DOCUMENT 48:
HIE DEVELOPER CORPORATION INFORMATION EXCHANGE INFRASTRUCTURE DEVELOPMENT AGREEMENT

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HIE Developer Corporation
Information Exchange Infrastructure Development Agreement

This Information Exchange Infrastructure Development Agreement is entered into as of the Effective Date stated below between HIE DEVELOPER Corporation ("HIE DEVELOPER "), a <STATE> corporation, and <ORGANIZATION NAME>, a <STATE AND TYPE OF ORGANIZATION> ("Sponsor").

A. HIE DEVELOPER is a provider of peer-to-peer network services and related software applications and support services, designed to provide technology infrastructures for electronic Information Exchange among health care providers and their trading partners ("Information Exchange Infrastructures").

B. The Sponsor is a <REGIONAL HEALTH INFORMATION ORGANIZATION/HOSPITAL/PHYSICIAN ORGANIZATION/ETC.> which wishes to implement an Information Exchange Infrastructure provided and managed by HIE DEVELOPER.

The parties therefore agree:

1. Configuration of Information Exchange Infrastructure. HIE DEVELOPER makes a range of network services ("Services") and software applications ("Applications") available for use as Information Exchange Infrastructure components. Each Information Exchange Infrastructure is uniquely configured to support the Information Exchange strategies of the parties which use it ("Users"). The Information Exchange Infrastructure to be implemented pursuant to this Agreement is described in Exhibit A to this Agreement.

2. Development of Information Exchange Infrastructure.

2.1. ***HIE DEVELOPER Development Team.*** HIE DEVELOPER shall provide a Development Manager and staff with appropriate authority and expertise to develop the Information Exchange Infrastructure described in Exhibit A ("Development Team"). The Development Team will establish an Infrastructure Development Plan, including milestones and defined deliverables, in collaboration with the Sponsor.

2.2. ***Sponsor Development Support.*** The Sponsor shall provide a Sponsor Contact with appropriate authority and expertise to help the Development Team specify appropriate milestones and deliverables for the Infrastructure Development Plan, to approve the Infrastructure Development Plan on behalf of the Sponsor, and to accept the Information Exchange Infrastructure on behalf of the Sponsor.

2.3. ***Infrastructure Development Plan***. The Infrastructure Development Plan will include, at a minimum, the following:

2.3.1. A schedule and milestones for the measurement of progress in the development of the Information Exchange Infrastructure;

2.3.2. A specification of the Services and Applications to be included in the final Information Exchange Infrastructure;

2.3.3. A Services Level Agreement for the operation of the Information Exchange Infrastructure by HIE DEVELOPER ; and

2.3.4. A form of User Agreement and Terms of Use applicable to all Users of the Information Exchange Infrastructure.

3. Operation of Information Exchange Infrastructure. Upon acceptance of the Information Exchange Infrastructure by the Sponsor, HIE DEVELOPER will commence operating the Information Exchange Infrastructure pursuant to the Services Level Agreement.

4. Intellectual Property Usage and Confidentiality. The development and implementation of an Information Exchange Infrastructure pursuant to this Agreement may entail the use of proprietary software and/or confidential business information.

4.1. HIE DEVELOPER shall be solely responsible for obtaining and providing any necessary license for any software or information needed for purposes of the Infrastructure Development Plan and for operation of the Information Exchange Infrastructure, including any license necessary for any software or proprietary information necessary or appropriate for such purposes.

4.1.1. *Licensing of Applications.* The Customer may enter into a License for any Application offered by HIE DEVELOPER by (a) identifying the Application of Exhibit A upon the entry into this Agreement, or (b) by amendment of Exhibit A by mutual agreement of the parties. No new License is required for Updates for any Licensed Application.

4.1.2. *Title*. The Customer agrees that, as between HIE DEVELOPER and the Customer, HIE DEVELOPER shall have sole and exclusive ownership of, and all right, title, and interest in and to, the Applications and HIE DEVELOPER Materials, and all modifications and enhancements to the Applications and HIE DEVELOPER Materials (including ownership of all copyrights and other intellectual property rights), subject only to the rights expressly granted to the Customer under this Agreement. Entry into a License under this Agreement does not provide the Licensee with title or ownership of any Application or HIE DEVELOPER Materials, but only a limited right to use the same solely upon the terms expressly set forth in this Agreement.

4.1.3. *Authorized Users, Facilities and Equipment.* Each Application may be used only by persons who are Authorized Users, using Workstations at Authorized

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Facilities. The specific Facilities and/or Information Systems, and the number of Authorized Users or Workstations (if the number of either is limited) covered by the License for a given Application will be as provided in Exhibit A or any applicable amendment, and/or in the Implementation Plan. The number of Authorized Users and Workstations, and Authorized Facilities, may be changed at any time by amendment of Exhibit A.

4.1.4. *Term of License.* The term of any License to use an Application shall begin on the Effective Date or the effective date of the amendment of Exhibit A, as applicable, and shall end on the earlier of the date of termination of this Agreement or the date of termination of the License.

4.1.5. *Termination of License.* A License for an Application may be terminated at will by either party upon six (6) months written notice, without effecting the termination of this Agreement.

4.1.6. *Effect of Termination of License.* Upon the termination of the License for an Application,

4.1.6.1. HIE DEVELOPER shall terminate the authorization and ability of the Customer and all Users to access the Application;

4.1.6.2. HIE DEVELOPER shall terminate all Support Services provided in connection with that Application; and

4.1.6.3. The Customer shall uninstall and remove any Client Software present in any Customer Information System or Workstation, and return or destroy all HIE DEVELOPER Materials at HIE DEVELOPER's election. Software uninstallation and removal may be supervised or executed by HIE DEVELOPER at its discretion, and HIE DEVELOPER may require the Customer to certify the removal of the Client software and return or destruction of HIE DEVELOPER Materials.

4.1.6.4. The Customer may request that HIE DEVELOPER assist the Customer in making a transition to a substitute system or process, in which case HIE DEVELOPER shall provide reasonable assistance upon the Customer's agreement to pay HIE DEVELOPER for its reasonable time and costs incurred in providing such assistance.

