

**DOCUMENT 47:
DATA USE AND RECIPROCAL SUPPORT AGREEMENT (DURSA)**

EXECUTABLE TEST DATA DURSA AUGUST 26, 2008

Data Use and Reciprocal Support Agreement

This Data Use and Reciprocal Support Agreement is made and entered into this _____ day of _____, 2008, by and between the undersigned (hereinafter referred to individually as “Participant” and collectively as “Participants”) (the “DURSA” or the “Agreement”).

WITNESSETH:

WHEREAS, the Participants are either Health Information Exchanges that have each individually entered into contracts or agreements with the Department of Health and Human Services (“HHS”) for the implementation of the Nationwide Health Information Network (“NHIN”) (the “Prime Contracts”) (“HIE Participants”) or Federal Agencies participating in the NHIN Trial Implementation (“Federal Participants”);

WHEREAS, some Participants are not actual providers of health care services to patients. Rather said Participants serve as an organizational structure to allow for an individual’s health information to be obtained from health care providers, organized into agreed upon formats, and transmitted to other health care providers who are authorized to view it. Said Participants, therefore, generally do not have a direct relationship of any kind (treatment, contractual, business or otherwise) with the individual whose records are available within their respective Systems;

WHEREAS, some Participants are actual providers of health care services to patients. Said Participants generally do have a direct relationship with the individual whose records are available within their respective Systems;

WHEREAS, some Participants are not actual providers of health care services to patients, but do have a direct relationship with the individual whose records are available within their respective Systems;

WHEREAS, SSA is not an actual provider of health care services, but does have a direct relationship with the individuals’ whose records it requests.

WHEREAS, pursuant to the Prime Contracts HIE Participants are required to enter into a Data Use and Reciprocal Support Agreement that will govern the exchange of information between the Participants in connection with the Trial Implementation and the AHIC Use Cases; and the Federal Participants are required as a condition of their participation in the NHIN Trial Implementation to enter into a Data Use and Reciprocal Support Agreement with each other and the HIE Participants for purposes of electronic data exchange;

WHEREAS, the Participants desire to now enter into such an agreement to support each HIE Participant’s performance of its Prime Contract and to support the participation of the Federal Participants in the Trial Implementation;

WHEREAS, the Participants acknowledge that the above-referenced consideration is sufficient to render the DURSA legally binding on all Participants.

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NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Participants hereto mutually agree as follows:

1. **Definitions.** The following terms shall have the meaning ascribed to them below. If a capitalized term is not otherwise defined, it shall have the meaning ascribed to it in the Template Prime Contract.
 - a. **AHIC** shall mean the American Health Information Community, which is a federal advisory body, chartered in 2005 to make recommendations to the Secretary of the U.S. Department of Health and Human Services on how to accelerate the development and adoption of health information technology.
 - b. **AHIC Use Cases** shall mean the AHIC Emergency Responder EHR, EHR – Lab Results, Consumer Empowerment – Registration and Medication History, Biosurveillance, Consumer Access to Clinical Information, Quality, or Medication Management Use Cases as more fully described in the Template Prime Contract (as referenced in Tasks 14-20).
 - c. **Anonymize** shall mean the statistically valid process by which PHI is converted into data for the Trial Implementation by removing at least the eighteen types of identifying information specified in 45 CFR § 164.514(b)(2) of the HIPAA Regulations and replacing it, as needed, with fictitious data for valid implementation, testing and demonstration of the Trial Implementation, as well as meeting the requirement of 45 CFR 164.514(b)(2)(ii).
 - d. **Applicable Law** shall mean: (i) for the HIE Participants, all relevant laws of the state(s) or jurisdiction(s) in which the HIE operates, as well as all relevant federal laws; (ii) for the Federal Participants, all relevant federal laws.
 - e. **Confidential Information** shall mean proprietary or confidential materials or information of a Discloser in any medium or format including but not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, research and development, including but not limited to research protocols and findings, passwords and identifiers, new products, and marketing plans, (ii) proprietary financial and business information of a Discloser, (iii) information or reports provided by a Discloser to a Receiving Party pursuant to this Agreement; and (iv) all other non-public information designated by either party in writing as confidential or proprietary.
 - f. **Cooperative Workgroups** shall mean those workgroups established by ONC pursuant to the Prime Contracts (Tasks 5 and 6) in which the Participants participate. These groups include representatives from each Participant and are focused on developing the deliverables for the Prime Contracts. Consequently, the Workgroups are not intended to, and shall not, serve in an advisory capacity to the Federal government.
 - g. **Discloser** shall mean a Participant that discloses Confidential Information to a Receiving Party.
 - h. **Dispute** shall mean any controversy, dispute, or disagreement arising out of or relating to this Agreement or a breach of this Agreement.

