

## **COMMONWELL HEALTH ALLIANCE MEMBER SERVICES AGREEMENT**

This CommonWell Health Alliance Member Services Agreement (“Agreement”) is made effective as of the date signed by the Alliance (the “Effective Date”), by and between CommonWell Health Alliance Inc. (“Alliance”), and the Alliance Member who desires to participate in the Services (hereinafter “Participant”) (collectively the “Parties”).

### **BACKGROUND**

The Alliance has been established to define and promote a national infrastructure with common standards and policies with regard to its Services that enable trusted data sharing among its Members who participate in the Services, their Authorized Users, and Affiliated Networks on a nation-wide basis, as each term is further defined. In order to further the foregoing mission, Alliance has procured certain services, through its Service Provider, which is made available to Participant under the terms and conditions of this Agreement and those terms incorporated by reference.

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

### **1 DEFINITIONS**

1.1 Defined Terms. Capitalized terms in this Agreement not otherwise defined elsewhere in this Agreement shall have the meanings set forth in Exhibit A.

### **2 LICENSES RELATED TO THE SERVICES**

2.1 Participant’s License to Use Services. During the Term and subject to the terms and conditions of this Agreement, Alliance hereby authorizes Participant to: (i) embed Service Provider’s APIs in the Participant Solution to enable access and interoperability to and with the Services; (ii) where Participant is an End User, access and Use the Services and the Documentation for its own business purposes; (iii) access and Use the Services and the Documentation for the purpose of providing the Services to Authorized Users; (iv) allow Authorized Users the right to allow their Downstream Authorized Users the right to access and Use the Services, and (v) market and distribute the Services for each of the above authorized purposes.

2.2 Permitted Purposes. Participant shall, and Participant shall require its Authorized Users to access or use all or any portion of the Services solely for and as permitted in a compliant implementation of an approved Use Case (available here, as may be updated from time to time: <https://specification.commonwellalliance.org/use-cases>) and only for and in accordance with the terms and conditions applicable to Permitted Purposes (available here, and as may be updated from time to time: <https://specification.commonwellalliance.org/use-cases/permitted-purposes>), and otherwise only in accordance with a compliant implementation of the Alliance Specification. Without limiting the generality of the foregoing, Participant otherwise shall not, and Participant shall require its Authorized Users to not, do any of the following: (i) use, market, sell or distribute the Services except as expressly authorized in an approved Use Case; (ii) license or sublicense the Services to any person or entity other than an Authorized User; (iii) make the Services available to any entity other than an Authorized User; (iv) rent, lease, grant a security interest in or otherwise transfer or attempt to transfer any rights in or to the Services; or (v) remove, alter or deface any legends, restrictions, product identification, copyright, trademark or other proprietary notices from the Services.

2.3 Data Use Restrictions. Participant shall: (i) access or use Data acquired through the Services solely for and in compliance with an approved Use Case and only for and in accordance with Permitted Purposes in accordance with a compliant implementation of the Alliance Specification, and; (ii) be responsible for obtaining all necessary consents and authorizations for its Authorized Users, its own use, and disclosure of

Data in and through its Participant Solution and the Services. Participant is responsible for obtaining all necessary consents and authorizations for its own (including its Authorized Users') use and disclosure of Data or PHI in and through its Participant Solution regardless of whether the Data was received through the Services or otherwise.

2.4 Alliance License to Use Data and PHI. Participant grants Alliance the right to use data, including but not limited to Data, PHI and de-identified PHI acquired through the Services: (i) solely to provide the Services for the benefit of the Alliance and its Members; (ii) to improve the Services, and; (iii) for system administration of the Services, and for no other purposes. Notwithstanding the foregoing, nothing herein shall be deemed to restrict Alliance from using Data and PHI to create de-identified data which may be used to improve or enhance the Services, and to provide the Services in accordance with approved Use Cases. Alliance may de-identify PHI and store Health Data and de-identified PHI for the sole purposes of performance testing, trouble shooting and improving the Services related to approved Use Cases. For the avoidance of doubt, any reference to Alliance in Section 2 shall mean Alliance and its Service Provider(s). The Parties acknowledge that additional Use Cases may be approved that are not currently contemplated, and such additional Use Cases may include access to Affiliated Networks, and may require changes in compliance obligations.

### **3 THE SERVICES.**

3.1 User Management. Where Participant provides access to the Services in a manner requiring a user to use Login Credentials, Participant agrees to institute an Authorized User management process including but not limited to: (i) a process to designate and terminate Authorized Users and their Permitted Users, including the issuance of usernames and passwords, (ii) registration of Authorized Users, (iii) Participant and Authorized User obligations to ensure each Authorized User and Permitted User is appropriately credentialed and/or authenticated in accordance with Alliance Policies, (iv) reporting requirements regarding adverse changes to licensing status, and (v) a process for Participant and its Permitted Users to report any adverse changes to Authorized User and Permitted User qualifications.

3.2 Service Level Commitment. Alliance will provide the Services in accordance with the service level commitments set forth in Exhibit C. Alliance's ability to meet the service levels is dependent on the Participant Solution and Participant Interface properly functioning with the Services pursuant to the Alliance Specification.

3.3 Modification; Discontinuance; Suspension. Alliance reserves the right to modify, discontinue, and suspend the availability of the Services, in whole or in part, upon written notification if: (i) Alliance determines in its sole and reasonable discretion that such suspension is necessary to comply with or to mitigate potential or actual damages or liability associated with a Breach, a potential Breach, or Applicable Law, or; (ii) immediately if Alliance determines in its reasonable business judgment that the performance, integrity or security of the Services, Data, PHI, or Confidential Information of any party is being adversely impacted or in danger of being compromised, as a result of access to the Services by any party, and in such a case the Alliance will provide written notice of any action as soon as reasonably practical given the circumstances.

3.4 Regulatory. Alliance is not responsible for Participant, or any Authorized User, or Downstream Authorized User's compliance with any legal or regulatory requirements imposed on or through the use of the Services. Future regulations or industry practices may affect performance of the Services and require Alliance, Service Provider, Participants, or other Authorized Users to meet additional regulatory requirements or to discontinue using some or all of the Services. In the event a Party receives written notice from a regulatory authority with jurisdiction over such Party, or with jurisdiction over the subject matter of

the Services, that requires or advises such Party to alter or discontinue its provision or use of the Services, the Parties will negotiate in good faith to execute an amendment to this Agreement within ninety (90) days after receipt of such notice (or sooner if required by the regulatory authority or Applicable Law), in as narrow a manner and scope as is necessary to comply with such notice. If, after the Parties have engaged in such good faith negotiations, either Party determines in good faith that such an amendment is not reasonably possible, then such Party may terminate this Agreement upon thirty (30) days' advance written notice.

3.5 Implementation Plan. If applicable, the Parties shall use commercially reasonable efforts to follow the implementation plan that specifies the performance of Implementation Services as well as all prerequisite tasks that a Participant and Authorized User shall complete in preparation for, and during, the implementation process ("Implementation Plan") as set forth in Exhibit E. The Parties understand and acknowledge that the timeframes specified in an Implementation Plan represent good faith estimates and are subject to change, depending on variables encountered in the implementation process. No Party is obligated to perform to the extent such performance is adversely affected by the other Party's failure to adhere to the Implementation Plan. The Implementation Plan may also include hardware, software, environmental, connectivity, and other specifications, dependencies, or conditions that must be met prior to implementation, as well as for Authorized User's use, of the Services.

## 4 PARTICIPANT OBLIGATIONS

4.1 Business Practices. Participant will not make any representations, warranties or guarantees with respect to the specifications, features or functionality of the Services that are inconsistent with or are in addition to the terms and conditions set forth herein.

4.2 Services. Participant will use commercially reasonable efforts to provide and support the Participant Solution and the Participant Interface to its Authorized Users in a manner that facilitates the successful utilization of the Services by such parties. If Participant is a Contributor Member as described in the Alliance Bylaws, the Bylaw's Contributor Membership Performance Obligations ("CMPO") shall apply to Participant.

4.3 Training Materials. Participant will cooperate with Alliance and Service Provider with any Alliance requested efforts to develop training materials for Authorized Users or Downstream Authorized Users regarding obtaining the Services, complying with Alliance Policies, or documenting consent, consent functionality, or patient identification obligations, as appropriate, as they relate to the Services.

4.4 Participant Warranties.

4.4.1 General. Participant represents and warrants that it is duly organized, validly existing and in good standing under the laws of the state in which it was organized or incorporated and that it has full power and authority to enter into and consummate the transactions contemplated in this Agreement.

4.4.2 Functionality. Participant represents and warrants that it shall provide the Participant Interface and Participant Solution in all material respects in accordance with the Documentation and in compliance with the Implementation Plan, and the Alliance Specification. In the event of breach of this warranty, Participant will use reasonable efforts to repair or replace the nonconforming portion of Participant Interface and Participant Solution in a timely manner so that it performs in accordance with such warranty. The obligations in the foregoing sentence shall be the sole and exclusive remedy of the Parties under this Section.

4.4.3 Compliance with Laws. Participant represents and warrants that it shall comply with all Applicable Laws in performing its obligations or exercising its rights under this Agreement.

4.4.4 Compliance with Alliance Policies. Participant represents and warrants that it shall comply with all applicable Alliance Policies, including but not limited to the Alliance Data, Security, and Privacy Policy available: [www.commonwellalliance.org/policies](http://www.commonwellalliance.org/policies).

4.4.5 BAAs. Participant represents and warrants that: (i) Participant maintains a business associate agreement and any other appropriate agreements with each of its Authorized Users that authorizes access, use and disclosure of Data and PHI as necessary for that Participant's participation in the Services; (ii) Participant will comply with its business associate agreements with its Authorized Users in connection with the use or provision of the Services, and; (iii) Alliance's use, access and disclosure of PHI on behalf of Participant and its Authorized Users to provide the Services is permitted under Participant's BAAs or other agreements with Authorized Users.

4.4.6 Minimum Terms. Where Participant is acting as an End User, Participant shall be subject to the End User License Agreement ("EULA") and where Participant is not an End User, Participant represents and warrants that it shall incorporate the EULA, either directly or by reference, into a legally binding agreement with its Authorized Users (each a "Authorized User Agreement") who have access to or allow access to the Services. The EULA is available at [www.commonwellalliance.org/policies](http://www.commonwellalliance.org/policies) and may be updated from time to time.

Participant shall include the following notice in its Authorized User Agreements:

**The EULA is a legally binding agreement between Authorized User and Alliance, and Service Provider is a third-party beneficiary of the EULA.**

4.4.7 Compliance Confirmation. Participant shall require all of its Authorized Users to comply with the EULA and all applicable Alliance Policies. In the event that the Participant becomes aware of a material non-compliance with any of the obligations stated in the EULA or any applicable Alliance Policy by one of its Authorized Users, then Participant shall promptly notify the Authorized User in writing that its failure to correct any such deficiencies within the stated timeframe constitutes a material breach of the Authorized User Agreement, which may result in termination of such agreement.