4.1.6.5. The termination of a License with respect to one Application shall not affect the License for any other Application or any Optional Services which HIE DEVELOPER has agreed to provide.

4.1.7. *Limitations on Application Use and Distribution.* The Customer acknowledges and agrees that the Applications and HIE DEVELOPER Materials are licensed solely for the internal use by Customer in the ordinary course of business. The Customer may not use the Applications or HIE DEVELOPER Materials for any other purposes, such as use to provide data processing services to other health care organizations, and may not rent the Applications or share them with other parties. The unauthorized reproduction or redistribution of any Application software by the Customer is prohibited by law and may result in severe civil and criminal penalties. The Applications may only be used by the Customer in the United States of America and in any territory of the United States of America.

4.1.7.1. HIE DEVELOPER Remedies for Breach of Limitations on Application Use and Distribution. The Customer acknowledges that any violation of the Limitations on Application Use and Distribution will cause irreparable damage to HIE DEVELOPER. , which could not be adequately redressed by monetary damages, and is not considered a Curable Breach. The Customer therefore agrees that in the event of an actual or threatened violation of Section 1.3.7, during or after the Term of the applicable License or this Agreement, HIE DEVELOPER shall be entitled to both temporary and permanent injunctive relief against the Customer from any court of competent jurisdiction, without first submitting the matter to mediation as provided in Section 12.1 and in addition to all other remedies which HIE DEVELOPER may have at law, in equity or otherwise.

4.1.8. *Limited Intellectual Property Warranty***.** HIE DEVELOPER hereby warrants with respect to the Applications that HIE DEVELOPER has the legal right and authority to grant the Customer the License(s) contemplated by this Agreement.

4.1.8.1. Customer Remedies for Breach of Intellectual Property Warranty**.** Any claim or allegation that the Customer's Use or possession of an Application or any HIE DEVELOPER Materials constitutes a violation of a third party's intellectual property rights will be considered a Curable Breach. In such event HIE DEVELOPER will diligently seek to resolve such claim or allegation, and to clear the title to or obtain a valid license for the Customer's Use or possession of the Application or HIE DEVELOPER Materials, or implement a reasonable substitute for the Application or HIE DEVELOPER Materials, if reasonably possible.

4.1.8.2. HIE DEVELOPER Intellectual Property Indemnification. HIE DEVELOPER will indemnify, hold harmless and defend the Customer against any and all claims that the Customer's use of any

Application during the term of the License for that Application violated any third party's patent, copyright or other intellectual property rights.

4.2. ***Applications and Support Services Service Levels.*** Applications and Support Services shall be available under the following terms and conditions:

4.2.1. *Application and Services Availability.* HIE DEVELOPER shall make reasonable, good faith efforts to provide the Customer with the following Support Services for each licensed Application during the term of its License, according to the following schedule:

4.2.1.1. Applications shall be available 24/7, unless otherwise specified by HIE DEVELOPER when offering the Application.

4.2.1.2. Connectivity Support Services shall be available 24/7.

4.2.1.3. The Help Desk shall be available 24/7.

4.2.1.4. Setup Services shall be available during Normal Working Hours, and shall be scheduled under an implementation plan agreed to by HIE DEVELOPER and the Customer. Setup Services shall be available through the completion date provided under the implementation plan, and for a period of ninety (90) days after the completion date to allow for trouble-shooting.

4.2.1.5. Software Application Maintenance shall be provided during Normal Working Hours.

4.2.1.6. Technical Support shall be available during Normal Working Hours.

4.2.1.7. Applications and Support Services scheduled to be available 24/7 may be interrupted for reasonable periods from time to time for purposes of maintenance, upgrades and other management activities. HIE DEVELOPER shall attempt to schedule such interruptions to minimize inconvenience to the Customer, and if reasonably possible shall give the Customer prior notice of the interruption.

4.2.1.8. Services scheduled to be available only during Normal Working Hours may be made available After Hours at HIE DEVELOPER's discretion for an additional cost.

4.2.2. *Lack of Availability or Delays Due to Customer Performance.* HIE DEVELOPER shall not be liable for any delay in the delivery and/or installation of any Application or for any delay in the performance of any other obligation under this Agreement, if such delay is materially due to the

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Customer's failure or delay in performing any obligation within the scope of this Agreement, or in completing tasks agreed upon with HIE DEVELOPER personnel, or some other action or inaction by Customer.

4.3. ***Optional Services Support Levels.*** The services levels for Optional Services shall be determined by the parties' agreement at the time of contracting for such services, and may be changed from time to time by agreement of the parties.

4.4. ***Excluded Applications, Services and Products.*** Notwithstanding any express or implied representation in this Agreement or in any related document or oral representation by or on behalf of HIE DEVELOPER, the following services are not included in the Support Services and are the sole responsibility of the Customer:

4.4.1. *Anti-Virus and Related Software*. The installation and maintenance on the Customer's Information System and/or Workstations of any anti-virus or other anti-malware software or other applications intended to identify, prevent the download of, disable, uninstall or otherwise affect any computer virus, worm, "Trojan horse," spyware, or other potentially harmful third-party software; provided that HIE DEVELOPER may require the Customer to implement such software, if HIE DEVELOPER determines that it is reasonable and appropriate for the security of (a) HIE DEVELOPER 's own Information System, (b) any hosted Application, and/or (c) the Information System of any other HIE DEVELOPER customer.

4.4.2. *Customer's Security Management*. The determination or implementation of reasonable and appropriate administrative, physical and technical safeguards or security controls or their equivalent, for Customer's Information System or Systems under any Information Protection Law, except to the extent that the if HIE DEVELOPER determines that a specific implementation is reasonable and appropriate for the security of (a) HIE DEVELOPER 's own Information System, (b) any hosted Application, and/or (c) the Information System of any other HIE DEVELOPER customer.

4.4.3. *Acceptable Use Management.* The determination or implementation of policies, procedures or technical services (including but not limited to firewall settings) for purposes of controlling or limiting access to or use of the Internet or any websites by any user of the Customer's Information System, except to the extent HIE DEVELOPER determines that a specific implementation is reasonable and appropriate for the security of (a) HIE DEVELOPER 's own Information System, (b) any hosted Application, and/or (c) the Information System of any other HIE DEVELOPER customer.