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- i. **Fabricate** shall mean the ONC approved process by which data is created for use in the Trial Implementation, where the data created have no origin in PHI.
- j. **Health Information Exchange or HIE** shall mean a multi-stakeholder entity that enables the movement of health-related data within state, regional, or non-jurisdictional participant groups and is not a Federal Agency. (See Section C.6 Definitions of the Template Prime Contract).
- k. **HIPAA Regulations** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information [45 C.F.R. Parts 160 and 164] promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as in effect on the date of this Agreement and as may be amended, modified, or renumbered.
- l. **HSP or Health Information Service Provider** shall mean a company or other organization that will support one or more Participants by providing them with operational and technical health exchange services. (See Section C.6 Definitions of the Template Prime Contract).
- m. **NHIN Cooperative Testing Strategy Document** shall mean the document attached hereto as Attachment 1, which was developed by the NHIN Cooperative Testing Workgroup and submitted to the NHIN Trial Implementation Cooperative on March 3, 2008 that provides the framework for testing and demonstrations of the Trial Implementation.
- n. **NHIN Interface Specifications** shall mean the specifications developed by the NHIN Cooperative to specify the data content, technical and security requirements necessary to support the NHIN Core Services and AHIC Use Case specific services required by the Prime Contracts. A draft of the NHIN Interface Specifications is attached hereto as Attachment 2.
- o. **ONC** shall mean the Office of the National Coordinator for Health Information Technology in the Office of the Secretary, U.S. Department of Health and Human Services.
- p. **Participant Users** shall mean those persons, including but not limited to health care providers and individuals whose health information is contained within a Participant's System, who have been authorized to access data in a manner defined by the respective Participant in connection with the Trial Implementation.
- q. **Permitted Purposes** shall mean the exchange of Test Data among the Participants for implementation, testing and demonstration of the NHIN Interface Specifications under the Prime Contracts.
- r. **Protected Health Information ("PHI")** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.
- s. **Receiving Party** shall mean a Participant that receives Confidential Information from a Discloser.
- t. **Recipient** shall mean the Requesting Participant that received Test Data for Permitted Purposes, a Participant User who receives Test Data for Permitted Purposes, or other

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persons who use Test Data for Permitted Purposes, including but not limited to, public health officials and emergency medical services.

- u. **Requesting Participant** shall mean the Participant that submits a query for Test Data to another Participant.
 - v. **Responding Participant** shall mean the Participant that receives or responds to a query for Test Data from a Requesting Participant.
 - w. **Security Incident** shall have the meaning set forth at 45 CFR §164.304 of the HIPAA Regulations.
 - x. **System** shall mean software, portal, platform or other electronic medium controlled by a Participant through which the Participant conducts its health information exchange related activities. For purposes of this definition, it shall not matter whether the Participant controls the software, portal, platform or medium through ownership, lease, license or otherwise.
 - y. **Test Data** shall mean that data which is exchanged for a Permitted Purpose, which is not PHI, and which has been Anonymized or Fabricated.
 - z. **Trial Implementation** shall mean the tests and demonstrations among the Participants of the Participants' systems and processes used for interoperable health information exchange (as described in the Template Prime Contract), which conform to the NHIN Interface Specifications and NHIN Cooperative Testing Strategy.
 - aa. **Trial Implementations Issue Resolution Process** shall mean that process established by ONC to resolve Disputes that are not of a nature addressed by the Prime Contracts.
 - bb. **Use** shall mean the sharing, employment, application, utilization, examination, retrieval or analysis of Test Data for Permitted Purposes.
 - cc. **Use Case** shall mean the AHIC Use Cases, as well as the Social Security Administration (SSA) Use Case.
2. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into this Agreement in their entirety and shall be given full force and effect as if set forth in the body of this Agreement. The Template Prime Contract is attached hereto as Attachment 3 and incorporated herein.
3. **Purpose and Scope of the DURSA.** The purpose of this Agreement is to enable the Participants to fulfill their respective obligations under the Prime Contracts and as participants in the Trial Implementation. Pursuant to the Prime Contracts, the HIE Participants must demonstrate the trial operation of Core Services, exchange of a summary patient record pursuant to the AHIC Use Case and the remaining Use Cases that are assigned to the Participants as capable of operation and interchange with the other Participants to this Agreement. This Agreement shall only govern the exchange of Test Data for Permitted Purposes.
4. **Use of Test Data.** ONC has determined that the Use of Test Data is appropriate for the implementation, testing and demonstration of the NHIN Interface Specifications required by the Prime Contracts. As a result, the Participants shall use Test Data for these Permitted Purposes and this Agreement shall only govern the exchange of Test Data.