4.5 External Transaction Services Terms. Participants that utilize Services that include transactions allowed by Alliance but governed by third parties ("External Transaction Services"), understand and agree that they shall comply with the terms and conditions applicable to such services, which are available here <https://www.commonwellalliance.org/policies> and which are incorporated herein. Additional terms and conditions may apply to Participant's use of External Transaction Services, and any amendments to such terms and conditions shall be effective and apply to Participant's use of such services in accordance with the third party's terms related to amendments. Alliance or the third party may terminate Participant's access to the effected services in the event Participant refuses to agree to any applicable amendments.

## 5 ALLIANCE OBLIGATIONS

5.1 Business Practices. Alliance will not make any representations, warranties or guarantees with respect to the specifications, features or functionality of any Participant Solution or Participant Interface that are inconsistent with or are in addition to the terms and conditions set forth herein.

5.2 Services. Subject to the terms and conditions of this Agreement, Alliance agrees to provide support as described in Exhibit D.

### 5.3 Alliance Warranties.

5.3.1 General. Alliance represents that it is duly organized, validly existing and in good standing under the laws of the state in which it was organized or incorporated and that it has full power and authority to enter into and consummate the transactions contemplated in this Agreement. Alliance further warrants that the execution and performance of this Agreement does not violate the terms of any security agreement, license, or any other contract or written instrument to which it is a party.

5.3.2 Functionality. Alliance will make available the Services in all material respects in accordance with the Documentation and in compliance with the Alliance Specification. In the event of a breach of this warranty, Alliance will be given a reasonable opportunity to repair or replace the nonconforming portion of Services in a timely manner so that it performs in accordance with such warranty; provided Alliance will be relieved from its obligation to perform to the extent such performance is adversely affected by Participant's or any Authorized User's failure to adhere to its performance obligations under this Agreement or applicable Authorized User Agreement.

5.3.3 Compliance with Laws. Alliance agrees to comply with all Applicable Laws in performing its obligations under this Agreement.

5.3.4 Services Warranty. Alliance warrants to Participant that all Services will be performed in a professional manner by trained and skilled personnel.

## 6 **AMENDMENTS**

This Agreement, and any attachments, exhibits or policies incorporated by reference into this Agreement, may be amended by Alliance from time to time provided that Alliance first provides notice and an opportunity to provide feedback on the draft proposed amendment and an opportunity to object in accordance with this section. Alliance will provide Notice of any proposed amendment to Participant and all other Participants at least ninety (90) calendar days prior to the proposed effective date of the amendment. Alliance will accept feedback on the draft proposed amendment from Participant and all other Participants for fourteen (14) calendar days, and will provide final text of the proposed amendment to Participant and all other Participants no later than sixty (60) calendar days prior to the effective date of the amendment. Participant shall have thirty (30) days from the date of the publication of the final text to advise Alliance in writing if the Participant objects to the proposed amendment and the specific reasons for its objection. If more than one-third (1/3) of all Participants object to the proposed amendment, then the amendment shall not go into effect. Otherwise, the amendment shall be effective at the end of the ninety (90) day notice period. Participant shall be required to sign any amendment approved in accordance with this section or terminate participation in the Services by providing at least sixty (60) days prior written Notice of such termination to Alliance. No amendment to this Agreement shall be proposed to Participant unless such amendment is proposed to all other Participants. Notwithstanding the foregoing, if Alliance determines, based on advice from legal counsel, that an amendment is required in order for Alliance to remain in compliance with Applicable Law, Alliance is not required to provide Participant and other Participants with an opportunity to object to the amendment.

## 7 **PRICING AND PAYMENTS**

7.1 Fees and Invoicing Terms. Participant shall pay Alliance all applicable fees and charges for the implementation and operation of the Services in accordance with Exhibit B. Participant shall be responsible for the payment of any applicable fees associated with its use of any External Transaction Services.

7.2 Expenses. Neither Party will be responsible for expenses incurred by the other relating to the subject matter of this Agreement unless such expenses were authorized in writing by an authorized representative of such Party. Any such expenses must be authorized in advance by the Party, reasonably incurred and documented, and in conformance with its own travel reimbursement policy which if applicable will be provided upon request.

7.3 Taxes. All amounts payable in connection with this Agreement are exclusive of sales, use, and value-added taxes and withholding taxes. Each Party is responsible for the payment of its own taxes.

## **8 TERM AND TERMINATION**

8.1 Term. The term of this Agreement shall commence on the Effective Date and continue for the thirty-six (36) months from the Effective Date (the “Initial Term”). At the end of the Initial Term, the Agreement will automatically renew for additional subsequent one (1) year periods (each a “Subsequent Renewal Term”, collectively, the “Term”) unless either Party provides notice of its intent not to renew the Agreement at least one hundred and twenty (120) days prior to the end of the then current Term, unless otherwise terminated in accordance with Section 8.2.

8.2 Termination for Cause. Either party may terminate the Agreement upon notice if the other: (i) materially breaches the Agreement and fails to remedy, or fails to commence reasonable efforts to remedy, such breach within thirty (30) days after receiving notice of the breach from the terminating Party, (ii) infringes or misappropriates the terminating Party’s (including its licensor’s) Intellectual Property Rights and fails to remedy, or fails to commence reasonable efforts to remedy, such breach within thirty (30) days after receiving notice of the breach from the terminating Party, (iii) materially breaches this Agreement in a manner that cannot be remedied, or (iv) commences dissolution proceedings or ceases to operate in the ordinary course of business. Alliance may suspend the Services or terminate this Agreement upon thirty (30) days’ notice to Participant in the event Participant fails to pay any Alliance, Service Provider, or other fees or charges related to membership in the Alliance, the Services, or other services or offerings made available through the Services or the Alliance, if the failure to pay such fees remains uncured at the end of such notice period. This Agreement shall terminate automatically and without notice in the event Participant’s membership in the Alliance is terminated for any reason. Unless the Alliance has agreed in writing to an exception, Participant’s Membership Agreement, and Participant’s Membership in the Alliance, shall be terminated automatically in the event this Agreement is terminated for Cause by Alliance.

### 8.3 Obligations upon Termination.

8.3.1 Neither the Alliance nor Service Provider will be obligated to provide any Services to Participant if Participant is in breach of any material terms of this Agreement, including Participant’s obligation to pay applicable fees. Upon Termination and for a period of sixty (60) days, Data Migration Services shall be available on a time and materials basis from Service Provider, in accordance with an agreement mutually agreed upon between Service Provider and Participant. “Data Migration Services” shall mean those services and access necessary for the transitioning party to complete its transition, including without limitation, access to a person’s records and applicable document links.

8.3.2 Participant will promptly cease using and destroy or return to Alliance and Service Provider, at either’s request, all advertisements and promotional materials that bear such Service Provider or the Alliance’s Marks and all Confidential Information of Alliance and Service Provider; Participant will promptly: (i) cease use of the Services; and (ii) certify in writing to Alliance that Participant has complied

with its obligations under this Section; and (iii) each Party will, promptly return to the other Party or destroy all copies (including partial copies) of Confidential Information disclosed by the other Party and certify in writing to the other Party that it has complied with its obligations under this Section. Participant acknowledges its obligations under this Section apply to Confidential Information of Service Provider.

#### 8.4 Obligations upon Termination.

8.4.1 Alliance shall not be obligated to provide any Services to Participant if Participant is in breach of any material terms of this Agreement, including Participant's obligation to pay applicable fees. Upon Termination and for a period of sixty (60) days, Data Migration Services shall be available on a time and materials basis from Alliance or on its behalf, in accordance with an agreement mutually agreed upon between Participant and Alliance or the party providing such services. "Data Migration Services" shall mean those services and access necessary for Participant to complete its transition following termination of this Agreement, including without limitation, access to a health records and applicable document links.

8.4.2 Participant will promptly cease using and destroy or return to Alliance, at its request, all advertisements and promotional materials that bear any Alliance Marks and all Confidential Information of Alliance; Participant will promptly: (i) cease use of the Services; and (ii) certify in writing to Alliance that Participant has complied with its obligations under this Section; and (iii) each Party will, promptly return to the other Party or destroy all copies (including partial copies) of Confidential Information disclosed by the other Party and certify in writing to the other Party that it has complied with its obligations under this Section. Participant acknowledges and agrees that its obligations under this Section applies to the above described materials and Confidential Information of Alliance and its Services Provider.

8.4.3 Survival of Provisions. The following provisions of this Agreement shall survive termination or expiration of this Agreement and will remain in full force and effect: 1.1 (Defined Terms); 2.4 (Alliance Licenses to Use Data and PHI); 3.4 (Regulatory); 4.1 (Business Practices); 4.4 (Participant Warranties); 7 (Pricing and Payment); 8 (Term and Termination); 9 (Confidentiality); 10 (Intellectual Property); 12 (Limitation of Liability); 13 (Third Party Beneficiaries), 14 (Dispute Resolution), and; 15 (General Terms).

## 9. **CONFIDENTIALITY**

9.1 Confidentiality. Alliance and Participant may disclose to the other their Confidential Information, and the use of the Services may allow the parties to receive the Confidential Information of other Participants, Authorized Users, or Individuals. Except as expressly permitted by this Agreement, neither Party will: (i) disclose any other party's Confidential Information except (ii) to its Permitted Users, including employees, contractors, or service providers, and representatives who have a need to know and are bound by confidentiality terms no less restrictive than those contained in this Section, or (a) to the extent required by Applicable Law following prompt notice of such obligation to the other Party; or (b) use or reproduce another party's Confidential Information for any purpose other than performing its obligations under this Agreement or enjoying the rights granted under this Agreement. Each Party will use reasonable care in handling and securing Confidential Information that it receives in or through the Services by employing commercially reasonable security measures used for its own proprietary information of similar nature. For the purpose of this Section, Alliance shall include Alliance, and its employees, contractors, agents, board of directors, and representatives, who may receive Confidential Information during their involvement with the Alliance, and Alliance shall obligate such persons to comply with obligations of confidentiality at least as protective as those in this Agreement.

9.2 Period of Confidentiality. The restrictions on use, disclosure and reproduction of Confidential Information set forth herein, with respect to Confidential Information that constitutes a "trade secret" (as that term is defined and applicable under Applicable Law), shall be perpetual, and will, with respect to other

Confidential Information, remain in full force and effect during the Term and for three (3) years following the termination of this Agreement.

9.3 Injunctive Relief. The Parties agree that the breach, or threatened breach, of another Party's Confidential Information or Intellectual Property Rights may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, a Party will be entitled to seek injunctive relief to prevent the other Party from commencing or continuing any action constituting such breach. Nothing in this Section will limit any other remedy available to either Party.

