quality management for Individuals and with respect to any other parties resulting from, or in any way related to, the use of the HIE or the HIE Content made available through the HIE. Simply Connect disclaims that the HIE or HIE Technology or any services provided in connection with this Agreement are fit for diagnosing disease or illness, prescribing medical treatment, or for performing any tasks that constitute the practice of medicine.

(d) **No Reliance on HIE.** The parties agree that Simply Connect has no role or responsibility for the care and well-being of any Individual, and any reliance by Participant, any End User or any other member of Participant's Workforce upon the HIE, data or information provided by the HIE shall not create this responsibility. Simply Connect does not and will not validate, error check, or otherwise confirm any HIE Content that Participant or any other Participant stores in, enters into, or uploads into the HIE or HIE Technology.

8.03 **Unavailability of HIE over Carrier Lines.** Participant acknowledges that the exchange of HIE Content is to be provided over various facilities and communications lines, and information shall be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which are beyond the control of Simply Connect (collectively, "Carrier Lines"). Simply Connect assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted over Carrier Lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any HIE Content or other information attributable to transmission

over those Carrier Lines. Use of the Carrier Lines is solely at Participant's risk and is subject to all applicable law. Participant understands and agrees that, during suspension or interruption of the HIE, Participant may not be able to obtain or access HIE Content or other PHI through HIE, and Participant shall maintain and use all resources necessary to conduct its operations without such access.

8.04 **NO OTHER WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT, SIMPLY CONNECT MAKES NO OTHER AND DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES REGARDING THE OPERATION, ACCESSIBILITY OR RELIABILITY OF THE HIE OR THE HIE TECHNOLOGY OR THE QUALITY, RELIABILITY, TIMELINESS, OR SECURITY OF THE HIE OR THE HIE TECHNOLOGY. SIMPLY CONNECT MAKES NO REPRESENTATION THAT THE HIE OR HIE TECHNOLOGY SHALL BE UNINTERRUPTED OR ERROR-FREE. SIMPLY CONNECT MAKES NO REPRESENTATION OR WARRANTY THAT THE DATA OR HIE CONTENT PROVIDED BY ANY PARTICIPANT SHALL BE TIMELY, CORRECT OR COMPLETE OR CLINICALLY ACCURATE OR COMPLETE. ALL SERVICES HEREUNDER, ALL HIE CONTENT, THE HIE AND THE HIE TECHNOLOGY ARE 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.

8.05 **PARTICIPANT RESPONSIBILITY.** THE HIE AND THE HIE TECHNOLOGY ARE NOT DESIGNED OR INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, JUDGMENT, DIAGNOSIS OR TREATMENT AND SHOULD NOT BE USED AS A REPLACEMENT OR SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, JUDGMENT, DIAGNOSIS OR TREATMENT. IN THE COURSE OF PROVIDING ANY SERVICE, PARTICIPANT WARRANTS THAT ALL MEDICAL TREATMENT DECISIONS, IF ANY ARE MADE BY OR ON BEHALF OF PARTICIPANT, ARE BASED ENTIRELY UPON THE PROFESSIONAL MEDICAL JUDGMENT OF PARTICIPANT AND ITS END USERS.

AS BETWEEN PARTICIPANT AND SIMPLY CONNECT, PARTICIPANT IS SOLELY RESPONSIBLE FOR ASSESSING THE SUITABILITY OF THE HIE AND THE HIE TECHNOLOGY FOR USE. WITHOUT LIMITATION WITH RESPECT TO OTHER MATTERS, PARTICIPANT SHALL BE SOLELY RESPONSIBLE FOR PERSONAL INJURY OR DEATH THAT MAY OCCUR AS A RESULT OF PARTICIPANT'S AND ITS END USERS' USE OF THE HIE AND THE HIE TECHNOLOGY.

9. **LIMITATIONS OF LIABILITY AND EXCLUSIONS.**

9.01 **Exclusion of Certain Damages.**

(a) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY OTHER PARTICIPANT FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, ARISING OUT OF ANY ACTS OR OMISSIONS RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA OR CLAIMS ARISING FROM ANY DELAY, OMISSION OR ERROR IN THE HIE OR RECEIPT OF HIE CONTENT AND WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING.