5. Access to Test Data.

- 5.01 Each Participant shall develop access policies which limit access to Participant Users for Permitted Purposes. The Requesting Participant shall be responsible for documenting that a request for information is for a Permitted Purpose. The Participant shall provide its access policies to any other Participant upon request. The Participants acknowledge that their access policies and business practices will differ among them. For the purposes of this Agreement, the Participants agree that they shall allow a Requesting Participant to follow its internal user access policies and business practices for Participant Users even if they allow greater access than the policies and practices of the Responding Participant would allow. Notwithstanding the preceding sentence, the Participants agree that each Participant shall comply with the Applicable Laws.
- 5.02 **License.** The Responding Participant grants to the Requesting Participant a perpetual, fully-paid, worldwide, non-exclusive, royalty-free right and license to access and use all Test Data, for Permitted Purposes only, provided by the Responding Participant to the Recipient pursuant to this Agreement.
6. **Secure Environment.** Each Participant shall be responsible for maintaining a secure environment that supports the implementation, testing and demonstration of the NHIN Interface Specifications required by the Prime Contracts and implemented in the Trial Implementation.
7. **Equipment and Software.** Each Participant shall be responsible for procuring and, assuring that its Participant Users have or have access to all equipment and software necessary for it to participate in the implementation, testing and demonstration of the NHIN Interface Specifications. Each Participant shall ensure that all computers and electronic devices owned or leased by the Participant and its Participant Users to be used in connection with the implementation, testing and demonstration of the NHIN Interface Specifications are properly configured, including but not limited to the base workstation operating system, web browser and Internet connectivity.
8. **Auditing.** Each Participant represents that, through its agents, employees and independent contractors, it shall have the ability to monitor and audit all access to and use of its System and its components and the content of any data or messages communicated to, from or through its System, or stored on any component of its System, related to this Agreement, for system administration, security, and other legitimate purposes. Each Participant shall perform those auditing activities required by the NHIN Interface Specifications and NHIN Cooperative Testing Strategy Document.
9. **Malicious Software.** In participating in the implementation, testing and demonstration of the NHIN Interface Specifications, each Participant shall ensure that it employs security controls that meet applicable industry standards so that the information and Test Data being transmitted and any method of transmitting such information and Test Data will not introduce any viruses, worms, unauthorized cookies, trojans, malicious software or “malware”, or other program, routine, subroutine, or data designed to disrupt the proper operation of a System or any part thereof or any hardware or software used by a Participant in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause a System or any part thereof or

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any hardware, software or data used by a Participant in connection therewith, to be improperly accessed, destroyed, damaged or otherwise made inoperable.

10. **Performance and Service Specifications.** Each Participant shall comply with (i) the NHIN Interface Specifications developed by the Cooperative Workgroups (as noted in Attachment 2); and (ii) the NHIN Cooperative Testing Strategy developed by the Cooperative Workgroups.
11. **Specific Duties of a Requesting Participant.** A Requesting Participant shall be responsible for using all reasonable efforts to:
 - 11.01 Ensure that any and all requests for Test Data that it submits are for a Permitted Purpose, supported by appropriate legal authority for obtaining the Test Data, and are submitted in accordance with the performance and service specifications required by Section 10;
 - 11.02 Authenticate the Recipient by confirming and verifying that Recipient is an authorized Participant User and that Recipient has declared that he has requested the Test Data for a Permitted Purpose;
 - 11.03 Complete all testing in compliance with the NHIN Cooperative Testing Strategy Document; and
 - 11.04 Provide documentation of the Permitted Purpose and appropriate legal authority for obtaining the Test Data upon request by the Responding Participant.
12. **Specific Duties of a Responding Participant.** A Responding Participant shall be responsible for using all reasonable efforts to:
 - 12.01 Ensure that any and all responses to requests for Test Data that it transmits are transmitted in accordance with the performance and service specifications required by Section 10;
 - 12.02 Authenticate requests for Test Data meaning that the Responding Participant shall confirm and verify that the request was submitted by an appropriate Requesting Participant;
 - 12.03 Authenticate its response to a request by confirming and verifying that it is transmitting the proper Test Data to the proper Requesting Participant;
 - 12.04 Complete all testing in compliance with the NHIN Cooperative Testing Strategy Document; and
 - 12.05 Data transmitted by Federal Participants shall adhere to standards recognized by the Secretary of Health and Human Services, and NIST and FIPS standards, as applicable.
13. **Privacy and Security.**
 - 13.01 **Non-Applicability of HIPAA.** The Test Data and information exchanged pursuant to this Agreement and in support of the Prime Contracts is, by definition, not PHI; therefore, HIPAA is not applicable to this Agreement.
 - 13.02 **Safeguards.** Each Participant agrees to use reasonable and appropriate administrative, physical and technological safeguards to prevent use or disclosure