## 10 INTELLECTUAL PROPERTY

10.1 Alliance Ownership. As between Alliance and Participant, Alliance shall retain all rights title and interest in and to Alliance Confidential Information and Alliance Background Technology. Except as otherwise provided in this Agreement, nothing in this Agreement will be deemed to transfer any ownership interest to Participant, or other party, in Alliance Background Technology, Alliance Confidential Information, or Third- Party Materials provided by Alliance. Ownership of all right, title and interest in and to the Intellectual Property Rights in the Alliance Specification shall be governed by the terms of the Alliance Membership Agreement. Licensing of the Alliance Specification shall be governed by the Membership Agreement and other licenses applicable to the use of the Alliance Specification that are approved and made available by the Alliance.

10.2 Participant Ownership. As between Alliance and Participant, Participant will own all right, title and interest in and to the Participant Confidential Information, Participant Solution, and Participant Materials, including any and all Intellectual Property Rights therein. The Alliance agrees not to take any step to disassemble, decompile, or reverse engineer or otherwise derive a source code equivalent of the software in the Participant Confidential Information or to permit any third party to do so; provided, however, nothing in the foregoing shall prevent Alliance from exercising the rights granted in this Agreement in such Confidential Information. Nothing in this Agreement will be deemed to transfer any ownership interest to Alliance or any other party in such Participant Confidential Information, Participant Solution and Participant Materials or Third Party Materials provided by a Participant to Alliance. Any Participant Solution, Participant Materials or Third Party Materials provided by Participant to Alliance and any modifications thereto are, and shall remain, the property of Participant or a third party, as applicable.

10.3 Service Provider Ownership. The Parties agree that as between Participant and Service Provider, Service Provider shall own all right, title and interest in and to Service Provider Confidential Information and Service Provider Technology, including Service Provider's Background Technology and any Existing Service Provider Offerings. Nothing in this Agreement will be deemed to transfer any ownership interest to Participant, or to any other participant, or other party, in Service Provider Technology, Existing Service Provider Offerings, or Third-Party Materials provided by Service Provider to Participant or any other participant.

10.4 Feedback and General Knowledge. Participant may from time to time identify problems, solutions to identified problems, provide suggestions, comments or other feedback related to the Services ("Feedback") to Alliance. Participant will not provide Feedback that includes Confidential Information of Participant or third party. Participant grants Alliance a non-exclusive, royalty-free, fully paid, perpetual, non-revocable, sub-licensable, license in and to its Intellectual Property Rights (except for any patent or trademark rights) in and to its Feedback to develop, manufacture, make, have made, reproduce, have reproduced, modify, use, export, import, create derivative works of, offer to sell and sell such Feedback with the Services or other products and services or to grant others the right to do so. Each Party retains the right to use any generalized knowledge, ideas, concepts, techniques, methodologies, practices, processes and know-how learned by its personnel in the course of performing services in connection with this Agreement, whether learned prior to, on or after the Effective Date.



10.5 No Implied Rights. Except as may be expressly stated in writing, nothing contained herein or implied pursuant to the business relationship between the Parties shall be construed to give any implied rights or interests to one Party in the rights or interests of any other Party in such Party's Intellectual Property Rights.

10.6 Intellectual Property Infringement Indemnification by Participant.

10.6.1 Duty to Defend and Indemnification. Participant will defend, indemnify, and hold the Alliance, its officers, directors, and representatives ("Indemnified Parties") harmless, from any action or other proceeding brought by a third party against the Indemnified Parties at Participant's sole cost and expense to the extent that such action or proceeding is based on a claim by a third party that (a) the use or sale of the Participant Materials or Participant Solution infringes any U.S. copyright or U.S. patent, (b) the Participant Materials or Participant Solution incorporate any misappropriated trade secrets, or (c) any Participant trademark or service mark provided by Participant infringes any U.S. trademark or service mark. Participant will pay any damages finally awarded against Indemnified Parties, including any award of costs, as a result thereof; provided, that the Indemnified Parties (i) notifies Participant of the claim as promptly as practical, but in any event timely enough so as not to prejudice any defense, (ii) provides Participant with all reasonably requested cooperation, information and assistance, and (iii) gives Participant sole authority to engage defense counsel, control the litigation, and defend and settle the claim at the Participant's sole cost and expense. For the avoidance of doubt, so long as the Participant is satisfying the obligation to the Indemnified Parties to defend and settle the claim at the Participant's sole cost and expense, Participant will not be obligated to reimburse Indemnified Parties for any attorneys' fees for attorneys engaged by any Indemnified Party or other costs and expenses incurred at the direction of any Indemnified Party to defend or settle the claim. For the avoidance of any doubt, with respect to any claims that are Participant Combination Claims (as defined in Section 10.6.2 below), Participant will indemnify the Indemnified Parties for expert witness fees for experts engaged by both Participant and the Indemnified Parties, but will not indemnify the Indemnified Parties for expert witness fees or other costs solely attributable to the Indemnified Party, such as e-discovery costs.

10.6.2 Exclusions. Participant will have no obligations under Section 10.6.1 to the extent a claim arises from any use by Indemnified Parties of Participant Materials, Participant Solutions, or Participant trademarks in a manner not contemplated by this Agreement or the Documentation, or use of the Participant Materials or Participant Solutions in combination with products, services or activities not provided by Participant unless (i) Participant Materials or Participant Solutions provided by the Participant perform the point(s) of novelty of the invention in the asserted patent, (ii) none of the limitations in any asserted patent claim are met by a design choice made by Indemnified Parties for which there existed a reasonable, non-infringing substitute, and (iii) any limitations of any asserted patent claim(s) that are attributable to products, services or activities of Indemnified Parties combined with the Participant Materials or Participant Solutions are insubstantial to the point(s) of novelty, for example, the combination of the Participant Materials or Participant Solutions with a generic network or one or more staple hardware elements (i.e., generic display, storage media) when such combined elements are insubstantial to the point(s) of novelty ("Participant Indemnified Combination Claims").

10.6.3 Infringement Remedies. If a claim of infringement or misappropriation for which an Indemnified Party is entitled to be indemnified under Section 10.6.1 arises, then Participant may, at its sole option and expense: (i) obtain for an Indemnified Party the right to continue using the Participant's trademark, Participant Solutions or Participant Materials or (ii) terminate the affected Services license and terminate Participant's rights and obligations under this Agreement with respect to such Services.

10.6.4 Exclusive Remedy. THE FOREGOING IS PARTICIPANT'S SOLE AND EXCLUSIVE OBLIGATIONS, AND THE INDEMNIFIED PARTIES' SOLE AND EXCLUSIVE REMEDIES, WITH

## RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR TRADE SECRET MISAPPROPRIATION.

### 11 TRADEMARKS

11.1 Limited License to Alliance Marks. Subject to the terms and conditions of this Agreement, Alliance grants Participant a non-exclusive, non-transferable right to use and display the Alliance trademarks and service marks provided by Alliance, as may be updated from time to time in Alliance's sole discretion (the "Alliance Marks"), to advertise and promote the Services and otherwise as necessary or appropriate for Participant to exercise its rights or perform its obligations under this Agreement, all subject to Participant's compliance with the Alliance's Trademark Usage Guidelines, as may be modified from time to time. Participant acknowledges and agrees that Alliance owns the Alliance Marks and that any and all goodwill and other proprietary rights that are created by or that result from Participant's use of the Alliance Marks inure solely to the benefit of Alliance. Participant will not at any time contest or aid in contesting the validity or ownership of the Alliance Marks or take any action in derogation of Alliance's rights therein, including, without limitation, applying to register any trademark, trade name or other designation that is confusingly similar to any Alliance Mark.

11.2 Limited License to Participant Marks. Subject to the terms and conditions of this Agreement, Participant grants Alliance a non-exclusive, non-transferable right to use and display the Participant trademarks and service marks provided by Participant, as may be updated from time to time in Participant's sole discretion (the "Participant Marks"), to advertise and promote the Services and otherwise as necessary or appropriate for Alliance to exercise its rights or perform its obligations under this Agreement. Alliance acknowledges and agrees that Participant owns the Participant Marks and that any and all goodwill and other proprietary rights that are created by or that result from Alliance's use of the Participant Marks inure solely to the benefit of Participant. Alliance will not at any time contest or aid in contesting the validity or ownership of the Participant Marks or take any action in derogation of Participant's rights therein, including, without limitation, applying to register any trademark, trade name or other designation that is confusingly similar to any Participant Mark.

### 12 LIMITATION OF LIABILITY

12.1 TOTAL DAMAGES. EXCEPT FOR DAMAGES RELATED TO A BREACH OF PARTICIPANT'S OBLIGATIONS UNDER SECTION 9 (CONFIDENTIALITY) AND PARTICIPANT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.6 (INDEMNIFICATION) PARTICIPANT'S TOTAL CUMULATIVE LIABILITY UNDER, IN CONNECTION WITH OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THREE MILLION (\$3,000,000) DOLLARS, OR ACTUAL DAMAGES, WHICHEVER IS LESS. THE TOTAL CUMULATIVE LIABILITY (INCLUDING ANY LIABILITY TO OTHER MEMBERS PURSUANT TO OTHER MEMBER SERVICES AGREEMENTS) OF THE ALLIANCE UNDER, IN CONNECTION WITH OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO ACTUAL DAMAGES, THREE MILLION (\$3,000,000) DOLLARS, OR THE AMOUNT ACTUALLY COVERED BY ITS INSURANCE POLICY, WHICHEVER IS LESS.

12.2 EXCLUSION OF DAMAGES. EXCEPT FOR EACH PARTY'S LIABILITIES RELATED TO A BREACH OF ITS OBLIGATIONS UNDER SECTIONS 8 (CONFIDENTIALITY) AND PARTICIPANT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.6 (INDEMNIFICATION) AND SUBJECT TO THE LIMITATIONS OF LIABILITY IN SECTION 12.1, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF GOODWILL, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT,

PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

12.3 MATERIAL CONSIDERATION. THE PARTIES ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS ARE A MATERIAL CONDITION FOR THEIR ENTRY INTO THIS AGREEMENT.