SIMPLY CONNECT DISCLAIMS AND PARTICIPANT HEREBY RELEASES SIMPLY CONNECT AND ITS OFFICERS, DIRECTORS, AFFILIATES, AGENTS AND CONTRACTORS FOR ANY AND ALL LIABILITY, LOSS, DAMAGE, CLAIM OR COST RELATING TO OR RESULTING FROM: (i) THE ACCURACY, COMPLETENESS, TRANSMISSION, STORAGE, USE, MISUSE AND/OR BACK-UP OF ANY HIE CONTENT MADE AVAILABLE THROUGH THE HIE; (ii) ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS, CARRIER LINES OR OTHER THIRD PARTIES; (iii) CLAIMS RELATING TO CLINICAL, MEDICAL OR OTHER DECISIONS RELATED TO THE TREATMENT OF AN INDIVIDUAL, INCLUDING THOSE ARISING OUT OF THE UNAVAILABILITY OF HIE CONTENT THROUGH THE HIE OR THE INCORRECT IDENTIFICATION OF AN INDIVIDUAL; OR (iv) ANY CLAIMS OR ERRORS CAUSED BY ANY PARTICIPANT'S FAILURE TO COMPLY WITH A PARTICIPATION AGREEMENT OR ANY INCLUDED OR RELATED DOCUMENTATION.

9.02 **Limitation of Liability.** In no event shall the amount of damages of any type owed by either party to the other party for any claim arising in connection with the Agreement exceed the amount Participant paid to Simply Connect under this Agreement during the twelve (12) months prior to the date on which notice of the claim is provided to Simply Connect.

9.03 **Non-Exclusive Remedies.** Except as provided in Section 11, nothing in this Agreement shall be construed to restrict any party's right to pursue all remedies available under applicable law for damages or other relief arising from acts or omissions of other parties related to the HIE or this Agreement, or to limit any rights, immunities or defenses to which a party may be entitled under applicable law.

10. **INDEMNIFICATION.**

10.01 **Indemnification.**

A. Participant hereby agrees to indemnify and hold harmless Simply Connect and its officers, directors, affiliates, agents and contractors from and against any demand, suit, action, or proceeding (each a "Claim") brought by any third party and any and all damages awarded or settlement amounts payable in connection with the resolution of such Claim, to the extent the Claim relates to this Agreement and arises from:

- (a) Participant's or its End User's material breach of this Agreement, including without limitation the unauthorized or improper use of the HIE, the use or disclosure of HIE Content for any purpose other than a Permitted Purpose, a failure to comply with the Simply Connect Policy Manual, and/or a failure to suspend or terminate an End User when required;
- (b) Participant's or its End User's violation of Applicable Law (including, without limitation, HIPAA);
- (c) The negligent acts, omissions, or willful misconduct of Participant or its Workforce, including but not limited to its End Users; and/or
- (d) Any claim of third parties (including, without limitation, HHS, the State of Minnesota and/or Individuals) arising from or with respect to the failure of Participant or its End Users to comply with any applicable consent or authorization requirements.

B. Simply Connect hereby agrees to indemnify and hold harmless Participant and its officers, directors, affiliates, agents and contractors from and against any demand, suit, action, or proceeding (each a "Claim") brought by any third party and any and all actual damages awarded or settlement amounts payable in connection with the resolution of such Claim, to the extent the Claim relates to this Agreement and arises from:

- (a) Simply Connect's material breach of this Agreement, including without limitation its unauthorized or improper use of the Participant's HIE, use or disclosure of Participant's HIE Content for any purpose other than a Permitted Purpose, a failure to comply with the Simply Connect Policy Manual, and/or a failure to suspend or terminate another Participant when required;
- (b) Simply Connect's violation of Applicable Law (including, without limitation, HIPAA);
- (c) The negligent acts, omissions, or willful misconduct of Simply Connect, including but not limited to its End Users; and/or
- (d) Any claim of third parties (including, without limitation, HHS, the State of Minnesota and/or Individuals) arising from or with respect to the failure of Simply Connect or its End Users to comply with any applicable consent or authorization requirements.