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of the Test Data other than as provided for by this Agreement. Notwithstanding Section 13.01, for the purposes of this Agreement, each Participant shall fully comply with the HIPAA Security Standards as set forth in 45 CFR Parts 160 and 164 as if the Test Data exchanged were electronic Protected Health Information (ePHI) and as if Participants were either Covered Entities or Business Associates of Covered Entities, as those terms are defined in HIPAA.

- 13.03 **Report of Security Incident.** Each Participant agrees that within two business days of making a preliminary determination that a Security Incident occurred, Participant will notify the Director, Office of Interoperability and Standards at ONC at: nhinhelp@hhs.gov or by calling 202-205-4522 and any point of contact supplied in Appendix 4 for a Participant that could reasonably be impacted by the Security Incident.

14. Representations and Warranties.

Each Participant hereby represents and warrants the following:

- 14.01 **Compliance with this Agreement.** Each Participant shall comply fully with all terms and conditions of this Agreement.
- 14.02 **Express Warranty of Authority to Enter Into Agreement.** Each Participant has full power and authority to enter into and perform this Agreement and has taken whatever measures that are necessary to obtain all required approvals or consents in order for it to execute this Agreement. The representatives signing this Agreement on behalf of the Participants have been properly authorized and empowered to enter into this Agreement.
- 14.03 **Agreements with Participant Users.** Each HIE Participant has valid and enforceable agreements with each of its Participant Users that require the Participant User to, at a minimum, (i) comply all Applicable Laws; and (ii) cooperate with the other Participants to this Agreement in the implementation, testing and demonstration of the NHIN Interface Specifications.
- 14.04 **Agreements with Technology Partners.** Each HIE Participant has valid and enforceable agreements with each of its technology partners, including HSPs, that require the technology partner to, at a minimum, (i) comply with Applicable Law; and (ii) cooperate with the other Participants to this Agreement in the implementation, testing and demonstration of the NHIN Interface Specifications.
- 14.05 **Compliance with Specifications.** Each Participant shall fully comply with the NHIN Interface Specifications, and other ONC approved specifications as more fully discussed in Section 10 of this Agreement.
- 14.06 **Creation of Test Data.** Certain Participants have agreed to Anonymize PHI to create Test Data. Each Participant that has so agreed represents that the Test Data do not contain PHI and further represents that it has created the Test Data in accordance with the ONC approved process for Anonymizing PHI and the NHIN Cooperative Testing Strategy Document.
- 14.07 **Accuracy of Test Data.** When acting as a Responding Participant, each Participant hereby represents that the Test Data it provides is an accurate reproduction of the

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data that is contained in its System, is sent from a System that employs security controls that meet industry standards so that the information and Test Data being transmitted are free from malicious software in accordance with Section 9, and is provided in a timely manner and in accordance with the NHIN Interface Specifications. Other than those representations in Sections 14.06, 14.07, and 14.08, the Responding Participant makes no other representation, express or implied, about the Test Data.

- 14.08 **Express Warranty of Authority to Transmit Test Data.** To the extent each Participant is a Responding Participant and is providing Test Data to a Recipient, each Participant represents and warrants that it has sufficient rights in and to all Test Data that it provides or makes available to Recipient to grant the rights set out in this Agreement.
- 14.09 **Use of Test Data.** Each Participant hereby represents and warrants that it shall Use the Test Data for Permitted Purposes only.
- 14.10 **Compliance with Laws.** Each Participant will, at all times, fully comply with all Applicable Laws relating to this Agreement, the exchange of Test Data for Permitted Purposes and the Use of Test Data.

