

**DOCUMENT 24:
HEALTH INFORMATION EXCHANGE DATA USER AGREEMENT**

Health Information Exchange Data User Agreement

By clicking the "I AGREE" button below, you agree to the following terms and conditions (the "Agreement") between you (the "Data User") and the _____ ("Network"). If you disagree with any of the terms and conditions below, Network does not grant you permission to use Exchange and you should click the "I DISAGREE" button to exit.

Witnesseth:

WHEREAS, Network has established a secure, electronic patient data exchange system to allow authorized users to electronically access patient information from participating _____ health care providers ("Exchange"); and

WHEREAS, Network has entered into an agreement with _____ ("Access Provider") under which Access Provider has agreed to provide Network's designated "registered users" with access to the Exchange in order to view patient information generated by participating _____ health care providers ("Data Providers"); and

WHEREAS, Network has entered into an agreement with _____ ("Host") to host the Exchange; and

WHEREAS, Data User, which may be a hospital, physician, physician practice, other health care facility or other health care provider, desires to participate in the Exchange in order to access patient information for the continuing care and treatment of its patients; and

WHEREAS, Network desires Data User to have the same privileges to the Exchange as a "Registered User" has pursuant to the End User Agreement between Access Provider and Network;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth below, the parties agree as follows:

1. Definitions

"Documentation" means the user documentation, manuals, and user guides, whether in paper, electronic, or other form, furnished to Data User by Network for use with the Exchange.

"Data" means any data or information accessible via the Exchange by or on behalf of Data User or its registered users, including, without limitation, personally identifying information and protected health information.

2. Data User License and Restrictions. Subject to the terms and conditions of this Agreement and during the term of this Agreement, the Data User is hereby granted a limited license to remotely access and use the Exchange and Documentation for the sole purpose of accessing and viewing Data in the Exchange as authorized by Network. Any access to or use of the Exchange not expressly permitted in this Agreement is prohibited. Except as expressly permitted in this Agreement, Data User shall not, and shall not allow or authorize any third party to: (i) allow use of or access to the Exchange by any third-party; (ii) alter, enhance or otherwise modify, or create derivative works of the Exchange, or reverse engineer, disassemble, or decompile the Exchange or any of its components; or (iii) sublicense, transfer, or assign its rights to access and use the Exchange, in whole or in part, to a third party. Data User in no event shall access, transfer, use, or disclose Data in any manner or for any purpose that is prohibited by any applicable state or federal law, rule, or regulation. Except as expressly set forth in this Agreement, Data

User will not obtain any rights in the Exchange, Documentation, any of the technology used to create the Exchange, including electronic formats and tools that Network or Access Provider uses in converting the Data into the Exchange, or in all related software, hardware, documentation, and methodologies used by Network, Access Provider, or Host to develop, maintain, and operate the Exchange and deliver services to Data User.

3. Data User Responsibilities.

3.1. Data User shall be responsible for ensuring the security and confidentiality of the password protected account within the Exchange to which Data User is granted access in order to access and use the Exchange (“Data User Account”), including, without limitation, all user IDs and passwords assigned to that account. Data User shall not disclose its Data User Account to any third party, and Data User hereby is expressly prohibited from sharing its Data User Account with any third party.

3.2. Data User acknowledges and agrees that the Exchange: (a) is accessed over the Internet; (b) relies, in part, on the existence and proper operation of equipment and software that is outside of the control of Network, Access Provider, and/or Host; and (c) relies on access to information from, and the provision of information controlled by, third-parties and, as a result, access to the Data by Data User may be prevented by events or actions outside of Network’s, Access Provider’s, and/or Host’s control. Network, Access Provider, and Host have made and hereby make no guarantee or warranty to Data User as to the availability or accessibility of the Exchange or Data.