4.5. *Third Party Products*. While HIE DEVELOPER shall recommend the hardware, software, peripheral equipment and accessories necessary for the implementation of the Applications for the Customer ("Third Party Products"), the Customer shall be

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solely responsible for their acquisition and maintenance. HIE DEVELOPER does not make any warranties with respect to Third Party Products.

4.6. ***Disclaimer.*** **EACH APPLICATION AND ALL SUPPORT AND OPTIONAL SERVICES, AND ALL HIE DEVELOPER MATERIALS ARE BEING PROVIDED ON AN "AS IS" BASIS ONLY. ACCORDINGLY, BUT WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, HIE DEVELOPER DOES NOT REPRESENT OR WARRANT THAT THE APPLICATIONS OR SERVICES WILL MEET THE REQUIREMENTS OF ANY PERSON OR WILL OPERATE ERROR-FREE OR CONTINUOUSLY, AND HIE DEVELOPER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OR REPRESENTATIONS CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY ONE OR MORE OF THE GOODS AND SERVICES REFERRED TO ABOVE. THE CUSTOMER AGREES THAT HIE DEVELOPER HAS MADE NO AGREEMENTS, REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND THAT NO FUTURE AGREEMENT, REPRESENTATION OR WARRANTY OF HIE DEVELOPER WITH REGARD TO INFORMATION, GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO THIS AGREEMENT.**

4.7. ***Limitations on Liability Relating to Performance of Applications, Support Services and Optional Services.*** The Customer's sole remedies against HIE DEVELOPER for losses or damages caused by or arising in connection with the performance of Applications, Support Services or Optional Services, regardless of the form of action, whether in contract (including pursuant to the indemnification provisions of this Agreement), tort, strict liability or otherwise, shall be as follows:

4.7.1. *Indemnification for Damages.* In the event that the Customer suffers financial losses or damages other than a penalty or penalties due to a failure by an Application, Support Service and/or Optional Service to comply with an applicable federal or state standard, including but not limited to a standard related to professional services, HIE DEVELOPER shall pay the Customer upon demand its actual losses or damages incurred, up to an amount equal to the total sums paid to HIE DEVELOPER by the Customer under this Agreement during the preceding twelve (12) month period.

4.7.2. *Indemnification for Civil Monetary Penalties.* In the event that a civil monetary penalty is imposed upon the Customer by a governmental authority due to a failure by an Application, Support Service and/or Optional Service to comply with an applicable federal or state standard, HIE DEVELOPER shall be liable to reimburse the Customer upon demand for the amount of the

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penalty plus the Customer's reasonable attorneys' fees incurred in connection with any proceedings pertaining to the imposition of the penalty.

4.7.3. *Termination for Failure to Provide Applications or Services.* Any breach of this Agreement caused by a failure to delivery or inadequacy in any Application, Support Services or Optional Service which is not caused by Force Majeure or a Customer failure to perform which is subject to Section 2.6 shall be deemed a Curable Breach under Section 8.3.

5. Customer Obligations. The Customer acknowledges that the installation and maintenance of Applications and the effective provision of Support Services and Optional Services by HIE DEVELOPER is dependent upon the Customer's cooperation and assistance. The Customer therefore agrees that:

5.1. ***Client Software Use and Management***. Customer shall be solely responsible for its use and management of Client Software following installation, and for providing a proper operating system and environment for Client Software.

5.2. ***Acquisition and Maintenance of Third Party Products***. Customer shall be responsible, at its sole cost and expense, for obtaining, purchasing and maintaining the Third Party Products identified in the Implementation Plan. At all times during the term of this Agreement, including such time as the Third Party Products, or any portion thereof, may be in the possession of HIE DEVELOPER. , the Customer shall (a) bear the sole risk of any loss or damage to such Third Party Products, and (b) be solely responsible for procuring and paying for insurance which provides coverage for loss or damage to the Third Party Products.

5.3. ***Application and Services Coordination.*** The Customer shall to cooperate and assist HIE DEVELOPER as reasonably necessary for purposes of installation and maintenance of Applications and the performance of Support and Optional Services, including but not limited to (a) the review and acceptance of an Implementation Plan as part of the Setup Services; (b) the designation and maintenance of Contact Designees; (c) the prompt communication of any questions or issues potentially affecting or pertaining to performance of any Application or Connectivity to HIE DEVELOPER. ; (d) the timely provision of remote Information System access or Customer facility access for purposes of Setup and Technical Support services; and (e) prompt response to other HIE DEVELOPER queries and requests on issues and matters pertaining to Applications, Support Services and Optional Services under this Agreement.

5.4. ***Use of Professional Judgment.*** The Customer acknowledges and agrees that those Applications, Support Services, Optional Services and HIE DEVELOPER Materials which are used to support clinical care are not intended to be used as diagnostic tools or to provide medical diagnoses or determinations. The Customer and its Authorized Users are solely responsible for using due care and exercising their independent

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professional judgment with regard to patient examination, diagnosis and treatment. The Customer acknowledges that the Customer is solely responsible for ensuring that its Authorized Users follow appropriate procedures, as required by law and professional standards, for medical records and data handling in using Applications, Support Services and Optional Services with respect to the creation, modification, backup and storage of medical and administrative records.

5.5. ***User Awareness.*** The Customer is solely responsible for ensuring that all Users are aware of the material terms of this Agreement, and for training and educating Users with respect to the Use of the Applications, Support Services and Optional Services, as well as their obligations under applicable Information Protection Laws.

5.6. ***HIE DEVELOPER Remedies for Customer Failure***. A Customer breach of this Section shall be deemed a Curable Breach, provided that in the event of any delay in the delivery and/or installation of any Application or any delay in HIE DEVELOPER 's performance of any other obligation under this Agreement which is due to a failure by the Customer to cooperate as provided in this Section 2, HIE DEVELOPER may also request in writing that the date or dates for performance under this Agreement by HIE DEVELOPER be extended for a period equal to the time loss caused by the delay.

5.6.1. ***No HIE DEVELOPER Liability Based on Customer Failure***. In no event shall HIE DEVELOPER be responsible for any penalties, damages or other losses incurred by the Customer as the result of any delay or failure to perform under this Agreement by HIE DEVELOPER which was materially caused by the Customer.