15. Confidential Information.

- 15.01 Each Receiving Party shall hold all Confidential Information in trust and confidence and agrees that it shall not, during the term or after the termination of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it while in the execution of the terms and conditions of this Agreement unless such use or disclosure is permitted by the terms of this Agreement.
- 15.02 Confidential Information does not include any information which is or becomes known publicly through no fault of a Receiving Party; or is learned by a Receiving Party from a third party entitled to disclose it; or is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party's written records; or must be disclosed under operation of law, provided that a Discloser gives Receiving Party reasonable notice to allow the non-disclosing party its rights to object to such disclosure and then only to the minimum extent necessary to comply with the operation of the law.

16. Disclaimers.

- 16.01 **Reliance on a System.** Each Participant acknowledges and agrees that (i) the information provided through its System is drawn from numerous sources and commingled on its System, and (ii) it can only confirm that the information and Test Data provided is an accurate reproduction of the data that is contained in its System. Each Participant shall be solely responsible for communicating, and shall communicate, the contents of this Section 16.01 to the Participant Users.
- 16.02 **Carrier lines.** All Participants acknowledge that the exchange of Test Data between Participants is to be provided over various facilities and communications lines, and information shall be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices

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(collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and Internet Service Providers, all of which may be beyond the Participants' control. When beyond the Participants' control and provided a Participant uses reasonable security measures, no less stringent than those directives, instructions and specifications issued by Cooperative Workgroups, the Participants assume no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the Participants' risk and is subject to all Applicable Laws.

16.03 **No Warranties.** EXCEPT AS REPRESENTED IN SECTION 14.07, THE TEST DATA OBTAINED BY A REQUESTING PARTICIPANT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE PARTICIPANT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTICIPANT HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE PARTICIPANT DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR OTHER THIRD PARTIES.

16.04 **Performance of the NHIN.** The Participant makes no representation, express or implied, as to the performance of the NHIN as a network. This disclaimer of a representation about network level performance is not intended to diminish or limit in any way the other representations and warranties that the Participant is making in this Agreement. It is intended to recognize that the overall performance of the network is beyond the power of any individual Participant to control.

17. Term and Termination.

17.01 This Agreement is effective _____ and shall terminate on January 31, 2009 or upon the termination of the Prime Contracts, whichever is later. Federal Participants may terminate their participation in this Agreement upon withdrawal from the Trial Implementations. If, however, prior to the termination of the Prime Contracts, the Participants enter into a subsequent agreement governing data use and reciprocal support for the exchange of data that includes PHI, this Agreement shall automatically terminate upon the execution of said subsequent agreement. The

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Participants shall have the right to extend the term of this Agreement by mutual agreement if HHS exercises the right to extend the term of the Prime Contracts.

- 17.02 To the extent a Responding Participant has provided Test Data to a Recipient, such Test Data may be inextricably entangled with the Recipient's System such that returning or destroying same at the termination of this Agreement would be a severe hardship to the Recipient. At the time of termination, therefore, Test Data may remain on Recipient's System in accordance with the Recipient's document and data retention policies and procedures.

18. Cooperation.

- 18.01 Participant understands and acknowledges that numerous activities with respect to the implementation, testing and demonstration of the NHIN Interface Specifications shall likely involve another Participant's employees, agents and third party contractors, vendors or consultants. To the extent not legally prohibited, each Participant shall (a) cooperate fully with each other Participant and any such third parties with respect to such activities as they relate to this Agreement, (b) provide such information to each other Participant and/or such third parties as they may reasonably request for purposes of performing activities related to this Agreement, (c) devote such time as may reasonably be requested by another Participant or such third parties to review information, meet with, respond to and advise the other Participant or such third parties with respect to activities as they relate to this Agreement, (d) provide such reasonable assistance as may be requested by another Participant or such third parties when performing activities as they relate to this Agreement, and (e) subject to a Participant's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation, provide information and assistance to the other Participants in the investigation of Security Incidents and unauthorized or improper uses of the Participant's System or the Systems of the Participants. In seeking another Participant's cooperation, each Participant shall make all reasonable efforts to accommodate the other Participant's schedules and operational concerns. A Participant shall immediately report, in writing, to any other Participant any problems or issues that arise in working with the other Participant's employees, agents or subcontractors which threaten to delay or otherwise adversely impact the work required by this Agreement. This writing shall set forth in detail and with clarity the problems that the Participant has identified.
- 18.02 For SSA, this provision only applies to the two HIEs awarded contracts for the SSA Use Case.