10.02 **Defense Against Action.** Upon notification of any third party action brought against Participant based on a claim that the HIE Technology provided by Simply Connect and used by Participant infringes any patent, copyright, trade

secret, or trademark of a third party that is enforceable in the United States, Simply Connect will defend such action at its expense and will indemnify and hold Participant harmless and pay any and all fees, costs, or damages that may be awarded in such action or resulting settlement; except that Simply Connect shall not have any indemnification obligation for a claim of infringement to the extent such claim arises out of or is related to (i) modification of the HIE Technology by anyone other than Simply Connect, its employees, agents, representatives or contractors, (ii) the combination of the HIE Technology with Participant-provided technology, (iii) Participant's use of the HIE Technology for a purpose other than as contemplated by this Agreement or (iv) use of the HIE Technology outside of the United States by Participant or any third party gaining access to the HIE Technology through Participant.

In the event that an injunction is obtained against Participant prohibiting use of the HIE Technology by reason of infringement of a patent, copyright, trade secret, or trademark of a third party that is enforceable in the United States, Simply Connect may, at its option and expense, procure the right for Participant to continue using the HIE Technology, or provide or procure alternative solutions which furnish equivalent functionality. If Simply Connect is unable to procure the right for HIE User to continue using the HIE Technology or provide an alternative solution with equivalent functionality within a reasonable period of time, Simply Connect may promptly refund a pro rata portion of any amounts paid in advance by Participant, if any, for the infringing HIE Technology and terminate this Agreement. This section provides Vendor's exclusive remedy for claims arising under this Section 10.2.

10.03 **Process for Indemnification.** Any party seeking indemnity hereunder (an "Indemnitee") shall give the other party (the "Indemnitor") prompt written notice of any actual or threatened claim, sole control of the defense and settlement of such claim, and all reasonably accessible information regarding such claim in its possession. The Indemnitor will promptly defend and continue the defense of such claim at Indemnitor's expense. Indemnitor shall not enter into any settlement of an indemnified claim without the Indemnitee's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Indemnitor fails to undertake and continue such defense, Indemnitee will have the right (but not the obligation) to make and continue such defense as it considers appropriate, and the expenses and costs thereof, including but not limited to reasonable attorneys' fees, out-of-pocket expenses and the costs of an appeal and bond thereof, together with the amounts of any judgment rendered against Indemnitee, will be paid by Indemnitor.

11. **INSURANCE.** Simply Connect maintains insurance under the following terms:

11.01 **Insurance Coverage.**

- (a) **Professional Liability** – Coverage Part, Limits of Liability \$1,000,000 each claim; \$1,000,000 aggregate. **Data Breach** – Coverage Part, Limits of Liability \$1,000,000 each claim; \$1,000,000 each unauthorized access; \$1,000,000 aggregate. **Electronic Media Coverage** – Coverage Part, Limits of Liability \$1,000,000 each claim; \$1,000,000 aggregate. **Combined Aggregate Limit of Liability** \$1,000,000 all damages, regulatory fines, loss and claim expenses under all coverage parts, combined.
- (b) Simply Connect will notify Participant no later than ten (10) days of any actual or threatened claim, action, or proceeding related to activities undertaken pursuant to this Agreement and will cooperate in all respects with Participant in the defense of any such claim, action, or proceeding. Simply Connect will provide Participant with notice within ten (10) days of any cancellation, termination or material alteration of any such insurance policies. Prior to the expiration or cancellation of any such policies, Simply Connect will secure replacement of such insurance coverage upon the same terms and will furnish Participant with a certificate of insurance. Failure of Simply Connect to secure replacement coverage in the event of such cancellation, termination or material alteration of any such insurance policies will be a default hereunder, and Participant will have the option to terminate this Agreement pursuant to Section 6 of this Agreement.