6. Customer Security Management. The Customer shall maintain reasonable and appropriate administrative and physical Safeguards for its Information System(s) and reasonable and appropriate technical Safeguards for any Client Software or other software used in the Customer's Information System which is not HIE DEVELOPER Applications, including but not limited to those Safeguards included in Client Software.

6.1. ***HIE DEVELOPER Remedies for Customer Security Management Failure.*** In the event that HIE DEVELOPER determines that a failure by the Customer to comply with this Section 3 creates a material vulnerability potentially affecting the HIE DEVELOPER Information System, any Applications hosted by the HIE DEVELOPER Information System, or the Protected Information or Information System of any other HIE DEVELOPER customer, HIE DEVELOPER shall promptly notify the Customer and may, at HIE DEVELOPER 's reasonable discretion, suspend or limit Access to and/or use of Applications and/or HIE DEVELOPER 's Information System by some or all of the Customer's Users, as HIE DEVELOPER may determine is reasonably prudent in order to mitigate the vulnerability. Such a failure shall be deemed a Curable Breach, provided that upon receipt of such notice the Customer shall use its best efforts to come into compliance with this Section.

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Upon the Customer's demonstration to HIE DEVELOPER's reasonable satisfaction that the Customer is in compliance with this Section HIE DEVELOPER shall terminate the suspension.

7. Payment for Software Applications and Support Services. The fees and costs and payment schedules applicable to the Software Applications, Support Services and Optional Services provided to the Customer are identified in Exhibit B. In the event that HIE DEVELOPER and the Customer modify, add to, or cancel some of the Software Applications, Support Services or Optional Services by amendment of Exhibit A, the parties shall enter into a written amendment of Exhibit B including any revisions to fees and costs. The amendment of Exhibit B shall not amend or terminate this Agreement.

7.1. ***Invoicing***: HIE DEVELOPER will submit invoices to the Customer and the Customer will pay invoices within thirty (30) days from the invoice date.

7.2. ***Out of Pocket Expenses*:** The Customer shall reimburse HIE DEVELOPER for all reasonable out-of-pocket expenses incurred by HIE DEVELOPER. , its agents, and employees in connection with the performance of mutually agreed upon obligations while services are being provided. Any out-of-pocket expenses in excess of $500 must be pre-approved by the Customer.

7.3. ***Late Payment***. The Customer agrees that amounts of any unpaid invoice shall accrue interest at one and one half percent (1.5%) per month. Client shall pay all costs of collection, including reasonable attorneys' fees and costs, in the event any invoice requires collection efforts.

7.4. ***Taxes***: Customer will be responsible for the payment of all applicable taxes, including sales or use taxes, payable in respect of the goods and services provided under this agreement and any penalties or interest owing on those taxes.

7.5. ***Revision of Fees and Costs*.** Fees and costs payable and payment schedules applicable under this Agreement may be revised (a) by amendment of Exhibit B or other written agreement of the parties or (b) by HIE DEVELOPER effective as of the anniversary date of this Agreement, upon no less than ninety (90) days prior notice to the Customer.

8. Regulatory Compliance. The parties acknowledge that a number of laws and regulations apply to healthcare organizations and functions, and wish to provide for their compliance with such laws and regulations. Each party shall remain responsible for its own compliance, subject to the provisions of this Section.

8.1.1. *Security Incident* means any action or event which:

- Provides an unauthorized person with Access to and/or the ability to Use, Disclose, modify or destroy Protected Information; or

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- Permits an unauthorized person to modify the functioning of an Information System, including any equipment or device and any software application or operating system which is a component of an Information System; or
- Involves the acquisition of more than the Minimum Necessary Protected Information by a User or member of the Customer's or HIE DEVELOPER's Workforce or a Subcontractor of either party.

8.2. ***Privacy and Information Protection Compliance***. The parties acknowledge that the Customer is a *Covered Entity* as defined in 45 CFR § 164.103, and that the Customer's privacy and information protection practices may be subject to requirements of both HIPAA and other Information Protection Laws. HIE DEVELOPER is therefore the Customer's Business Associate as defined in 45 CFR § 160.103, and the following provisions are intended to incorporate but are not limited to those required in a Business Associate Contract under 45 CFR §§ 164.502(e) and 164.504(e).

8.2.1. *Permitted Uses and Disclosures of Protected Information*. HIE DEVELOPER may Use or Disclose Protected Information for the following purposes, provided that in all cases it shall Use or Disclose only the Minimum Necessary:

8.2.1.1. For purposes of installing, maintaining, upgrading or removing an Application or Client or in order to provide Support Services;

8.2.1.2. For purposes of Health Care Operations which are part of Required or Optional Services provided to the Customer under this Agreement;

8.2.2. *Prohibited Uses and Disclosures.* HIE DEVELOPER shall not Use or Disclose Protected Information for any purpose not permitted by this Agreement, except with the express written authorization of the Customer.

8.2.3. *Notification of Prohibited Uses and Disclosures and Other Security Incidents*. HIE DEVELOPER shall notify the Customer of any Use or Disclosure of Protected Information by any member of the HIE DEVELOPER Workforce or HIE DEVELOPER Subcontractor, or other Security Incident, as provided in Section 5.3.9.

8.2.4. *Subcontractors*. HIE DEVELOPER may make use of Subcontractors to perform functions and activities involving Protected Information for purposes permitted by this Agreement, provided that HIE DEVELOPER first obtains a written agreement from the Subcontractor requiring it to comply with privacy and information protection requirements equivalent to or more restrictive than those assumed by HIE DEVELOPER under this Agreement.

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8.2.5. *HIE DEVELOPER Relation to Data Subject*. The parties acknowledge that HIE DEVELOPER has no direct relationship with Data Subjects, so that requests from Data Subjects for (a) access to, (b) copies, (c) amendment or (d) an accounting of disclosures of, or (d) additional restrictions on access to Protected Information which pertains to them should be directed to the Customer. Therefore, in the event that a Data Subject or other individual contacts HIE DEVELOPER in order to request any such action with respect to Protected Information which may be in or accessible through HIE DEVELOPER's Information System, HIE DEVELOPER will refer the Data Subject to an appropriate Contact Designee for appropriate action, and shall not Disclose any Protected Information directly to the individual.