12.4 DISCLAIMER OF WARRANTY. EXCEPT AS SET FORTH IN SECTION 4.4 AND 5.3 EACH PARTY PROVIDES ITS CONFIDENTIAL INFORMATION, AND THE ALLIANCE PROVIDES THE SERVICES "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NO PARTY WARRANTS THAT SUCH PARTICIPANT INTERFACE, PARTICIPANT SOLUTION, SERVICE PROVIDER INTERFACE OR THE SERVICES WILL MEET ANY OTHER PARTY'S REQUIREMENTS OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. EACH PARTY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12.5 DATA FORMAT, LOSS OR DAMAGE DISCLAIMERS. ALLIANCE AND PARTICIPANT ACKNOWLEDGE AND AGREE THAT ANY PHI OR DATA, WHETHER IN A RECORD OR OTHERWISE RECEIVED BY ALLIANCE OR SERVICE PROVIDER THROUGH THE SERVICES FROM ANY PARTY OR THIRD PARTY, SHALL BE IN A FORMAT THAT CONFORMS WITH SPECIFICATIONS SET FORTH IN THE ALLIANCE SPECIFICATION OR OTHERWISE AGREED UPON BY THE PARTIES IN WRITING. ACCORDINGLY, ALLIANCE DISCLAIMS FOR ITSELF AND FOR SERVICE PROVIDER ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO INACCURATE DATA OR OMISSIONS OR ERRORS IN THE DATA TRANSMITTED FROM THE PARTIES OR THIRD PARTIES, INCLUDING INFORMATION SUBMITTED BY PATIENTS OR PROVIDERS THROUGH USE OF THE SERVICES. WITHOUT LIMITING THE LIABILITY DISCLAIMERS IN THIS AGREEMENT AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER ALLIANCE NOR ITS SERVICE PROVIDER ARE LIABLE FOR ANY LOSS OF OR DAMAGE TO ANY PHI OR DATA OF ANY PARTY, OR OTHER PARTY, OR INDIVIDUAL, INCLUDING BUT NOT LIMITED TO PARTICIPANT, ITS AUTHORIZED USERS, DOWNSTREAM AUTHORIZED USERS, THIRD PARTIES, OR OTHER USERS, OR THE UNAVAILABILITY OF ANY OF THE SERVICES, DATA OR PHI.

### **13 THIRD PARTY BENEFICIARIES**

13.1 Participant. Participant shall be a third party beneficiary to the Alliance rights in the following sections in its written agreement with Service Provider(s): (Participant Ownership); (Transition Services); (Obligations upon Termination); (Warranties ); (Indemnification), and (Data, Security and Privacy).

13.2 Service Provider. Participant acknowledges Service Provider shall be a third-party beneficiary to the Alliance's rights under the following sections of this Agreement: 2 (Licenses Related to the Services); 3.4 (Regulatory); 4 (Participant Obligations); 7 (Pricing and Payments); 9 (Confidentiality); 10.3 (Service Provider Ownership); 10.4 (Feedback and General knowledge); 10.5 (no implied rights) and 10.6.1 (Duty to Defend and Indemnification by Participant).

13.3 Alliance. Participant acknowledges and agrees that Alliance is a third party beneficiary to Participant's rights under its Authorized User Agreements with regards to any warranties, indemnification, and limitations of liability.

13.4 Except as specifically set forth herein, nothing in this Agreement will confer any right, remedy, or obligation upon anyone other than the Parties.

## 14 DISPUTE RESOLUTION

The Parties shall attempt in good faith to resolve any dispute. Subject to Section 9.3 (injunctive Relief), if the Parties are unable to resolve a dispute through good faith negotiation, the Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement will be determined exclusively by confidential, final and binding arbitration, in accordance with the then existing Arbitration Rules and Procedures of JAMS located within the state of Delaware. Disputes, claims and controversies subject to final and binding arbitration under this Agreement include, without limitation, all those that otherwise could be tried in court to a judge or jury in the absence of this agreement. **BY AGREEING TO SUBMIT ALL SUCH DISPUTES, CLAIMS AND CONTROVERSIES TO BINDING ARBITRATION, THE PARTIES EXPRESSLY WAIVE ANY RIGHTS TO HAVE SUCH MATTERS HEARD OR TRIED IN COURT BEFORE A JUDGE OR JURY OR IN ANOTHER TRIBUNAL.** Any award will be final, binding and conclusive upon the Parties, subject only to judicial review provided by statute, and a judgment rendered on the arbitration award can be entered in any state or federal court having jurisdiction thereof. Unless otherwise specifically provided for in this Agreement, the Parties shall bear their own legal fees and costs for all claims.

## 15 GENERAL TERMS

15.1 Certification. At Alliance's written request, Participant will furnish Alliance with a certification signed by an officer of Participant verifying that Participant is in compliance with the terms and conditions of this Agreement including with regards to any payment terms or obligations. At Alliance's request, Participant will furnish Alliance with any detail or documentation supporting such certification, as reasonably requested by Alliance.

15.2 Export Control. This Agreement is subject to governmental laws, orders and other restrictions regarding the export, import, re-export or use ("Control Laws") of the Services and Documentation, including technical data and related information ("Regulated Materials"). Alliance and Participant shall comply, and Participant shall cause its Authorized Users to comply, with all Control Laws relating to the Regulated Materials in effect in, or which may be imposed from time to time by, the United States or any country into which any Regulated Materials are shipped, transferred, or released. Alliance and Participant may permit use of the Services by any outsourcing or facility management service provider only with Alliance's prior written approval.

15.3 Insurance. Participant agrees, at its own expense, to maintain policies as follows: (a) commercial general liability insurance with a minimum limit of \$3,000,000 per occurrence and \$3,000,000 annual aggregate; (b) professional errors and omissions liability insurance with \$3,000,000 per claim and \$3,000,000 annual aggregate; (c) statutory workers compensation and employers liability coverage with \$1,000,000 limit each accident or disease, and; (d) cyber and HIPAA cyber insurance liability insurance with \$3,000,000 per claim and \$3,000,000 annual aggregate.

15.4 Books and Records. If required by Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Section 1395x(v)(1)(1), for a period of four years after the Services are furnished, each Party agrees to make available, upon the written request of the Secretary of Health and Human Services, the Comptroller General, or their representatives, this Agreement and such books, documents, and records as may be necessary to verify the nature and extent of the Services with a value or cost of \$10,000 or more over a twelve month period.

15.5 Governing Law and Venue. This Agreement is governed by and will be construed in accordance with the laws of the State of Delaware, exclusive of its rules governing choice of law and conflict of laws and any version of the Uniform Commercial Code. Any legal action or proceeding arising under this Agreement will be brought exclusively within the state of Delaware, and the Parties hereby consent to personal jurisdiction and venue therein.

15.6 Competition Law Compliance. The Parties agree to conduct their activities in compliance with the spirit and letter of any applicable state and federal competition laws and their existing compliance policies.

15.7 Assignment. Except as it relates to the transfer of its Membership and assignment of its Membership Agreement as set forth in the Membership Agreement or the Bylaws, and except upon written approval of the Alliance, Participant may not transfer, assign, sublicense or otherwise delegate any of its rights or obligations under this Agreement, by operation of law or otherwise.

15.8 Severability. If any part of a provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Agreement will not be affected.

15.9 Notices. All notices relating to the Parties' legal rights and remedies under this Agreement will be provided in writing and will reference this Agreement. Such notices will be deemed given when sent by national commercial overnight carrier, at the time of receipt confirmed by the recipient from such carrier on delivery, or via e-mail upon actual delivery. All notices to a Party will be sent to its address set forth on the signature page of this Agreement, or to such other address as may be designated by that Party by notice to the sending Party.

15.10 Waiver. Failure to exercise or enforce any right under this Agreement will not act as a waiver of such right.

15.11 Force Majeure. Except for the obligation to pay money, a Party will not be liable to the other for any failure or delay caused by a Force Majeure Event, whether or not such matters were foreseeable, and such failure or delay will not constitute a material breach of this Agreement.

15.12 Amendment. This Agreement may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of the Parties.

15.13 Relationship of Parties. Each Party is an independent contractor of the other Party. This Agreement will not be construed as constituting a relationship of employment, agency, partnership, joint venture or any other form of legal association. Neither Party has any power to bind the other Party or to assume or to create any obligation or responsibility on behalf of the other Party or in the other Party's name.

15.14 Publicity. Neither Party will make any public announcement or press release regarding this Agreement, or any activities performed hereunder without the prior written consent of the other Party.

15.15 Construction of Agreement. This Agreement will not be presumptively construed for or against any Party. Section titles are for convenience only. As used in this Agreement the word "include" means "includes without limitation." The Parties may execute this Agreement in one or more counterparts, the combination of which shall be deemed an original and one and the same instrument.

15.16 Entire Agreement. This Agreement, including the Schedules, Exhibits, and documents incorporated by reference, constitute the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter, including without limitation any letter of

intent executed between the Parties. Terms and conditions on or attached to purchase orders will be of no force or effect.

This Agreement is executed by an authorized representative of each Party.

[Signature blocks on next page]

**COMMONWELL HEALTH ALLIANCE INC. MEMBER/PARTICIPANT:**

\_\_\_\_\_

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

Name: Paul L Wilder

Title: Executive Director

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

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

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

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

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

Alliance Address:

75 Arlington Street, Suite 500,  
Boston, MA 02116

Attn: Executive Director

CC: Legal Counsel

Jim Markwith  
Markwith Law PS  
1090 NE 4th ST  
STE 2300  
Bellevue, WA 98004-8335

with e-mail to:  
jim@markwithlaw.com

Participant Name and Contact Information

Full Participant Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

**EXHIBIT A**  
**CommonWell Health Alliance**  
**Member Services Agreement**  
**Definitions**

“**Affiliated Networks**” means networks that operate with or connect to the Alliance Services and/or network, including those currently existing and those that may come to exist in the future.

“**Agreement**” shall have the meaning set forth in the introductory paragraph of the first page of this agreement.

“**Alliance Policies**” means all policies approved by the Alliance relating to the Alliance or the Services, as updated from time to time.

“**API**” means application programming interface.

“**Applicable Laws**” means all laws (including common law), statutes, rules, regulations, ordinances, formal written guidance, codes, permits and other authorizations and approvals having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision, including without limitation agreements and operating procedures required to operate with any government agency or government sponsored healthcare exchange.

“**Authorized User(s)**” means a party that accesses or uses the Services in accordance with an authorized Use Case that has a written agreement directly with Participant, which may include but which shall not be limited to Individuals, Connectors, and Providers.

“**Authorized User Agreement**” means a legally binding agreement between a Participant and one or more Authorized Users that may receive or have access to or make the Services available to third parties. In the event of any conflict or inconsistency between or among Applicable Law, the Authorized User Agreement, and any other terms and conditions, the following shall be the order of precedence to the extent of such conflict or inconsistency: (i) Applicable Law, (ii)

this Agreement; (iii) Authorized User Agreement, and (iii) any other terms and conditions agreed to by the parties to the extent such terms and conditions are less restrictive than the preceding.

“**Background Technology**” means materials and technologies and all Intellectual Property thereto and therein, which is (i) developed, owned by, or licensed to either party, before or after the Effective Date, and (ii) which is created or obtained independently of the Agreement. The Parties understand and agree that Alliance Background Technology includes, but is not limited to, the Alliance Specification and Alliance Documentation.

“**Brokered Query Transaction**” means a single document query by an Authorized Participant or a Customer.

“**Bylaws**” means the then current Alliance Bylaws approved by the Alliance Board of Directors.

“**Common Agreement**” means the Common Agreement for Nationwide Health Information Interoperability that has been entered into by and between CommonWell and the RCE, including as may be amended, along with the QHIN Technical Framework (QTF), all Standard Operating Procedures (SOPs), and all other attachments, exhibits, and artifacts incorporated therein by reference.