19. Dispute Resolution.

- 19.01 **General.** The Participants acknowledge that it is in their best interest to resolve disputes through an alternative dispute resolution process rather than resolve their differences through civil litigation. Participants have reached this conclusion based upon the fact that the legal and factual issues involved in this Agreement are unique, novel and complex and as of 2008, limited case law exists which addresses the legal issues that could arise from this Agreement. Therefore, to the extent that a Dispute is of a nature addressed by the applicable Prime Contracts (See, for

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instance, PART II, SECTION I CONTRACT CLAUSES, Clause 52.233-1 Disputes), the applicable Template Prime Contract shall govern resolution of the Dispute. Otherwise, Sections 19.02 thru 19.04 of this Agreement shall govern resolution of the Dispute. Such resolution shall not involve the payment of damages.

- 19.02 **Informal Conference.** In the event a Dispute arises between or among any of the Participants concerning their respective duties and obligations under this Agreement, each Participant shall be obligated to meet and confer with the other(s) in good faith, on reasonable notice, and at a mutually agreeable location.
- 19.03 **Dispute Resolution Committee.** If after participating in the informal conference required by Section 19.02 the Participants have not resolved the Dispute, then within five (5) days of the conclusion of the informal conference, the Participants agree to begin the Trial Implementations Issue Resolution Process. If the Dispute is submitted to the Trial Implementations Issue Resolution Process and is resolved through the issuance of a decision, the Participants agree to implement the decision provided, however, that the Participants may pursue other remedies available to them at law.
- 19.04 Pending determination of any Dispute under this Agreement, the Participants agree to fulfill their responsibilities in accordance with this Agreement and shall not delay the progress toward the fulfillment of those responsibilities.
20. **Notices.** All notices to be made under this Agreement shall be given in writing to the appropriate Participant's representative at the address listed in Attachment 4, and shall be deemed given (i) upon receipt, if delivered in person or sent by facsimile transmission if the sending facsimile machine receives confirmation of receipt by the receiving facsimile machine, or (ii) within five business days after deposit in the United States mail, if sent certified mail, return receipt requested.

21. Miscellaneous/General.

- 21.01 **Governing law.** In the event of a dispute between or among the Participants arising out of this Agreement, the applicable federal and state conflicts of law provisions that govern the operations of the Participants involved in the dispute shall determine governing law.
- 21.02 **Amendment.** No waiver, modification, or amendment to the terms of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of all Participants to this Agreement.
- 21.03 **Assignment.** The Participants shall not assign or transfer this Agreement or any part thereof, without prior review and written consent of all other Participants and ONC, and any such assignment without the Participants' and ONC's written consent shall be void and have no binding effect.
- 21.04 **Survival.** The provisions of Sections 13, 14, 15, 16, 17.02 and 19 (Privacy and Security, Representations and Warranties, Confidential Information, Disclaimers, Termination and Data Retention, Dispute Resolution) shall survive the termination of this Agreement for any reason.

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- 21.05 **Waiver.** Participant's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Agreement, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.
- 21.06 **Integration.** This Agreement sets forth the entire and only Agreement between the Participants relative to the subject matter hereof. Any representation, promise, or condition, whether oral or written, not incorporated herein shall not be binding upon any Participant.
- 21.07 **Validity of Provisions.** In the event any Section, or any part or portion of any Section of this Agreement, shall be held invalid, void or otherwise unenforceable, each and every remaining section or part or portion thereof shall remain in full force and effect.
- 21.08 **Priority.** Except with respect to the Prime Contract, in the event of any conflict or inconsistency between a provision in the body of this Agreement and any Attachment hereto, the terms contained in the body of this Agreement shall prevail.
- 21.09 **Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify or aid in the interpretation or construction of meaning of the provisions of this Agreement. All references in this instrument to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision.
- 21.10 **Relationship of the Participants.** The Participants shall be considered independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the Participants. No Participant shall have any authority to bind or make commitments on behalf of another Participant for any purpose, nor shall it hold itself out as having such authority.
- 21.11 **Counterparts.** This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, bears the signatures of each of the Participants hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the Participant whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.
- 21.12 **Third-Party Beneficiaries.** With the exception of (1) the Participants to this Agreement and (2) ONC, there shall exist no right of any Person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

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This Agreement has been entered into and executed by officials duly authorized to bind their respective parties.