8.2.6. *HIE DEVELOPER Disclosure Tracking and Accounting*. Upon request by the Customer, within ten (10) business days HIE DEVELOPER shall provide an Accounting of Disclosures with respect to any identified Data Subject with respect to whom HIE DEVELOPER has disclosed Protected Information; provided that:

8.2.6.1. HIE DEVELOPER shall have no obligation to track or account for Disclosures of Protected Information which are (a) executed by use of an Application by the Customer or any party other than HIE DEVELOPER. , an HIE DEVELOPER Subcontractor or a member of HIE DEVELOPER 's Workforce; or made for purposes of (b) treating the Data Subject or paying for such treatment; (c) HIE DEVELOPER 's Operations; (d) disaster relief notification; (e) as part of a Limited Data Set; or (e) to law enforcement or correctional institution officials regarding inmates or other persons in lawful custody.

8.2.6.2. Any such Accounting for Disclosures shall include (a) the Disclosure date, (b) the name and (if known) address of the person or entity to whom the Disclosure was made, (c) a brief description of the Protected Information Disclosed, and (d) a brief statement of the purpose(s) of the Disclosure.

8.2.7. *Data Subject Record Set Access.* Upon a request from the Customer for action with respect to Protected Information on behalf of a Data Subject, within ten (10) business days HIE DEVELOPER shall:

8.2.7.1. Determine whether or not HIE DEVELOPER maintains a Designated Record Set (as defined in 45 CFR § 164.501) with respect to the Data Subject; if not HIE DEVELOPER shall advise the Customer accordingly and shall have no further obligation with respect to the request;

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8.2.7.2. If HIE DEVELOPER does maintain a Designated Record Set with respect to the Data Subject, HIE DEVELOPER shall advise the Customer accordingly, and provide the Customer with electronic copies of the Designated Record Set, amend the Designated Record Set, or implement additional restrictions, as requested by the Customer.

8.2.8. *HIE DEVELOPER Security Safeguards.* HIE DEVELOPER shall maintain an Information Security Program providing reasonable and appropriate administrative, physical and technical Safeguards for the HIE DEVELOPER Information System, including but not limited to those servers used to host the Customer's Applications and Protected Information. The Safeguards implemented shall be reasonably consistent with the standards and specifications of the HIPAA Security Rule, and with any other Information Protection Law which the Customer has notified HIE DEVELOPER is applicable to the Customer, as determined by HIE DEVELOPER in the exercise of reasonable discretion.

8.2.8.1. Customer Application and Information Access Protections. Specific objectives of the Information Security Program shall include:

8.2.8.1.1. Prevention of Access to or Use of the Customer's Applications or Access to, Use or Disclosure of the Customer's Protected Information by or to any individual acting on behalf of HIE DEVELOPER for any purpose not Authorized under this Agreement; and

8.2.8.1.2. Prevention of Access to or Use of the Customer's Applications or Access to, Use or Disclosure of the Customer's Protected Information by or to any person or application which has not been Authenticated as a party authorized by the Customer.

8.2.9. *Security Incidents*. The parties shall cooperate in responding to Security Incidents which involve or reasonably appear to involve (a) unauthorized Access to the Customer's Information System or Protected Information by use of HIE DEVELOPER Information System, (b) unauthorized Access to HIE DEVELOPER 's Information System by use of the Customer's Information System, or (c) unauthorized access to Applications, Protected Information or the Information System of another HIE DEVELOPER customer by use of the Customer's Information System or Applications.

8.2.9.1. HIE DEVELOPER Monitoring. *HIE DEVELOPER shall* be responsible for monitoring activity on the HIE DEVELOPER

Information System and with respect to hosted Applications and Protected Information.

8.2.9.2. Customer Monitoring and Reporting. The Customer be responsible for monitoring administrative and physical access to all devices which are part of the Customer's Information System, and for monitoring network activity with respect to any Client Software or other software used in the Customer's Information System which are not HIE DEVELOPER Applications, and shall promptly report to HIE DEVELOPER any potentially material Security Incident which might reasonably affect HIE DEVELOPER 's Information System, the Information System of any other HIE DEVELOPER customer, or any HIE DEVELOPER. -hosted Applications or Protected Information which it detects.

8.2.9.3. HIE DEVELOPER Investigation. HIE DEVELOPER shall investigate any Security Incident promptly upon receiving notice from the Customer or other information which reasonably indicates the potential occurrence of a material Security Incident. HIE DEVELOPER may retain or employ outside experts to assist in such investigation and may report the Security Incident to or seek intervention from law enforcement, homeland security or national defense agencies if appropriate.

8.2.9.4. Security Incident Reporting to Customer. HIE DEVELOPER shall promptly report any confirmed Security Incident to the Customer, unless prohibited from doing so by any law enforcement, homeland security or national defense agency.

8.2.9.5. Data Subject Notification. The Customer shall have primary responsibility for notification of Data Subjects potentially affected by a confirmed Security Incident, if such notification is required by law or elected by the Customer; provided that HIE DEVELOPER may give such notification if HIE DEVELOPER determines that it is required by law and the Customer fails or declines to give it. Notification by the Customer shall be deemed notification by HIE DEVELOPER and HIE DEVELOPER shall be identified as a notifying party, if HIE DEVELOPER determines that notification by HIE DEVELOPER is or may be required by law.

8.2.9.6. Cooperation in Mitigation and Remedial Action. The parties shall cooperate in taking such actions as may be reasonably appropriate to mitigate harm to Data Subjects resulting from a Security Incident, and to remedy the vulnerabilities which permitted the Security Incident to occur, if possible.

8.2.9.7. No Presumption of Breach or Negligence. The mere fact that a Security Incident occurs shall not create a presumption that either party breached any provision of this Agreement or failed to exercise reasonable prudence.