“**Confidential Information**” means non-public information, including technical, marketing, financial, personnel, planning, and other information that is marked confidential or which the receiving Party should reasonably know to be confidential. Without limitation, Confidential Information may include Data, Participant Solution, Participant Materials, Service Provider Materials, Service Provider Interfaces, object code, and source code. Confidential Information will not include: (a) information lawfully obtained or created by the receiving Party

independently of the disclosing Party's Confidential Information without breach of any obligation of confidence, (b) information that enters the public domain without breach of any obligation of confidence, (c) Protected Health Information or PHI, the protection of which will be governed by the CommonWell Health Alliance Data and Security Policy located at [www.commonwellalliance.org/data-and-security](http://www.commonwellalliance.org/data-and-security), (d) information disclosed for unrestricted release with the written approval of the disclosing Party, or (e) information the receiving Party is obligated to disclose by order or regulation of any governmental entity; provided, however, the receiving Party has given timely notification, to the extent it is reasonably permissible under the circumstances, to the disclosing Party prior to the date of disclosure and the receiving Party uses commercially reasonable efforts to obtain confidential treatment of such information.

**"Data"** means the information and files that a Participant may receive from or deliver to Alliance or a Service Provider through the Services, except PHI.

**"Documentation"** means user documentation developed by Alliance or Service Provider, namely, guidelines and information that describes processes and procedures related to use of the Services, including without limitation protocols around user authorizations and access and other measures that facilitate enhanced protections for the network accessing and using the Services, and developer guides or operating manuals containing the functional specifications for the Services and that Alliance or Service Provider provides to Participants, as may be reasonably modified from time to time by Alliance or Service Provider.

**"Downstream Authorized User"** means a party with a written agreement directly with an Authorized User, and each subsequent downstream Authorized User.

**"Electronic Health Information" or "EHI"** means Electronic Protected Health Information,

and any other information that identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual and is transmitted by or maintained in "electronic media," as defined at 45 CFR § 160.103, that relates to the past, present, or future health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

**"End User"** means the last person or party in the chain of Authorized Users in an authorized Use Case, which may be a Provider, Individual, or other final consumer of the Services in accordance with an approved Use Case.

**"End User License Agreement"** means the End User License Agreement, as updated from time to time, available at [www.commonwellalliance.org/commonwell-eula](http://www.commonwellalliance.org/commonwell-eula) and which may be updated from time to time.

**"Enrollment Transaction"** means a single transaction to enroll a patient by a Participant or Authorized User.

**"Existing Service Provider Offerings"** means Service Provider's products and services, including any of Service Provider's Background Technology related thereto, that exist prior to the Effective Date of this Agreement, and that are developed by Service Provider independent of the Alliance Specification and independent of Alliance Background Technology before or after the Effective Date.

**"Force Majeure Event"** means any cause beyond the reasonable control of a Party that could not, by reasonable diligence, be avoided, including acts of God, acts of war, terrorism, riots, embargoes, pandemics, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents, or strikes.

**"Implementation Services"** means the services provided to allow access to and to optimize the Services and/or Participant Interface for use in the Participant's clinical environment.



**“Independent Participant IP”** shall mean all embodiments of Intellectual Property Rights (and the Intellectual Property Rights therein) owned, created or reduced to practice by such Participant prior to the execution of this Agreement, or independently of the activities set forth in this Agreement.

**“Individual”** means an individual person that uses the Services on an individual basis. Individuals may have a direct relationship with the Alliance, Participant, or Authorized Users, but does not include Patients. Individuals for example may be a user of a PHR.

**“Individual Access Services”** means approved Use Cases relating to the use of the Services by an Individual.

**“Initiator Member”** means a Member that queries for data under the Treatment Use Case but does not have clinical patient data to share back.

**“Intellectual Property Rights”** means all forms of legal rights and protections in any country of the world regarding intellectual property rights, including all right, title and interest arising under common and statutory law to all: (i) letters patents, provisional patents, design patents, PCT filings, algorithms, other industrial property rights and other rights to inventions or designs; (ii) trade secret and equivalent rights in confidential or proprietary information and know-how; (iii) copyrights, mask works, moral rights or other literary property or author’s rights; (iv) rights regarding trade names, logos, domain names, URLs, trademarks, service marks and other proprietary indicia or addresses and all goodwill associated therewith; (v) any similar, corresponding or equivalent rights relating to intangible intellectual property; and (vi) all applications, registrations, issuances, divisions, continuations, continuations-in-part, renewals, reissuances and extensions of the foregoing.

**“Login Credentials”** means unique user identification and password combination, as well as any other applicable security measures that are

required by Service Provider to allow Participant, a Participant or a User to gain access to the Services.

**“Malicious Code”** means any viruses, worms, unauthorized cookies, trojans, malicious software, “malware” or other program, script, routine, subroutine or data that either (i) disrupts, or is designed to disrupt, the proper operation of the system or device into which it is introduced, the Services (or any part thereof), or any hardware or software of Service Provider, Alliance, a Participant or a Participant, or (ii) upon the occurrence of an event, the passage of time or the taking of or failure to take any action, shall cause or result in a system, device, the Services (or any part thereof) or any hardware, software, or data used by Service Provider, Alliance, a Participant or a Participant to be improperly accessed, destroyed, altered, damaged or otherwise made inoperable or unreadable.

**“Membership Agreement”** means a CommonWell Health Alliance Membership Agreement adopted by the Alliance.

**“Participant”** means the Alliance Member or other Alliance authorized entity or person that has entered into this Agreement or other authorized agreement directly with the Alliance in order to participate in or allow access to the Services.

**“Participant Interface”** means the software integrated with the applicable Participant Solution to allow the exchange of data unidirectionally or bi-directionally with the Services in accordance with the Alliance Specification and the interface specifications for any Data or PHI originating from and unique to Participant systems or the Participant’s system, as well as the software integrated with the applicable Participant Solution to exchange Data and PHI with other Companies.

**“Participant Materials”** means (a) Independent Participant IP, (b) Participant and Participant business requirements, work-flows, and operational processes (“Participant Processes”) and the Participant Interfaces and related

materials, concepts and inventions in the Participant Processes and Participant Interfaces created by Participant whether before, on or after the Effective Date, and (c) all modifications and derivative works of the foregoing.

“**Participant Solution**” means the applicable Participant electronic medical record solution or healthcare information technology solution that manages patient related data for such Participant.

“**Party**” or “**Parties**” references party or both Participant and Alliance.

“**Permitted User**” means any individual user (including a physician or any other individual) of the Services authorized to use the Services by a Participant or Authorized User or Downstream Authorized User. Permitted Users may be employed by such parties, but in all cases shall be authorized by such parties to use the Services.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Service Provider or on behalf of Alliance or a Participant.

“**Provider**” means a healthcare provider facility, practice group, physician (including any individual or legal entity), or other health care provider permitted by an Authorized User to access the Services or any enrollment user interface to utilize the Services.

“**PHR**” means a personal health record intended to be used by an Individual.

“**Responder Only Members**” means those Members who provide data to the network, but do not perform queries. Responders shall be considered Contributor Members of the Alliance.

“**Service Provider Interface**” means the application program interfaces that Service Provider makes available to Alliance, Participant

or Authorized Users in connection with accessing or exchanging data with the Services.

“**Service Provider Materials**” means (a) the Independent Service Provider IP, Services and Service Provider Interfaces and related materials, concepts and inventions created by Service Provider whether before, on or after the Effective Date, (b) all other tools, utilities, methodologies, templates and processes developed or owned by Service Provider, and (c) all modifications and derivative works thereof.

“**Services**” means any of the services Alliance or its Service Provider provides to Participants, Authorized Users, and Permitted Users under this Agreement.

“**Service Adopters**” are Members committed to connecting to the network and building CommonWell Services into their software, and who use the Services. Service Adopters also become Contributor Members as defined in the Alliance Bylaws. Contributor Members may actively participate in Alliance committees where they can both influence and vote on the direction of the Alliance and its service offerings.

“**Service Provider**” means the Service Provider retained by the Alliance to provide the Services.

“**Specification**” means each document designated as a “CommonWell Health Alliance Specification” as finally adopted and approved by the Board of Directors pursuant to the Bylaws which is located here: “Alliance Specification” means each document designated a “CommonWell Health Alliance Specification” as finally adopted and approved by the Alliance. The most current version of the Alliance Specification may be obtained at [www.commonwellalliance.org/connect-to-the-network/use-cases-and-specifications](http://www.commonwellalliance.org/connect-to-the-network/use-cases-and-specifications).

“**Third Party Materials**” means data, software, or other materials owned by third parties provided or used by Alliance, Service Provider, Participants, their licensors, or other Adopters, under this Agreement.

**“Transaction”** means the combination of a Brokered Query Transaction and an Enrollment Transaction.

**“Upstream Authorized User”** means an Authorized User (as defined above) that provides services to a Downstream Authorized User pursuant to a Downstream Authorized User Agreement.

**“Use”** means any access, creation, receipt, maintenance, transmission, use or disclosure.

**“Use Case”** means a specific Use Case authorized by the Alliance and as incorporated into the Specification.

**EXHIBIT B**  
**FEE SCHEDULE**  
**FEES/RATES**

**Annual Fees are based on Member level and Adopted Use Cases as follows:**

Tier	Member's Applicable Revenues	Service Adopters All Available Use Cases (Includes Service and Membership)	Service Adopters Payment and Operations Use Cases Only (Includes Service and Membership)	General Member Membership Only
1	< \$5 million	\$16,500	\$20,000	\$5,000
2	\$5-10 million	\$22,000		
3	\$10-25 million	\$33,000		
4	\$25-50 million	\$55,000		
5	\$50-100 million	\$88,000		
6	\$100-250 million	\$165,000	\$30,000	\$25,000
7	\$250-500 million	\$275,000	\$45,000	\$25,000
8	\$500M-1 billion	\$407,000	\$60,000	\$35,000
9	\$1-3 billion	\$605,000	\$90,000	\$50,000
10	> \$3 billion	\$990,000	\$100,000	\$50,000

Annual Member Fees are decided by the CommonWell Board of Directors and may be revised from time to time with advance notice from the Alliance to its Member. At the time of this Agreement, fees for 2025 onwards are projected to be the following:

Tier	Member's Applicable Revenues	2025 Onwards Service Adopters All Available Use Cases (Includes Service and Membership)
1	< \$5 million	\$25,500
2	\$5-10 million	\$34,000
3	\$10-25 million	\$51,000

4	\$25-50 million	\$85,000
5	\$50-100 million	\$136,000
6	\$100-250 million	\$255,000
7	\$250-500 million	\$425,000
8	\$500M-1 billion	\$629,000
9	\$1-3 billion	\$935,000
10	> \$3 billion	\$1,530,000

\* Utilizing the Payment and Operations Use Case requires a minimum Membership Fee of twenty thousand dollars (\$20,000). For Members with revenue below twenty five million dollars (\$25,000,000) that utilize the Treatment and/or or Patient Access Use Cases, but also opt to utilize Payment and Operations Use Case, the minimum Payment and Operations Use Cases Only Membership rate of \$20,000 shall apply.