Liesa Jenkins, Executive Director, CareSpark, Inc.

Date:

C. Martin Harris, MD, Chief Information Officer, Cleveland Clinic Foundation

Date:

Cheryl Stephens, Executive Director, Community Health Information Collaborative

Date:

Gina Perez, Executive Director, Delaware Health Information Network

Date:

Keith Hepp, Chief Financial Officer, HealthBridge

Date:

Todd Rowland, MD, Director of Medical Informatics, Bloomington Hospital

Date:

Lisa Caplan, MPH, RHIA, Vice President and Business Information Officer - Care Delivery, Kaiser Foundation Hospitals

Date:

Laura Landry, Executive Director, Long Beach Network for Health

Date:

Maggie Gunter, President and Executive Director, Lovelace Clinic Foundation

Date:

Michael Matthews, Executive Director, MedVirginia

Date:

Rachel Block, Executive Director, New York eHealth Collaborative

Date:

Holt Anderson, Executive Director, North Carolina Healthcare Information Alliance, Inc.

Date:

Marc Overhage, Director of Medical Informatics, Regenstrief Institute, Inc.

Date:

Sallie Milam, Chief Executive Officer, West Virginia Health Information Network

Date:

Katherine Cauley, Director, Center for Healthy Communities, Wright State University

Date:

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The Honorable S. Ward Casscells, MD, Assistant Secretary of Defense for Health Affairs, Department of Defense

Date:

Theresa Cullen, MD, MS, Chief Information Officer, Indian Health Service

Date:

Bill Gray, Deputy Commissioner of Systems, Social Security Administration

Date:

The Honorable Michael J. Kussman, MD, MS, MACP, Under Secretary for Health Department of Veterans Affairs, Veterans Administration

Date:

**Attachment 1
NHIN Cooperative Testing Strategy Document**

[Not yet released by DURSA.]

**Attachment 2
Draft NHIN Interface Specifications**

[Not yet released by DURSA.]

**Attachment 3
Template Prime Contract**

[Not yet released by DURSA.]

Attachment 4

Participant Addresses for Notice

Bloomington Hospital

Attn: Todd Rowland
Director Medical Informatics
PO Box 1149
Bloomington, IN 47402

CareSpark, Inc.

Attn: Leisa Jenkins
Executive Director
PO Box 657
112 West Main St.
Kingsport, TN 37662

Cleveland Clinic Foundation

Attn: C. Martin Harris
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9500 Euclid Avenue, JN5-01
Cleveland, OH 44195

**Community Health Information
Collaborative**

Attn: Cheryl Stephens
Executive Director
404 West Superior Street, Suite 250
Duluth, MN 55802

Delaware Health Information Network

Attn: Gina B. Perez, MPA
Executive Director
16856 Yawl Court
Lewes, DE 19958

Department of Defense

Attn: Leslie V. Shaffer
Director, TMA Privacy Office
5111 Leesburg Pike, Suite 810
Falls Church, VA 22041

HealthBridge

Attn: Keith Hepp
Chief Financial Officer
11300 Cornell Park Drive
Cincinnati, OH 45242

Indian Health Service

Attn: Theresa Cullen, MD, MS
Chief Information Officer
12300 Twinbrook Parkway, Suite 300
Rockville, MD 20852

Kaiser Permanente

Attn: Lisa Caplan, MPH, RHIA
Vice President and Business Information
Officer - Care Delivery
Kaiser Foundation Hospitals
1800 Harrison St., 24th Floor
Oakland, CA 94612

Copy of all contract notices:

VP & Assistant General Counsel, Business
Law
Kaiser Foundation Health Plan, Inc.
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Oakland, CA 94612

Long Beach Network for Health

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Lovelace Clinic Foundation

Attn: Maggie Gunter
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MedVirginia

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New York eHealth Collaborative, Inc.

Attn: Rachel Block
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**North Carolina Healthcare Information
and Communications Alliance, Inc.**

Attn: Holt Anderson
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Social Security Administration

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**West Virginia Health Information
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Wright State University

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