12. **DISPUTE RESOLUTION.** Any controversy, transaction or dispute arising out of or relating to this Agreement or the services to be performed in connection with this Agreement or otherwise between the Parties shall be settled in the following order of preference: (i) by good faith negotiation between representatives of the Parties who have authority to fully and finally resolve the dispute; (ii) if necessary, by non-binding mediation at a location acceptable to both Parties in Hennepin County, Minnesota using a neutral mediator. In any mediation, the Parties shall equally share the cost of the mediator and otherwise

bear their own respective costs; or (iii) as a last resort only, by binding arbitration in Hennepin County, Minnesota. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association, with the following exceptions if in conflict: (a) one arbitrator shall be chosen by the American Arbitration Association; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator’s rules and regulations) of the proceeding has been given to such party. The Parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, transactions or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

GOVERNING LAW, VENUE, AND ARBITRATION. This Agreement shall be governed by the laws of the State of Minnesota. Venue for any proceeding arising under this Agreement shall be the state or federal courts located in Hennepin County, Minnesota. Any Dispute not resolved in the Dispute Resolution Process arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, shall be settled exclusively by binding arbitration, which shall be conducted in Minneapolis, Minnesota metropolitan area in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration (the “AHLA Rules”) and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In the event of any conflict or inconsistency between the AHLA Rules and this Agreement, the terms of this Agreement shall control. The parties shall use reasonable efforts to select arbitrator(s) who are based in the Minneapolis metropolitan area and are experienced in the legal issues that are the subject matter of the dispute (e.g., health information technology law or other relevant subject matter).

13. **NOTICES.** All notices to be made under this Agreement shall be given in writing to the addresses set forth below, and shall be deemed given: (a) upon delivery, if personally delivered; or (b) upon the date indicated on the return receipt, when sent by the United States Postal Service Certified Mail, return receipt requested.

For Simply Connect:

By: _____
 Name: _____
 Title: _____
 Date _____

For Participant:

By: _____
 Name: _____
 Title: _____
 Date _____

14. **MISCELLANEOUS AND GENERAL**

14.01 **Audit and Site Visits.** Each party shall provide access to books and records in its possession to the other party to the extent necessary to verify compliance with this Agreement. Simply Connect may also conduct site visits to assist Participant in using the HIE (e.g., training, integration testing, auditing compliance with state law, Breach investigation). Each party shall use commercially reasonable efforts to minimize any disruption to the other party’s business in the conduct of any such access to books and records, audit or site visit.

To the extent required to fulfill regulatory obligations of either party and when permitted under applicable law, each party shall cooperate with the other party to assist said other party with audit and inspection requests from regulators involving the nature of the relationship between Simply Connect and Participant, as well as HIE Content. Each Party shall provide prompt notice to the other party when it becomes aware of such audit and inspection requests that may involve assistance from the other party.

14.02 **Amendment.**

- (a) **General.** Except as set forth in Sections 14.02(b) and with respect to Attachments which may be amended pursuant to other provisions of this Agreement, any amendment or modification to this Agreement shall not be binding on the parties unless such amendment or modification shall be in a written instrument duly executed by the authorized representatives of each party.
- (b) **Amendment by Simply Connect.** Notwithstanding the foregoing, Simply Connect may amend this Agreement without the Participant's consent by providing Participant with advance written notice of such amendment for any of the following purposes:
 - (i) As required by applicable law; and
 - (ii) To address urgent privacy and security matters.

If Participant is unwilling to execute in writing such amendment, Simply Connect may terminate this Agreement and have no further obligations hereunder by providing written notice to Participant.

14.03 **Additional Participants.** Upon Simply Connect's acceptance of an entity as a Participant in the HIE, Simply Connect shall require such new Participant to execute an agreement materially similar to this Agreement. Upon such execution, such party shall become a "Participant." SIMPLY CONNECT SHALL, IN ITS SOLE DISCRETION, DETERMINE WHETHER TO ADMIT NEW PARTICIPANTS TO THE HIE.

14.04 **Assignment.** Simply Connect may assign the Agreement to another entity that is willing to agree in writing to assume the obligations of Simply Connect provided that the assignee agrees in writing to assume the obligations of Simply Connect under this Agreement. Any assignment that does not comply with the requirements of this section shall be void and have no binding effect.