Service Adopters: Members committed to connecting to the network and building CommonWell Services into their software, and who have adopted the Services. Members who adopt services also become Contributor Members of the Alliance, allowing them to actively participate in committees where they can both influence and vote on the direction of the Alliance and its service offerings.

General Members: Those organizations that are not yet ready to or do not intend to adopt the Services, and as further defined in the Alliance Bylaws. Members are encouraged to participate in Alliance activities and committees, including providing input on committee discussions and proposals.

Responder Only Members: These Members provide data to the network, but do not perform queries. Responders shall be considered Contributor Members of the Alliance.

All Use Cases includes document based exchange for Treatment, Request (patient access), Payment and Operations.

Coverage and Legal Use Cases, when and if approved and generally available, shall be included in the All Use Case and Payment and Operations categories above without additional Membership fees.

Future Use Cases may require different and/or additional fees, terms and conditions.

**Use Cases and Related Fees**

For additional details about a particular Use Case please see applicable terms in the Alliance Specification.

Treatment: \$0 in additional transaction fees. Request under this Use Case are unlimited as long as the Member's product is also responding to data queries. Connection to and from Carequality and TECCA is also included with membership under this use case. Initiator only products using the Treatment use case should request Member pricing and will be based on the particular situation.

Request: \$0 in additional transaction fees. Request is a query by the individual patient facilitated by a personal health record or equivalent connected product. Unlimited queries are included with Membership using the All Available Use Cases column in the table above.

Payment: Members under the Payment Use Case are allowed to query clinical records on behalf of Payors (health plans) that will be used for healthcare Payment activities (as the term is defined in 45 CFR § 164.501). Fees associated with record retrieval under a Payment Use Case are subject to terms published by the applicable service provider.

Operations: Members under the Operations Use Case are allowed to query clinical records on behalf of Payors (health plans) that will be used for Health care operations (as the term is defined in 45 CFR § 164.501). Fees associated with record retrieval under a Payment Use Case are subject to terms published by the applicable service provider.

### **Applicable Revenue**

Applicable revenue is the sum of all revenue for the Member's health information technology business units.

For CommonWell Connectors, applicable HIT Revenue shall include all revenue of the Connector added to the sum of all HIT Revenues for the Member's clients.

For Members utilizing Payment and Operations services only, revenue shall also include revenue generated as an aggregator for record requestors.

### **Additional:**

Initiator Member: Members that query for data under the Treatment Use Case, but do not have clinical patient data to share back to the network.

Membership rates for Initiator only Members under the Treatment Use Case will vary based on HIT product form and function.

### **Implementation Services:**

Initial Use Case(s): \$10,000

Reduced to \$5,000 with a 3 year service commitment

Basic Implementation: Service Provider will provide Implementation Services including certification, onboarding, and setup support to Authorized Members at a rate of \$5,000 in one-time fees ("Implementation Fee") for the Member's first Use Case. The Implementation Fee shall be paid in advance of implementation services commencing.

Additional Implementation: Members with multiple software or systems which require separate and distinct certification, and Members whose software or system is undergoing a substantial upgrade or other modification requiring a new separate and distinct certification will be provided Implementation Services at a rate up to \$2,500 in one-time fees.

Additional Use Cases in the Future: Additional Use Cases requiring a distinct certification will be provided Implementation Services at a rate of \$2,500 as a one-time fee.

## EXHIBIT C

### SERVICE PROVIDER - SERVICE LEVEL AGREEMENT

#### 1. OVERVIEW

This Service Level Agreement (“*SLA*”) sets forth service level definitions, measurements thereof and related Service Provider service standards that will be in effect during the Term of the Agreement.

#### 2. SERVICE AVAILABILITY

##### 2.1 Definition.

“*Service Availability*” or “*Available*” is defined as the amount of time that the Solution (a) is available to Alliance for the Solution’s intended purpose in Alliance’s business, and is capable of receiving and accurately processing data, and responding to requisition and result delivery requests as entered by Alliance or Alliance’s customers, as the case may be; and (b) meets the performance benchmarks, including without limitation, the industry standard redundancies and the Specifications relating to the Service Provider’s Solution, as set forth in the Agreement or otherwise defined in writing by the parties, but specifically excludes telecommunications failures in the connection from Alliance to the Service Provider hosting site, internet related issues (including but not limited to periods of high latency, DNS issues, denial of service attacks, ISP failures and similar types of internet issues) and problems in the data format caused by changes made by Alliance not agreed to in advance by Service Provider (collectively, the “*Exclusions*”).

##### 2.2 Minimum Service Level Requirement for Service Availability.

The minimum Service Availability for the Solutions will be 99.9% measured on a running average calculated over each calendar quarter. Service Provider shall immediately report any Service Provider Solution downtime (or unavailability) to Alliance by telephone, to be followed by written communication.

#### 3. SCHEDULED DOWN TIME

##### 3.1 Definition.

There will be a scheduled down time period for Service Provider’s performance of system maintenance, backup and upgrade functions for the Solutions (the “*Scheduled Down Time Period*”). The Scheduled Down Time Period shall mean between 2:00 AM EST and 5:00 AM EST (adjusted seasonably for Daylight Savings Time) each Sunday.



### **3.2 Measurement.**

The measurement for scheduled down time for the Solutions is the time elapsed from the time that the Solutions are not Available to fully perform operations to when the Solutions become Available to fully perform operations. Service Provider shall maintain daily system logs setting forth scheduled system down time and tracking outages.

### **3.3 Required Maintenance Work.**

In the event that Service Provider in its reasonable discretion determines that maintenance work is required to be performed outside of the Scheduled Down Time Period, Service Provider shall provide Alliance electronic mail or other notice of the required maintenance work at least seventy-two (72) hours in advance. This work will be performed by Service Provider at a mutually agreed upon time. Upon the parties' mutual agreement, any maintenance work performed pursuant to such notice shall be considered part of Scheduled Down Time Period

## **4. PROBLEM RESOLUTION PROCEDURES**

Service Provider's technical support team shall prioritize and respond to problems and requests according to the severity levels ("*Severity Level(s)*") set forth below.

### **4.1 Severity Level 1 Problems.**

A "*Severity Level 1 Problem*" is defined as an event (but specifically excluding any Exclusions) that halts or has a significant impact on use of Service Provider's System or the Solutions, by Alliance or Alliance's customers including without limitation, the following:

- Any event that significantly disrupts or threatens to disrupt Service Availability to Alliance or Alliance's customers.
- Any online application outage that significantly impacts the Service Availability.
- Consistent degradation of performance (response time or function) of Service Provider's System that significantly impairs service to Alliance or any repeating, unresolved incidents that have significant impact on the Service Availability, operations of Alliance or Alliance's use of the Software.

### **4.2 Severity Level 2 Problems.**

A "*Severity Level 2 Problem*" is defined as a situation where the Service Provider's System has lost some level of functionality but is still accessible by Alliance and Alliance's customers and the lost functionality

does not significantly impact Alliance's use of the Service Provider's System or the Solutions (including its customers), but a workaround does not exist.

#### **4.3 Severity Level 3 Problems.**

A “*Severity Level 3 Problem*” is defined as a situation where the Service Provider's System has lost some level of functionality but is still accessible by Alliance and Alliance's customers, and the lost functionality does not significantly impact Alliance's use of the Service Provider's System or the Solutions (including Alliance's customers), and a workaround exists.

#### **4.4 Severity Level 4 Problems.**

A “*Severity Level 4 Problem*” is defined as a situation where the Service Provider System has complete functionality and Solutions are still accessible by Alliance and Alliance's customers, but a bug exists.

#### **4.5 Response Time Calculation.**

“*Response Time*” is the total amount of time it takes Service Provider to respond to a request, calculated from the earlier of (a) the time a request arrives at Service Provider via telephone call or email regarding the problem or (b) the time Service Provider otherwise discovers the problem, until: 1) the appropriate technician or administrator begins to address the request, and 2) contact is made to the requesting party with a status update if the problem was not addressed on the initial call.

#### **4.6 Problem Resolution Response Effort.**

Severity Level 1 problems take precedence and are handled first. Service Provider will provide an online tracking system access to Alliance to monitor all problem resolutions and enable Alliance to monitor time elapsed for each and every service issue.

Severity Level 1 Problems: Service Provider will assign sufficient resources to resolve the problems as quickly as possible, with the goal of maintaining the service levels agreed to herein. For Severity Level 1 problems, Service Provider will use continuous effort to resolve the problem until an official fix is installed, tested and the Service Provider's System and Solutions are back to normal operations. Severity Level 1 problems will be continually monitored, and Alliance will be kept informed through frequent telephone and email contact. Service Provider will escalate any Severity Level 1 Problems that remain unresolved after four (4) hours to the next level of Service Provider's organization and will continue to escalate ongoing problems every four (4) hours thereafter.

Severity Level 2 Problems: Service Provider will assign sufficient resources to resolve the problems as quickly as possible, with the goal of maintaining the service levels agreed to herein.

For Severity Level 2 problems, Service Provider will use continuous effort to resolve the problem until an official fix is installed, tested and the Service Provider's System and Solutions are back to normal operations. Severity Level 2 problems will be continually monitored, and Alliance will be kept informed through frequent telephone and email contact. Service Provider will escalate any Severity Level 2 Problems that remain unresolved after forty-eight (48) hours to the next level of Service Provider's organization and will continue to escalate ongoing problems every four (4) hours thereafter.

Severity Level 3 Problems: During the business hours of 8:30 a.m. to 5:30 p.m. eastern, Service Provider will assign sufficient resources to fix the problem as quickly as possible. Alliances should be informed of the ticket progress by sending a first response within the first 24 hour time period from opening the ticket. Service Provider will provide frequent communication to the client by phone or email with ticket updates every eight (8) hours.

Severity Level 4 Problems: During the business hours of 8:30 a.m. to 5:30 p.m. eastern, Service Provider will assign sufficient resources to fix the problem as quickly as possible. Alliances should be informed of the ticket progress by sending a first response within the first 24 hour time period from opening the ticket. Service Provider will provide frequent communication to the client by phone or email with ticket updates every twelve (12) hours.

## 5. EXCUSED PERFORMANCE

Notwithstanding any provision herein or in the Agreement to the contrary, Service Provider shall not be liable for meeting any SLAs to the extent they relate to or arise from or during: (i) a Force Majeure Event; (ii) breaches of the Agreement by Alliance, including any failure by Alliance to fulfill its obligations hereunder or under the Agreement; (iii) scheduled outages mutually agreed between the parties; (iv) ad hoc reporting jobs, special production jobs, testing procedures or other services that are given priority at the written request of Alliance; (v) any Scheduled Downtime Period, (vi) any downtime for critical security updates or (vii) mutually agreed actions taken to correct or resolve a security incident or security vulnerability.

## 6. SERVICE LEVELS

Service Provider will setup the monitoring after the QHIN Production testing is complete (as in Exhibit B) and will require six (6) months' time period before starting the measurement of response time based on the SLA. Additionally, in the event of large Customer integrations, Alliance agrees that Service Provider may need to suspend SLA measurements for three (3) months for each such Customer.