8.3. ***Effect of Termination of Agreement.*** Upon Termination of this Agreement for any reason:

8.3.1. *Return of Information. HIE DEVELOPER* shall promptly make available for download or other copying by the Customer all of the Customer's Protected Information stored in HIE DEVELOPER 's Information System or otherwise in HIE DEVELOPER 's possession or control; and

8.3.2. *Destruction of Information.* After the Customer has taken possession of such information or upon the Customer's written instruction, HIE DEVELOPER shall destroy or make unrecoverable all of the Customer's Protected Information remaining in HIE DEVELOPER 's Information Systems or otherwise in HIE DEVELOPER 's possession or control; provided that

8.3.3. *Retention of Information.* In the event that the Customer fails to take possession of information and fails to instruct HIE DEVELOPER to destroy it, or HIE DEVELOPER determines that such destruction is not feasible, HIE DEVELOPER shall retain such information subject to the Protected Information protections of this Agreement and limit future uses of the information to those purposes which made the return or destruction of the information infeasible.

8.4. ***Compliance Records.*** HIE DEVELOPER shall retain records of its policies and procedures, Subcontractor contracts, Accountings of Disclosures, communications with Data Subjects, Security Incident reports, and other documentation material to its compliance with this Section 7, for a period of no less than six (6) years from the later of the date on which it was created or the last date on which the document was effect (if applicable).

8.5. ***Regulatory Access.***

8.5.1. *Medicare Access to Records*. If required for purposes of 45 CFR §§ 420.300 – 420.320, upon written request HIE DEVELOPER shall make this Agreement and any other necessary books, records and documents available to HHS or the Comptroller General or their duly authorized representatives, for purposes of verifying the nature and extent of any costs incurred by the Customer for services furnished by HIE DEVELOPER for which payment may be or have been made under Medicare, Medicaid or other applicable federal reimbursement programs.

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8.5.1.1. HIE DEVELOPER shall require any subcontractor which (a) is a related organization (as defined in 42 CFR § 420.301) and (b) carries out any of the duties of HIE DEVELOPER under this Agreement by providing services of a value or cost of ten thousand dollars ($10,000.00) or more in any twelve (12) period, to provide similar access to HHS, the Comptroller General or their duly authorized representatives.

8.5.1.2. HIE DEVELOPER's obligation to provide access to records under this Section 5.6.1 shall extend for four (4) years from the last date on which services are provided under this Agreement, and survive the termination of this Agreement for such period if applicable.

8.5.2. *HIPAA Compliance*. Upon written request HIE DEVELOPER shall make its internal practices, books and records pertaining to its Use and Disclosure of Protected Information received from, or created or received by HIE DEVELOPER on behalf of the Customer available, at the Customer's expense for purposes of determining the Customer's compliance with HIPAA,

- To the Customer, at HIE DEVELOPER 's facilities during Normal Business Hours, upon no less than ten (10) business days' prior notice; and
- To HHS, at a time and place designated by HHS, subject to HIE DEVELOPER's right to seek a time and place convenient to HIE DEVELOPER as well as HHS.

8.5.2.1. HIE DEVELOPER. ' obligation to provide access to records under this Section 5.6.2 shall extend for six (6) years from the last date on which services are provided under this Agreement, and survive the termination of this Agreement for such period if applicable.

8.5.3. *Notice to Customer*. HIE DEVELOPER shall notify the Customer promptly upon HIE DEVELOPER's receipt of a request or legal process for regulatory access to HIE DEVELOPER's records pertaining to the Customer, or to any Data Subject of Customer's Protected Information, unless such notice is prohibited by law or a court order.

8.5.4. *Confidentiality of Compliance Information.* Confidential Information provided to the Customer under this Section 5.6 shall be subject to the protection of Section 6. HIE DEVELOPER may seek to protect Confidential Information provided under this Section to the greatest extent permitted by law.

9. Confidentiality. During the Term of this Agreement, each party may be provided with or otherwise have access to information and data which is confidential and/or proprietary to the other party. The parties agree to protect the confidentiality of such information as follows

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9.1. ***Confidential Information***. The information to be protected may include but is not limited to, security Safeguards information, business plans, financial data, market information, customer lists, trade secrets, and all other information either (a) designated by the party providing the information as confidential; (b) subject to reasonable efforts by the party providing the information to protect it against unauthorized access or use; or (c) known by the recipient to be confidential (collectively referred to as "Confidential Information"). Confidential Information does not include any information or material which the recipient can demonstrate is: (w) In the public domain without violation of an obligation of non-disclosure; (x) required to be disclosed pursuant to law, but only to the extent such disclosure is required; (y) independently known or developed by the recipient without violation of an obligation of non-disclosure; or (z) obtained from a third party without violation of an obligation of non-disclosure.

9.2. ***Ownership of Confidential Information.*** As between the parties to this Agreement, (a) Confidential Information shall at all times be and remain the sole and exclusive property of the party which provided it; and (b) each party retains for itself exclusively all proprietary rights in and to all Confidential Information developed or sold by such party, and all modifications made thereto by any party, including the exclusive right to manufacture and distribute any and all such items.

9.3. ***Protection of Confidential Information.*** Each party shall keep and maintain all Confidential Information provided by the other party in connection with this Agreement, or which is learned or discovered by that party o as a consequence of or in relation to this Agreement, in confidence during the term of this Agreement and thereafter and will not, directly or indirectly, disclose or transfer any Confidential Information to any other person or entity, nor use any Confidential Information for its own benefit or for the benefit of others without the prior written consent of the party which owns the information. The prohibition against use or transfer of Confidential Information includes, but is not limited to, selling, licensing, or otherwise exploiting, directly or indirectly, any products or services which embody judgment or performing analysis based upon knowledge of Confidential Information.

9.4. ***Disposal of Information.*** In addition to the provisions of Sections 1.3.6.3 and 5.4, upon the Termination of this Agreement for any reason each party shall return all Confidential Information, and any copies or duplicates thereof, in such party's possession or control to the Disclosing party.

9.5. ***Other Customer Information***. HIE DEVELOPER may from time to time receive requests from health plans, public health agencies, academic researchers or other interested parties seeking information that may pertain to the Customer. Whether or not the information sought is Confidential Information, HIE DEVELOPER will not disclose information identifying or which may be used to identify the Customer, or any Authorized User associated with the Customer for purposes of this Agreement, without the written consent of the Customer, unless such Disclosure is required by a

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court or administrative order. HIE DEVELOPER will give the Customer prompt notice of any such order, unless such notification is prohibited by law.