14.05 **Survival.** The provisions of Sections 4, 6.05, 8.02, 8.04, 8.06, 9, 10, 11, 12 and 14.16 of this Agreement shall survive the expiration or termination of this Agreement for any reason.

14.06 **No Waiver.** No failure or delay in exercising any rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.

14.07 **Entire Agreement.** This Agreement, together with all Attachments, sets forth the entire and only agreement among the parties relative to the subject matter hereof and supersedes all other prior and contemporaneous agreements, understanding and commitments among the parties with respect to the subject matter hereof. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon any Participant. Attachments to this Agreement on the effective date include:

- (a) Attachment 1 – **HIE Services Description & Desired Services Selection**
- (b) Attachment 2 – **Technical Specifications**
- (c) Attachment 3 – **Business Associate Addendum**
- (d) Attachment 4 – **Fee Schedule**

14.08 **Severability and Validity of Provisions.** In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of this Agreement, invalid, void or otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect.

- 14.09 **Priority.** Except as set forth herein, in the event of any conflict or inconsistency between a provision in the body of this Agreement and any attachment hereto, the terms contained in the body of this Agreement shall prevail.
- 14.10 **Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify, or aid in the interpretation or construction of meaning of the provisions of this Agreement.
- 14.11 **Relationship of the Parties.** The parties to this Agreement and their respective personnel are and shall be independent contractors to each other. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the parties. Neither Simply Connect nor Participant shall have any authority to bind or make commitments on behalf of another party for any purpose, nor shall any such party hold itself out as having such authority.
- 14.12 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.
- 14.13 **No Third-Party Beneficiaries.** This Agreement shall not confer upon any persons other than Simply Connect and/or Participant any rights or remedies hereunder.
- 14.14 **Force Majeure.** No party shall be deemed in violation of any provision of this Agreement to the extent it is prevented from performing any of its obligations (other than the payment of money) by reason of: (a) severe weather and storms; (b) earthquakes or other disruptive natural occurrences, including, without limitation, floods; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) terrorist attacks; (g) acts of legislative, judicial, executive, or administrative authorities; or (h) any other circumstances that are not within its reasonable control, including without limitation, riot, fire, act of God, telecommunications failure or failure of the Internet. This Section 14.14 shall not apply to obligations imposed under applicable law. The affected party shall use reasonable and prompt efforts to correct any nonperformance.
- 14.15 **No Publicity.** Parties to this Agreement shall not issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written consent of the other Party.

IN WITNESS HEREOF, the parties have executed this Agreement by their duly authorized representatives on the date set forth below:

Simply Connect, LLC

(Participant)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT 1.

HIE SERVICES DESCRIPTION

The following items and services are offered by Simply Connect to Participants in the HIE depending on the Participant's level of participation:

1. Access to the HIE through use of HIE Technology, including access to:
 - a. The Simply Connect Record Locator Service;
 - b. Ability to query the HIE Content; and
 - c. Ability to receive the HIE Content; and
 - d. Rx Gateway – with connection to the primary pharmacy, the list of dispensed medications to individual residents pushed to the HIE Content; and
 - e. Clinical in-box(es) with Direct Secure Messaging capacity
2. Guided training process for accessing and using the HIE.
 - a. Resident/workforce educational materials; and
 - b. Template Opt-Out/In Form
3. On-going access to technical/trouble shooting assistance, through a customer service support line.

ATTACHMENT 2.

TECHNICAL SPECIFICATIONS

Participants will need the following to operate Simply Connect:

1. Minimum System Requirements:
 - 1.01 A standard web browser (i.e., internet explorer)
 - 1.02 Support for SSL (Secure Socket Layer)
 - 1.03 HTTPS (Hypertext Transfer Protocol)
2. Standard internet access
 - 2.01 Internet Speed Requirements:
 - (a) To check your current internet speeds, go to www.speedtest.net and click “Begin Test”
 - (b) **1-2 Concurrent Users:** Recommended download speed of at least 7Mbps and upload speed of 1Mbps
 - (c) **3-4 Concurrent Users:** Recommended download speed of at least 12 Mbps and upload speed of 1.5 Mbps
 - (d) **5 + Concurrent Users:** Contact your Internet Service Provider for their opinion. The faster your internet, the better



ATTACHMENT 3.