**Service Provider SLA Fees** shall mean all Service Provider Fees paid by Alliance in the measurement period under this Agreement. In the event of multiple failures, Alliance shall only receive the greatest applicable Service Level Credit and not a cumulative Service Level Credit under each Section 6.1, 6.2, 6.3 and 6.4. Applicable Service Level credits shall be paid the following calendar quarter.

**Revenue Pass Through Services SLA Fees** shall mean Revenue Pass Through Services Fees as described in Exhibit E under this Agreement. In the event of multiple failures, Alliance shall only receive the greatest applicable Service Level Credit and not a cumulative Service Level Credit under each Section 6.1, 6.2, 6.3 and 6.4. Applicable Service Level credits shall be paid the following calendar quarter.

## 6.1 Patient Query Response Time.

6.1.1 Service Level Requirement. Service Provider will transmit its response transaction to 98% of Patient Queries within 2 seconds or less.

6.1.2 Measurement. Patient Query Response Time shall mean the period of time between Service Provider's receipt of a valid and complete API Patient Query request and Service Provider's transmission of a response transaction to such Patient Query, excluding time elapsed communicating with member gateways from transmission of a request to either receipt of a response or timeout of the request.

6.1.3 Remedies. If Service Provider fails to meet this Patient Query Response Time service level during a calendar quarter, the following Service Level Credits shall apply:

(i) If Service Provider fails to meet this Patient Query Response Time service level during a single calendar quarter, Service Provider shall perform a root cause analysis and will create a corrective action plan to address such failure. Service Provider shall provide the root cause analysis to the Alliance within thirty (30) days of the close of the applicable calendar quarter;

(ii) If Service Provider fails to meet this Patient Query Response Time service level during two (2) consecutive calendar quarters, Service Provider shall issue the Alliance one of the following two remedies based on the extent of the service level failure:

a. If more than 2% of Patient Queries do not meet the Service Level Requirement in Section 6.1.1 in a calendar quarter, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 1% of the Revenue Pass Through Services SLA Fees and 1% of the Service Provider SLA Fees;

b. If more than 4% of Patient Queries do not meet the Service Level Requirement in Section 6.1.1 in a calendar quarter, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 5% of the Revenue Pass Through Services SLA Fees and 3% of the Service Provider SLA Fees;

c. If at least 5% of Patient Queries do not meet the Service Level Requirement in Section 6.1.1 in a calendar quarter, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 10% of the Revenue Pass Through Services SLA Fees and 5% of the Service Provider SLA Fees;

a. If Service Provider fails to meet this Patient Query Response Time service level over three (3) consecutive quarters, the Alliance may terminate this Agreement upon thirty (30) days' prior written notice, provided that this termination right must be exercised within thirty (30) days of the service level failure.

## 6.2 Document Query Response Time

6.2.1 Service Level Requirement. Service Provider will transmit its response transaction to 98% of Document Queries within 8 seconds or less for a document size no greater than 4MB, as measured in accordance with Section 6.2.2.

6.2.2 Measurement. Document Query Response Time shall mean the period of time between Service Provider's receipt of a valid and complete CommonWell platform request and Service Provider's transmission of a response transaction to such Document Query, excluding time elapsed communicating with member gateways from transmission of a request to either receipt of a response or timeout of the request.

6.2.3 Remedies. If Service Provider fails to meet this Document Query Response Time service level during a calendar quarter, the following Service Level Credits shall apply:

(i) If Service Provider fails to meet this Document Query Response Time service level during a single calendar quarter, Service Provider shall provide the root cause analysis to the Alliance within thirty (30) days of the close of the applicable calendar quarter;

(ii) If Service Provider fails to meet this Document Query Response Time service level during two (2) consecutive calendar quarters, Service Provider shall issue the Alliance one of the following two remedies based on the extent of the service level failure:

a. If more than 2% of Document Queries do not meet the Service Level Requirement in Section 6.2.1 in a calendar quarter, as measured in accordance with Section 6.2.2, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 1% of the Revenue Pass Through Services SLA Fees and 1% of the Service Provider SLA Fees;

b. If at least 4% of Document Queries do not meet the Service Level Requirement in Section 6.2.1 in a calendar quarter, as measured in accordance with Section 6.2.2, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 5% of the Revenue Pass Through Services SLA Fees and 3% of the Service Provider SLA Fees;

c. If at least 5% of Document Queries do not meet the Service Level Requirement in Section 6.2.1 in a calendar quarter, as measured in accordance with Section 6.2.2, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 10% of the Revenue Pass Through Services SLA Fees and 5% of the Service Provider SLA Fees;

(iii) If Service Provider fails to meet this Document Query Response Time service level during over three (3) consecutive quarters, the Alliance may terminate the Service Provider Agreement upon thirty (30) days' prior written notice, provided that this termination right must be exercised within thirty (30) days of the service level failure.

### 6.3 Document Retrieval Response Time.

6.3.1 Service Level Requirement. Service Provider will transmit its response transaction to 90% of Document Retrieval Queries (multi document) within 7.0 seconds or less for a document size no greater than 4MB, as measured in accordance with Section 6.3.2.

6.3.2 Measurement. Document Retrieval Response Time shall mean the period of time between Service Provider's receipt of a valid and complete CommonWell platform request and Service Provider's transmission of a response transaction to such Document Query, excluding time elapsed communicating with member gateways from transmission of a request to either receipt of a response or timeout of the request.

6.3.3 Remedies. If Service Provider fails to meet this Document Retrieval Response Time service level during a calendar quarter, the following Service Level Credits shall apply:

(i) If Service Provider fails to meet this Document Retrieval Response Time service level during a single calendar quarter, Service Provider shall provide the root cause analysis to the Alliance within thirty (30) days of the close of the applicable calendar quarter;

(ii) If Service Provider fails to meet this Document Retrieval Response Time service level during two (2) consecutive calendar quarters, Service Provider shall issue the Alliance one of the following two remedies based on the extent of the service level failure:

a. If more than 2% of Document Retrieval Queries do not meet the Service Level Requirement in Section 6.3.1 in a calendar quarter, as measured in accordance with

Section 6.3.2, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 1% of the Revenue Pass Through Services SLA Fees and 1% of the Service Provider SLA Fees;

- b. If more than 4% of Document Retrieval Queries do not meet the Service Level Requirement in Section 6.3.1 in a calendar quarter, as measured in accordance with Section 2.3.2, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 5% of the Revenue Pass Through Services SLA Fees and 3% of the Service Provider SLA Fees;
- c. If more than 5% of Document Retrieval Queries do not meet the Service Level Requirement in Section 6.3.1 in a calendar quarter, as measured in accordance with Section 2.3.2, then in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 10% of the Revenue Pass Through Services SLA Fees and 5% of the Service Provider SLA Fees;

(iii) If Service Provider fails to meet this Document Retrieval Response Time service level during over three (3) consecutive quarters, the Alliance may terminate the Service Provider Agreement upon thirty (30) days' prior written notice, provided that this termination right must be exercised within thirty (30) days of the service level failure.

#### 6.4 Core Alliance Services Availability.

6.4.1 Service Level Requirement. The Service Provider production environment platform shall be available 99.7% of the time during each complete calendar quarter.

6.4.2 Measurement. Availability shall be measured on a quarterly basis utilizing web-based monitoring solutions emulating the perspective of an integrated Member. The measurement for Service Availability for a given month is calculated by dividing the total number of minutes the Solutions were Available (excluding Scheduled Down Time Periods as defined in Section 3.1 of this SLA) during the Hours of Operation (defined below) for such month by the total number of minutes in the Hours of Operation (excluding Scheduled Down Time Periods) for such month and multiplying the result by 100. The number of minutes in a given month will be calculated based on the number of days in such month. "Hours of Operation" shall mean 24 hours multiplied by the number of days in the particular month.

6.4.3 Remedies. If Service Provider fails to meet this Availability service level during a calendar quarter, the following Service Level Credits shall apply:

- (i) If Availability is between 99.0 – 99.7% during two (2) consecutive calendar quarters, in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 1% of the Revenue Pass Through Services SLA Fees and 1% of the Service Provider SLA Fees;
- (ii) If Availability is between 98.0 – 99.0% during two (2) consecutive calendar quarters, in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 5% of the Revenue Pass Through Services SLA Fees and 3% of the Service Provider SLA Fees;
- (iii) If Availability is less than 98.0% during two (2) consecutive calendar quarters, in addition to the root cause analysis, Service Provider shall provide the Alliance with a Service Level Credit in an amount equal to 10% of the Revenue Pass Through Services SLA Fees and 5% of the Service Provider SLA Fees;

(iv) If Service Provider fails to meet this Availability service level during over three (3) consecutive quarters, the Alliance may terminate the Agreement upon thirty (30) days' prior written notice, provided that this termination right must be exercised within thirty (30) days of the service level failure.

6.4.4 Reportable Service Level. The Service Provider production environment platform is expected to be available 99.9% of the time during each complete calendar quarter.

(i) If Service Provider fails to meet this Availability service level during a single calendar quarter, Service Provider shall provide root cause analysis to the Alliance within thirty (30) days of the close of the applicable calendar quarter.

**EXHIBIT D**  
**IMPLEMENTATION PLAN**

[Subject to the terms and conditions of this Agreement, Alliance agrees to provide support as described in Exhibit D.]



**EXHIBIT E**  
**IMPLEMENTATION PLAN**

**EXHIBIT F**  
**BUSINESS ASSOCIATE AGREEMENT (BAA)**  
**ALLIANCE-PARTICIPANT**

This business associate agreement (this “BAA”) applies to the PHI received, created, maintained or transmitted by Alliance in providing the following business associate services in connection with the CommonWell Health Alliance Services (as such term is defined in the Underlying Agreement) to Participant:

1. Maintenance, use and disclosure of PHI by Alliance on behalf of Participant in providing the Services.
2. Receipt of PHI by Alliance from Participant, receipt of requests for PHI by Alliance from Participant with respect to specific patients, submission on behalf of Participant of those requests to other participating vendors/providers, receipt on behalf of Participant of responses from other participating vendors/providers to Participant requests, and provision to Participant of those responses.

**SECTION 1: DEFINITIONS**

“**Breach**” will have the same meaning given to such term in 45 C.F.R. § 164.402.

“**Covered Entity**” will have the same meaning given to such term in 45 C.F.R. § 160.103.

“**Designated Record Set**” will have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

“**Electronic Protected Health Information**” or “**Electronic PHI**” will have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Alliance creates, receives, maintains or transmits from or on behalf of Participant.

“**Individual**” will have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

“**Parties**” will mean, collectively, Participant and Alliance.

“**Party**” will mean, individually, Participant or Alliance.

“**Privacy Rule**” will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Alliance from or on behalf of Participant or its Authorized Users. All references to PHI include Electronic PHI.