10. Reporting and Research. HIE DEVELOPER provides reporting and research services involving Protected Information, subject to the following terms.

10.1. ***"Opt-In" for Reporting and Research.*** HIE DEVELOPER will not Use or Disclose Protected Information, Confidential Information pertaining to the Customer or other Customer information subject to Section 6.5 for purposes of Data Aggregation, reporting or Research without the Customer's express, prior written Authorization of the specific Use or Disclosure.

10.2. ***Data Aggregation Services.*** Upon request by the Customer or another interested party, and only with the express, prior written Authorization of the Customer, HIE DEVELOPER may act as the Customer's agent in the provision of Data Aggregation services including the Customer's Protected Information, for purposes related to the Customer's Health Care Operations.

10.3. ***Limited Data Sets for Research and Reporting.*** Upon request by the Customer or another interested party, and only with the express, prior written Authorization of the Customer, HIE DEVELOPER may act as the Customer's agent in the creation and Use or Disclosure of Limited Data Sets including the Customer's Protected Information, for purposes of Research, reporting to Public Health Authorities, or the Customer's Health Care Operations.

10.3.1. Data Use Agreements Required. Prior to Disclosing a Limited Data set to any other party (excluding the Customer); HIE DEVELOPER shall require the other party to enter into a Data Use Agreement. HIE DEVELOPER shall make the form of Data Use Agreement to be used in connection with a given Limited Data Set Disclosure available for review and approval by the Customer, which shall not be unreasonably withheld, on or before the request for the Customer's consent and Authorization.

10.3.2. *No Unauthorized Use or Disclosure.* HIE DEVELOPER may not make or authorize any other party to make any Use or Disclosure of a Limited Data Set which has not been expressly Authorized by the Customer in writing, unless expressly required by warrant, court order, subpoena or other demand or process by a court or agency of competent jurisdiction; provided that no such disclosure shall be made without prior notice to the Customer unless such notice is prohibited by law or court order.

11. Term and Termination of this Agreement. The Term of this Agreement shall begin on the Effective Date stated in Section 17 below, and shall renew automatically each year on the anniversary date unless terminated as provided in this section.

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11.1. ***Termination at Will***. Either party may terminate this Agreement without cause upon ninety (90) days written notice prior to the anniversary renewal date.

11.2. ***Termination for Cause***. The applicable party may terminate this Agreement for cause immediately upon written notice to the other party, without any term of notice and/or judicial intervention being required, and without liability for such termination, under the following conditions:

11.2.1. *Information Protection Law Violation by HIE DEVELOPER.* The Customer may terminate this Agreement upon written notice at its sole discretion in the event that it has actual knowledge that HIE DEVELOPER has engaged in an activity or practice that constituted a material breach of a provision of this Agreement pertaining to the Use or Disclosure of Protected Information and, following written notice of such breach and a demand for cure from the Customer, did not take reasonable steps to cure the breach or was otherwise not successful in curing the breach within a reasonable period. The time periods of Section 8.3 shall govern termination under this subsection unless allowing such a length of time is not reasonable given the nature of the breach;

11.2.2. *Automatic Termination upon Exclusion.* This Agreement shall be deemed automatically terminated effective upon the date of exclusion of either party from participation in any government health care program, including but not limited to Medicare, Medicaid, CHAMPUS or Tricare;

11.2.3. *Violations of Other Laws.* Either party may terminate this Agreement upon written notice at its sole discretion in the event the other party receives (a) a Criminal Conviction (as defined in Section 11.6.1), (b) is named as a defendant in a criminal proceeding for a violation of any Information Protection Law; or (c) is found to have or stipulates that the party has violated any privacy, security or confidentiality protection requirements under any applicable Information Protection Law in any administrative or civil proceeding in which the party has been joined; or

11.2.4. *Insolvency and Bankruptcy.* Either party may terminate this Agreement upon written notice at its sole discretion in the event bankruptcy or insolvency proceedings under bankruptcy or insolvency code or similar law, whether voluntary or involuntary, are properly commenced by or against the other party, or the other party is dissolved or liquidated.

11.3. ***Termination for Curable Breach***. Either party may terminate this Agreement in the even the other party fails to remedy a breach which is curable ("Curable Breach"). In the event of such a breach the non-breaching party shall give written notice identifying the breach and demanding a cure. In the event that the breaching party fails to cure the breach within sixty (60) days of such notice, or if the breach by its

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nature is not reasonably susceptible to cure within sixty (60) days fails to commence and diligently pursue a cure within such time period, the non-breaching party may terminate this Agreement effective upon written notice.

11.4. ***Effect of Termination on Application Licenses and Services***. Each Application and all services are provided under separate Licenses or other agreement terms as provided in Section 1.3. All Licenses and services shall terminate automatically upon the termination of this Agreement for any reason.

12. Interpretation of this Agreement.

12.1. ***Definitions.*** Capitalized terms are defined in this Agreement in the sections where they are most commonly used, as a matter of convenience. A capitalized term which is defined in one section has the same definition when used in any other section of this Agreement.

12.2. ***Headings***. Section headings are for convenience and will not affect the construction or interpretation of any provisions of this Agreement.

12.3. ***Applicable Law.*** *Applicable Law*. This Agreement shall be interpreted consistently with federal law applicable to the parties, including but not limited to HIPAA, provided that state law issues shall be exclusively interpreted according to the laws of the State of Washington, without regard to choice of law principles. In the event of a material conflict between interpretation under federal and state law, however, (a) if the conflict is between two applicable Information Protection Laws, the more stringent law shall apply, and (b) in the event of conflicts between other applicable laws, federal law shall apply.

12.4. ***Incorporation by Reference.*** This Agreement may incorporate addenda, exhibits or amendments by reference, and may be incorporated by reference into addenda, exhibits, or amendments to this Agreement, or other agreements or policies mutually accepted by both parties in writing.

12.5. ***Survival***. The provisions of Sections 1.3.7, 1.3.8, 1.8, 1.9, 2.6.1, 4, 5.3.2, 5.3.3, 5.4, 5.5, 5.6, 6, 7.3.2, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10, 11.2 and 12 shall survive the termination of this Agreement for any reason.