BUSINESS ASSOCIATE AGREEMENT ADDENDUM

This Business Associate Agreement Addendum ("Addendum") is entered into as of the Effective Date of the Participation Agreement between **Simply Connect, LLC**, ("Business Associate") and _____ ("Participant").

WHEREAS, Participant has entered into a Participation Agreement with Business Associate that requires Business Associate to perform certain health information exchange services on behalf of Participant that requires Business Associate to receive, maintain, and transmit Protected Health Information, as such term is defined in the Health Insurance Portability and Accountability Act of 1996, Pub Law 104-191, and its implementing regulations, 45 C.F.R. Parts 160 and 164 ("HIPAA Rules") including all current and subsequent amendments; and

WHEREAS, HIPAA and its implementing regulations require that Participant and Business Associate enter into a Business Associate Agreement, as required by the HIPAA Rules; and

WHEREAS, Participant and Business Associate desire to conduct their relationship and services in compliance with HIPAA; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth, the parties to this Addendum hereto agree as follows:

1. DEFINED TERMS.

- a. The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. "Business Associate" shall have the meaning given to such term at 45 CFR Section 160.103, and in reference to this Addendum, shall mean Simply Connect, LLC.
- c. "Covered Entity" shall have the meaning given to such term at 45 CFR Section 160.103.
- d. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE. Business Associate agrees to:

- a. Not Use or Disclose PHI other than as permitted or required by this Addendum to perform its services under the Business Associate Addendum or as required by law.
- b. Use appropriate administrative, technical and physical safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to preserve the integrity and confidentiality of electronic PHI, and to prevent Use or Disclosure of electronic PHI other than as provided for by the HIPAA Rules and this Agreement.
- c. Report to Participant any Use or Disclosure of PHI not provided for by the Agreement which it becomes aware, including Breaches of Unsecured PHI as required by 45 CFR 164.410, and any Security Incident of which it becomes aware. Such incidents shall be reported to the Participant without delay, but in no event later than five (5) business days from the date the incident was discovered by the Business Associate. Notification from Business Associate to Participant must include the identity of individuals affected and number of individuals affected, description of the Breach or situation, types of PHI involved, steps taken by Business Associate to investigate, mitigate and protect against similar future incidents, and contact information for the individual who is reporting the incident to Participant. Participant may make further inquiries or request



further action related to the reported incident. As between Participant and Business Associate, all breach notification requirements related to the incident shall be handled by the Participant.

- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to PHI. The Business Associate is not in compliance with the HIPAA Rules if it knew of a pattern of activity or practice of a Subcontractor that constitutes a material breach or violation of the subcontractor's obligation under its HIPAA Subcontractor Agreement with Business Associate or other arrangement, unless the Business Associate took reasonable steps to cure the breach or end the violation, and if such steps were unsuccessful terminated the Subcontract or arrangement, if feasible.
- e. Make available PHI in a Designated Record Set to Participant in order to timely meet the applicable Covered Entity's obligations under 45 CFR 164.524. Any request received by the Business Associate from an Individual who is requesting access to a Designated Record Set shall be promptly forwarded to Participant.
- f. Promptly make any amendment(s) to PHI in a Designated Record Set as directed or agreed to pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the applicable Covered Entity's obligations timely under 45 CFR 164.526. Any request received by the Business Associate from an Individual who is requesting amendment to a Designated Record Set shall be promptly forwarded to Participant.
- g. Maintain a system of documentation to make available the information required to provide an accounting of disclosures to Participant as necessary to satisfy the applicable Covered Entity's obligations under 45 CFR 164.528. Any request received by the Business Associate from an Individual who is requesting an accounting of disclosures shall be promptly forwarded to Participant.
- h. To the extent Business Associate is to carry out one or more of a Covered Entity's obligations under Subpart E of 45 CFR Part 164, the HIPAA Privacy Rule, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation.
- i. Make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services or his or her designee, in a reasonable time and manner for the purpose of permitting the Secretary to determine compliance with the HIPAA Rules.

3. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

- a. Business Associate may Use or Disclose PHI as permitted by HIPAA as necessary to perform the services set forth in the Participation Agreement between Participant and Business Associate.
- b. Business Associate may Use or Disclose PHI as Required by Law.
- c. Business Associate agrees to make Uses and Disclosures and requests for PHI consistent with the minimum necessary standards at 45 CFR 164.502(b) and any policies provided to it by Participant regarding minimum necessary.
- d. Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the applicable Covered Entity, except for the specific Uses and Disclosures set forth below:
 - (1) Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (2) Business Associate may Disclose PHI for the proper management and administration of Business Associate, provided that Disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- (3) Business Associate may provide Data Aggregation services relating to the Health Care operations of the applicable Covered Entity.
- (4) Business Associate may de-identify any and all PHI provided that the information is de-identified in accordance with HIPAA standards. De-identified information does not constitute PHI and is not subject to the terms and conditions of this Addendum, provided, however that such de-identified information may not be used for commercial purposes or shared with third parties.

4. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS.

- a. Participant shall notify Business Associate of any limitations in any applicable Notice of Privacy Practices under 45 CFR § 164.520, which may affect Business Associate's Use or Disclosure of PHI.
- b. Participant shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use and Disclosure of PHI.
- c. Participant shall notify Business Associate of any restriction on the Use or Disclosure of PHI that the applicable Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

5. PERMISSIBLE REQUESTS BY COVERED ENTITY. Participant will not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by the applicable Covered Entity, except Business Associate may Use or Disclose PHI for data aggregation or management and administrative activities of Business Associate if permitted under Section 3 of this Addendum.

6. TERM AND TERMINATION

- a. **Term.** The term of this Addendum and the obligations herein will be deemed effective as of the date of this Addendum and will terminate when the Participation Agreement between Participant and Business Associate terminates or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section 6.
- b. **Termination for Cause.** Business Associate authorizes termination of this Addendum by Participant, if Participant determines Business Associate has violated a material term of this Addendum and Business Associate has not cured the breach or ended the violation within the time specified by Participant.
- c. **Obligations of Business Associate Upon Termination.** Upon termination of this Addendum for any reason, Business Associate, with respect to PHI received from Participant, or created, maintained, received, or transmitted by Business Associate on behalf of Participant, shall:
 - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.
 - (2) Return to Participant or, if agreed to by Participant, destroy the remaining PHI that the Business Associate maintains in any form.
 - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI.
 - (4) Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3 paragraphs (d) which applied prior to termination.

(5) Return to Participant or, if agreed to by Participant, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

d. **Survival.** The obligations of Business Associate under this Section shall survive the termination of this Addendum.

7. MISCELLANEOUS

a. **Regulatory References.** A reference in this Addendum to a section in the HIPAA Rules means the section as in effect, or as amended, and for which compliance is required.

b. **Amendment.** The parties will take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable laws.

c. **Interpretation.** Any ambiguity in this Addendum will be resolved in favor of a meaning that permits the parties to comply with the HIPAA Rules.

d. **Indemnification.** Each party shall indemnify, defend and hold harmless the other party and its employees from and against any and all claims, penalties, legal actions, liabilities, damages, settlements, or costs (including reasonable attorneys' fees) that may arise from the negligence or willful misconduct of the party or its employees or subcontractors in the performance of this Addendum or from the party's failure to perform its obligations under this Addendum.

e. **Penalties.** Business Associate shall comply with the HIPAA Rules standards and regulations and understands that it is subject to all regulatory rules and related penalties set forth in the HIPAA Rules.

f. **No Agency.** Business Associate is an independent contractor of Participant and is not an agent of Participant. Participant shall not provide Business Associate with interim instruction regarding the Business Associate's compliance with the terms of this Addendum.