“**Required by Law**” will have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

“**Secretary**” will mean the Secretary of the Department of Health and Human Services or his or her designee.

“**Security Incident**” will have the meaning given to such term in 45 C.F.R. § 164.304.

“**Security Rule**” will mean the Security Standards at 45 C.F.R. Parts 160 and Part 164, Subparts A and C.

“**Unsecured PHI**” will have the same meaning given to such term under 45 C.F.R. § 164.402, and guidance promulgated thereunder.

“**Underlying Agreement**” will mean the Participant Services Agreement between Alliance and Participant.

**Capitalized Terms.** Capitalized terms used in this BAA and not otherwise defined herein will have the meanings set forth in the Privacy Rule, the Security Rule, and the HIPAA Final Rule, and the Underlying Agreement which definitions are incorporated in this BAA by reference.

## **SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Uses and Disclosures of PHI Pursuant to the Underlying Agreement. Except as otherwise limited in this BAA, Alliance may use or disclose PHI solely to perform services for Participant as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the Participant or a Covered Entity. Alliance may de-identify PHI to performance test, trouble-shoot and improve the Services as provided in the Underlying Agreement. Except as set forth in the prior sentence, in no event may Alliance de-identify or aggregate PHI or Electronic PHI or use or disclose any PHI or Electronic PHI for data mining, to provide data aggregation services or to develop new products or services.

2.2 Permitted Uses of PHI by Alliance. Except as otherwise limited in this BAA, Alliance may use PHI for the proper management and administration of Alliance related to the Services, which is defined as risk management, quality control, and support services for the Alliance infrastructure to provide the Services.

2.3 Permitted Disclosures of PHI by Alliance. Except as otherwise limited in this BAA, Alliance may disclose PHI for the proper management and administration of Alliance related to the Services, which is defined as risk management, quality control, and support services for the Alliance infrastructure to provide the Services, provided that the disclosures are Required by Law, or Alliance obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon Alliance pursuant to this BAA), and that the person agrees to notify Alliance of any instances of which it is aware in which the confidentiality of the information has been breached. Alliance may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1). All other uses or disclosures of PHI or Electronic PHI not expressly authorized by this BAA or Required by Law are strictly prohibited.

## **SECTION 3: OBLIGATIONS OF ALLIANCE**

3.1 Appropriate Safeguards. Alliance will use appropriate safeguards and will comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Underlying Agreement and this BAA. Except as expressly provided in the Underlying Agreement, Alliance shall not assume any obligations of a Covered Entity under the HIPAA Final Rule. To the extent that Alliance is to carry out any of Covered Entity's obligations under the HIPAA Final Rule as expressly provided in the Underlying Agreement, Alliance will comply with the requirements of the HIPAA Final Rule that apply to Participant in the performance of such obligation.

3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach. Alliance will report to Participant any use or disclosure of PHI not permitted under this BAA, Breach of Unsecured PHI or any Security Incident, without unreasonable delay, and in any event no more than five (5) days following discovery and will provide a further report within a reasonable period of time after the information becomes available using commercially reasonable efforts to do so within ten (10) days following discovery; provided, however, that Participant acknowledges and agrees that this Section constitutes notice by Alliance to Participant of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to Participant by Alliance will be required only upon request. "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Alliance's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Alliance's notification to Participant of a Breach will include: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Alliance to have been, accessed, acquired or disclosed during the Breach; (ii) any particulars regarding the Breach that a Covered Entity would need to include in its notification, as such particulars are identified in 45 C.F.R. § 164.404; and (iii) the remedial actions taken by Alliance to mitigate the adverse effects of the Breach.

3.3 Alliance's Agents. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, Alliance will enter into a written agreement with any agent or subcontractor that creates, receives,

maintains or transmits PHI on behalf of Alliance for services provided to Participant, providing that the subcontractor or agent agrees to restrictions and conditions that are substantially similar to those that apply through this BAA to Alliance with respect to such PHI or Electronic PHI.

3.4 Access to PHI. The Parties do not intend for Alliance to maintain any PHI in a Designated Record Set for Participant. To the extent Alliance possesses PHI in a Designated Record Set, Alliance agrees to make such information available to Participant pursuant to 45 C.F.R. § 164.524, within five (5) business days of Alliance's receipt of a written request from Participant; provided, however, that Alliance is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Participant. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Alliance, or inquires about his or her right to access, Alliance will promptly forward such request to Participant.

3.5 Amendment of PHI. The Parties do not intend for Alliance to maintain any PHI in a Designated Record Set for Participant. To the extent Alliance possesses PHI in a Designated Record Set, Alliance agrees to make such information available to Participant for amendment pursuant to 45 C.F.R. § 164.526 within five (5) business days of Alliance's receipt of a written request from Participant. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to Alliance, or inquires about his or her right to amendment, Alliance will promptly forward such request to Participant.

3.6 Documentation of Disclosures. Alliance agrees to document such disclosures of PHI and information related to such disclosures as would be required for Participant to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Alliance will document, at a minimum, the following information ("Disclosure Information"): (a) the date of the disclosure; (b) the name and, if known, the address of the recipient of the PHI; (c) a brief description of the PHI disclosed; (d) the purpose of the disclosure that includes an explanation of the basis for such disclosure; and (e) any additional information required under the HITECH Act and any implementing regulations.

3.7 Accounting of Disclosures. Alliance agrees to provide to Participant, within ten (10) days of Alliance's receipt of a written request from Participant, information collected in accordance with Section 3.6 of this BAA, to permit Participant to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual submits a written request for an accounting of disclosures of PHI pursuant to 45 C.F.R. § 164.528 directly to Alliance, or inquires about his or her right to an accounting, Alliance will promptly forward such request to Participant.

3.8 Governmental Access to Records. Alliance will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Alliance on behalf of Participant available to the Secretary, and ensure a copy of written materials delivered to the Secretary is delivered to Participant, for purposes of the Secretary determining a Covered Entity's or Participant's compliance with the Privacy Rule, the Security Rule, and/or the Final Rule.

3.9 Mitigation. To the extent practicable, Alliance will mitigate and cooperate with Participant's efforts to mitigate a harmful effect that is known to Alliance of a use or disclosure of PHI by Alliance that is not permitted by this BAA.

3.10 Minimum Necessary. Alliance will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.

3.11 HIPAA Final Rule Applicability. Alliance acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Alliance under the Privacy Rule and Security Rule. Alliance agrees to comply with applicable requirements imposed under the HIPAA Final Rule, including any amendments thereto.

3.12 In the event that a Breach is identified and it is determined that, (i) individual and/or public notification is required and (ii) that the requirement for notification is due to the acts or omissions of Alliance, its subcontractors or agents, Alliance shall be responsible for the reasonable and necessary costs incurred by Participant to meet all federal

and state legal and regulatory disclosure and notification requirements including but not limited to costs for investigation, risk analysis, any required individual and/or public notification, fines and mitigation activities.

3.13 Reasonable Assurances. Upon reasonable written request of Participant, Alliance will provide Participant with reasonable assurances that Alliance is in compliance with the obligations of this BAA. Such assurances may include, without limitation, information from third party consultants or security reviews, or, as mutually agreed upon with Alliance, a third party audit of the Alliance information technology used to provide the Services.

#### **SECTION 4: PERMISSIBLE REQUESTS BY PARTICIPANT**

4.1 Permissible Requests by Participant. Participant will not request Alliance to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HITECH Act if done by Participant, except as permitted pursuant to the provisions of Sections 2.2 and 2.3 of this BAA.

#### **SECTION 5: TERM AND TERMINATION**

5.1 Term. The term of this BAA will commence as of the BAA Effective Date, and will terminate when all PHI provided by Participant to Alliance, or created or received by Alliance on behalf of Participant, is destroyed or returned to Participant. If it is infeasible to return or destroy PHI, Alliance will extend the protections to such information, in accordance with Section 5.3.

5.2 Termination for Cause. Upon Participant's knowledge of a material breach by Alliance of this BAA, Participant will provide written notice to Alliance detailing the nature of the breach and providing an opportunity to cure the breach within thirty (30) business days. Upon the expiration of such thirty (30) day cure period, Participant may terminate this BAA and, at its election, the Underlying Agreement, if Alliance does not cure the breach or if cure is not possible. Notwithstanding the above, Alliance agrees that if Participant determines that Alliance has violated a material term of this BAA or HIPAA, Participant has the option to either immediately terminate the Underlying Agreement and this BAA.

5.3 Effect of Termination.

5.3.1 Except as provided in Section 5.3.2, upon termination of the Underlying Agreement or this BAA for any reason, Alliance will return or destroy all PHI received from Participant, or created or received by Alliance on behalf of Participant, and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of Alliance.

5.3.2 If it is infeasible for Alliance to return or destroy the PHI upon termination of the Underlying Agreement or this BAA, Alliance will: (a) extend the protections of this BAA to such PHI and (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Alliance maintains such PHI.

#### **SECTION 6: COOPERATION IN INVESTIGATIONS**

The parties acknowledge that certain breaches or violations of this BAA may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party will cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

#### **SECTION 7: SURVIVAL**

The respective rights and obligations of Alliance under this BAA will survive the termination of this BAA and the Underlying Agreement.

## **SECTION 8: EFFECT OF BAA**

In the event of any inconsistency between the provisions of this BAA and the Underlying Agreement, the provisions of this BAA will control. In the event of inconsistency between the provisions of this BAA and mandatory provisions of the Privacy Rule, the Security Rule or the HIPAA Final Rule, or their interpretation by any court or regulatory agency with authority over Alliance or Participant, such interpretation will control; provided, however, that if any relevant provision of the Privacy Rule, the Security Rule or the HIPAA Final Rule is amended in a manner that changes the obligations of Alliance or Participant that are embodied in terms of this BAA, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this BAA to give effect to such revised obligations. Where provisions of this BAA are different from those mandated in the Privacy Rule, the Security Rule, or the HIPAA Final Rule, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this BAA will control.

## **SECTION 9: GENERAL**

This BAA is governed by, and will be construed in accordance with, the laws of the State that govern the Underlying Agreement. Any action relating to this BAA must be commenced within two years after the date upon which the cause of action accrued. This BAA may only be assigned in connection with an assignment of the Underlying Agreement. If any part of a provision of this BAA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this BAA will not be affected. All notices relating to the Parties' legal rights and remedies under this BAA will be provided in writing to a Party, will be sent to its address set forth in the Underlying Agreement, or to such other address as may be designated by that Party by notice to the sending Party, and will reference this BAA. This BAA may be modified, or any rights under it waived, only by a written agreement executed by the authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for the Parties to comply with the requirements of applicable law. Nothing in this BAA will confer any right, remedy, or obligation upon anyone other than Participant and Alliance. This BAA is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter. Any ambiguity in this BAA shall be resolved in favor of the meaning that permits the Parties to comply with applicable law and any current regulations promulgated thereunder. Any failure of a Party to exercise or enforce any of its rights under this BAA will not act as a waiver of such rights.