4. Data. Data User acknowledges that the information provided through the Exchange is drawn from numerous sources, and Data User agrees to verify, to the best of its ability, that the Data obtained from Exchange which Data User relies upon in making treatment decisions about each patient in fact corresponds to that patient. Data User agrees and understands that the Data accessed through Exchange may not include a patient’s entire record of treatment in the region. Data User shall establish and implement appropriate policies and procedures for purposes of preventing unauthorized access to and disclosure of Data. Data User shall protect the confidentiality of all Data in accordance with applicable laws and the terms and conditions of this Agreement.

5. HIPAA.

5.1. Data User represents and warrants that: (i) it shall access and use the Exchange solely in its capacity as a “covered entity,” or as an employee of a covered entity as that term is defined in 45 C.F.R. § 160.103; and (ii) each such access and use by Data User shall be made solely for purposes of treatment, payment, and those health care operations specified in 45 C.F.R. § 164.506(c), or pursuant to a valid patient authorization or court order when required under 45 C.F.R. § 164.508, 45 C.F.R. § 2.1, *et seq.*, and/or state law, or as otherwise permitted by federal or state law.

5.2. Data User shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the security and integrity of Data on Data User’s computer network, and the confidentiality of all Data displayed, transmitted, or accessed at or from Data User’s facility using the Exchange. Data User shall report to the relevant Data Provider any use or disclosure of Data created at that Data Provider of which Data User becomes aware that is not permitted or required by this Agreement or by law.

6. Term and Termination. This Agreement shall commence on the Effective Date and shall continue in effect until terminated as provided herein. Either party may terminate this Agreement immediately by providing the other party with written notice of such termination. Upon termination, all licenses granted to Data User relating to access to or use of the Exchange or the accompanying software tools and documentation will cease.

7. Disclaimers. Network provides the Exchange “as is” and without any warranty of any kind to Data User, whether express, implied, or statutory. Network does not warrant that the performance or delivery of the Exchange will be uninterrupted or error-free. Network hereby disclaims all implied and express warranties, conditions, and other terms, whether statutory, arising from course of dealing, or otherwise, including without limitation terms as to quality, merchantability, fitness for a particular purpose, and non-infringement. Network shall not be liable to Data User for any consequential, incidental, indirect, punitive, or special damages suffered by Data User or any other third party, however caused and regardless of legal theory or foreseeability, including, without limitation, lost profits, business interruptions, or other economic loss, directly or indirectly arising out of this Agreement. Network shall not be liable for any damages arising out of or related to the acts or omissions of Data User in accessing or using the Exchange or in disclosing any Data contained therein.

8. Indemnification. Data User will indemnify and hold Network and its employees, agents, subcontractors, and licensors harmless from and against any and all liability (including reasonable attorney’s fees), injury, or damages that arise from or are related to: (a) Data User’s negligent use of the Exchange; or (b) Data User’s breach of this Agreement, including, without limitation, Data User’s breach of any obligation, representation, or warranty set forth herein. Network will indemnify and hold Data User harmless from and against any and all liability (including reasonable attorney’s fees), injury, or damages that arise from or are related to any and all claims involving intellectual property issues in regards to the Exchange and Documentation.

9. Miscellaneous. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or representations, written or oral, of the parties with respect to the subject matter of this Agreement. This Agreement may not be modified, altered, or amended except by a written instrument duly executed by both parties. No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. Data User shall not assign this Agreement, or any of the rights or obligations contained herein. This Agreement shall be binding on the parties, their successors and permitted assigns. The parties agree that any breach of a party’s obligations under Sections 2 and 5 will result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, in the event of any breach or threatened breach of such obligations, the nonbreaching party will be entitled to seek equitable relief in addition to its other available legal remedies in a court of competent jurisdiction. If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remaining portions shall remain in full force and effect. All notices required under this Agreement shall be: (a) in writing; and (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in the mail via certified mail, return receipt requested, to the addresses specified in the first paragraph of this Agreement or to such other address as the parties shall designate in writing from time to time.

I AGREE _____

I DISAGREE _____

You may print a copy of this Agreement from your “preferences” section in Exchange.