12.6. ***Severability.*** If any portion of this Agreement shall for any reason be invalid or unenforceable, such portions shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining portions shall remain valid and enforceable and in full force and effect.

12.7. ***No Waiver.*** No delay or omission by either party hereto to exercise any right, power or remedy occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right, power or

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remedy or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. No waiver of a breach on one occasion shall be deemed a waiver on another occasion.

12.8. ***Entire Agreement***. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to its subject matter and contains all of the covenants and agreements between them with respect to that activity. Each party acknowledges that no representation, inducement, promise or agreement, orally or otherwise, has been made by any party, or anyone acting on behalf of any party, which is not embodied within this Agreement. Any modifications to this Agreement shall be effective only if in writing and signed by the other party.

12.9. ***Amendment.*** This Agreement shall not be modified except by a written agreement signed by both of the parties.

13. Force Majeure. No party will be liable for any failure to perform its obligations hereunder, where such failure results from force majeure, meaning any cause beyond the reasonable control of the party including acts of God, fire, strike, lockout, labor disputes, disputes with suppliers, accidents, delays in transportation, inability to obtain materials, war, civil insurrection, riots, embargoes, or the demands, restrictions or delays of any government.

14. General Warranties and Indemnification. In addition to such specific warranties and representations as are made elsewhere in this Agreement, each party hereby represents and warrants to the other, at all times during the Term and at such other times as may be indicated, it:

14.1.1. Is duly organized or incorporated and validly existing under the laws of the jurisdiction of its organization, unless the party is an individual, and is duly qualified in all jurisdictions in which it does business;

14.1.2. Has all requisite powers, licenses and permits;

14.1.3. Shall comply with, and as applicable shall require its directors, officers and employees to comply with its duties and obligations pursuant to this Agreement, including but not limited to duties and obligations which survive the termination of this Agreement;

14.1.4. Shall comply with, and as applicable shall require its directors, officers and employees with, all applicable Information Protection Laws;

14.1.5. Is not and has not ever been excluded, barred or otherwise ineligible for participation in any government health care program including but not limited to Medicare, Medicaid, CHAMPUS or Tricare; and

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14.1.6. Has not ever received, and if applicable has taken appropriate steps to ensure that its directors, officers and employees have never received, a Criminal Conviction related to health care; provided that

14.1.6.1. *Criminal Conviction* means (a) a judgment of conviction entered against the entity or individual by a federal, state or local court, regardless of whether an appeal is pending or the judgment of conviction or other record relating to criminal conduct has been expunged; (b) a finding of guilt against the individual or entity that has been accepted by a federal, state or local court; (c) a plea of guilty or nolo contendere by the individual or entity that has been accepted by a federal, state or local court; or (d) the entering into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

14.2. ***General Indemnification***. Except for matters specifically addressed in other sections, each party will indemnify, hold harmless and defend the other parties to this Agreement from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Agreement; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the party's performance under this Agreement.

15. Dispute Resolution.

15.1. ***Mediation***. Any claim, dispute or controversy between the parties arising in connection with or relating to this Agreement will, if not settled by negotiation, be submitted to non-binding mediation under the rules of the American Arbitration Association then in effect, or under such other rules and procedures as the parties may agree. Any demand for mediation will be made in writing and served upon the other party in the same manner as otherwise provided for notice in this Agreement. The demand will set forth with reasonable specificity the basis of the dispute and the performance or relief sought. The parties will, within thirty (30) days of receipt of a demand to mediate, confer and select a mediator. The mediation will take place at a time and location mutually agreeable to the parties and the mediator, but not later than sixty (60) days after a demand for mediation is received. Each party will bear their own costs of mediation. Compliance with this mediation process will be a condition precedent to the right of either party to commence legal action in connection with this dispute, except that a party may, before or during any mediation, apply to a court having jurisdiction for a temporary restraining order or injunction where it believes such relief necessary to protect its interests or rights.

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15.2. *Jurisdiction and Venue.* Jurisdiction and venue for any dispute arising out of or in connection with this Agreement shall be in the Superior Court for Spokane County, at Spokane, Washington.

15.3. *Legal Fees and Costs.* In the event of legal proceedings arising from or pertaining to this Agreement the substantially prevailing party shall be awarded its reasonable attorneys fees and costs of litigation, including any on appeal or in bankruptcy proceedings.

16. **Relationship between Parties**. Nothing contained in this Agreement shall constitute or be construed to create, a partnership, joint venture, agency or any other relationship besides that of independent parties to this Agreement.

17. **Assignment.** This Agreement may not be assigned, in whole or in part, by either party to any third person or entity, without the prior written approval of the other party, which shall not be unreasonably withheld.

18. **Notices.** All notices and other communications under this Agreement shall be in writing and sent by hand-delivery, first-class mail, commercial courier facsimile, or electronic mail addressed as indicated below. Notice shall be deemed given pursuant to the following rules: if hand-delivered, at the time of delivery; if sent by first-class mail or commercial courier, on the third (3rd) day after delivery to the courier; and if sent by facsimile or electronic mail, at the time sent.

HIE DEVELOPER CORPORATION Attention: _____ ADDRESS Phone:_____	CUSTOMER:_____ _____ Attention: _____ _____ _____ Phone:_____

19. ***Counterparts.*** This Agreement may be executed in one or more counterparts. Each such counterpart shall be deemed an original document, but all counterparts together shall constitute a single agreement.

20. ***Effective Date.*** Unless otherwise agreed by the parties in writing, the Effective Date shall be the date on which HIE DEVELOPER receives a fully-executed counterpart of this Agreement from the Customer.

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20.1. The parties hereby agree that the Effective Date is _____.

HIE DEVELOPER CORPORATION By: _____ Its:_____	_____ _____ By:_____ _____ (Print Name) Its:_____ (Title)

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EXHIBIT A – SERVICES PROVIDED

Description of Services:

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EXHIBIT B – FEES

All services chosen in Exhibit A will are charged based on fees listed below. All other services not specifically identified on the quote will be charged the following rates:

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EXHIBIT C – CONTACT DESIGNEES

Contract Party	Contact Area	Name/Position
—	—	—
—	—	—

EXHIBIT D – VENDOR DATA SECURITY AND CONFIDENTIALITY AGREEMENT

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