

**WATERSHED HEALTH QUALITY IMPROVEMENT PROGRAM
PARTICIPATION AGREEMENT**

This is a legally binding agreement. Please read these terms and conditions carefully. By indicating your acceptance of this agreement, you represent that you have the full legal authority to enter this agreement yourself or on behalf of the party identified in the registration process, and in that capacity you acknowledge your agreement or such party's agreement to be bound by the terms and conditions set forth below.

This participation agreement (the "Agreement") is between Watershed Health, LLC ("Watershed Health"), and the individual or entity (the "Participant") indicated during the on-line registration process (as amended from time to time in accordance with this Agreement, the "Registration") for use of Watershed Health's online platform known as the Watershed Health Quality Improvement Program (WHQIP). This Agreement is made and entered into and is effective upon its acceptance by Participant in the course of the Registration (the "Effective Date"). The information entered by or on behalf of Participant during the Registration, as updated from time to time, is incorporated herein and made a part of this Agreement. Watershed Health and Participant are sometimes referred to in this Agreement singularly as a "party" and collectively as "the parties."

In consideration of the mutual covenants, promises, agreements, representations and warranties contained in this agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties promise, agree, represent and warrant as follows:

I. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Affiliate" means an entity that controls, is controlled by, or is under common control with Participant. For the purposes of this Agreement, "control" means possession, directly or indirectly, of a majority of an entity's voting interests.

"Ancillary Module" means a set of functionality provided through or in conjunction with other functionality of the Software pursuant to a written addendum to this Agreement executed by the parties (or, if presented to Participant by Watershed as a click-through agreement, accepted electronically by Participant) expressly reciting that it is governed by or made a part of this Agreement, each of which is incorporated herein and made a part hereof.

"Authentication Information" means the username, password, and other information necessary for a Super User or Authorized User to access or Use the Software.

"Authorized User" means an employee of, or an individual independent contractor to, Participant or an Affiliate, in each case as authorized by Participant, and in each such case so long as such authorization has not been canceled in accordance with procedures as established herein.

"Business Associate" shall have the same meaning set forth in the HIPAA Regulations.

"BAA" means the Business Associate Addendum attached hereto, as amended from time to time, which is incorporated in and made a part of this Agreement.

"Breach" means a Breach of unsecured protected health information, as such term is defined in 45 C.F.R. §164.402, maintained by the Software.

"Care Coordination" means post-acute care coordination, transition of care management, chronic care management, and other wellness and preventive health services, such as monitoring health services utilization to address chronic care needs, performing systematic assessments of health care needs, conducting

medication reviews, reviewing care plans, and managing care transitions among health care providers and settings.

“Confidential Information” means any information of any type in any form that (i) is disclosed to or observed or obtained by one party from the other party (or from a person the recipient knows or reasonably should assume has an obligation of confidence to the other party) in the course of, or by virtue of, this Agreement and (ii) either is designated as confidential or proprietary in writing at the time of such disclosure or within a reasonable time thereafter (or, if disclosure is made orally or by observation, is designated as confidential or proprietary orally by the person disclosing or allowing observation of the information) or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential or proprietary. For purposes of this Agreement, however, the term “Confidential Information” specifically shall not include any portion of the foregoing that (i) was in the recipient’s possession or knowledge at the time of disclosure and that was not acquired directly or indirectly from the other party, (ii) was disclosed to the recipient by a third party not having an obligation of confidence of the information to any person or body of which the recipient knew or which, under the circumstances, the recipient reasonably should have assumed to exist, or (iii) is or, other than by the act or omission of the recipient, becomes a part of the public domain not under seal by a court of competent jurisdiction, and the term “Confidential Information” specifically shall not include PHI (as defined under HIPAA), because such information is subject to the provisions of the BAA. No combination of information will be deemed to be within any of the foregoing exceptions, regardless of whether the component parts of the combination are within one or more exceptions. In the event of any ambiguity as to whether information is Confidential Information, the foregoing shall be interpreted strictly and there shall be a rebuttable presumption that such information is Confidential Information.

“Covered Entity” shall have the same meaning set forth in the HIPAA Regulations.

“Documentation” means all documents (whether printed or in an electronic retrieval format) supplied or made available to Participant by Watershed Health for use with or in support of the Software or its implementation, including without limitation any and all revisions, modifications, and updates thereof as may be supplied or made available by Watershed Health to Participant during the term of this Agreement and all copies thereof made by or on behalf of Participant.

“Emergency Treatment” means Treatment provided on an emergent basis.

“End User License Agreement” or “EULA” means the agreement between Watershed Health and a Patient or Enrollee, the form of which is set forth at www.watershedhealth.com/legal.

“Enrollee” means a person who is a member of a health plan that utilizes the Software.

“Environment Specifications” means the minimum information technology environment necessary for Use of the Software, set forth in the Documentation or published on Watershed Health’s web site from time to time.

“ePHI” means Electronic Protected Health Information as defined in 45 C.F.R. §160.103.

“General Knowledge” has the meaning ascribed in **Section VII(E)(4)** of this Agreement.

“HIPAA” means, collectively, the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (commonly referred to as the “HITECH Act”), and the regulations promulgated under the foregoing from time to time by the United States Department of Health and Human Services, each as amended from time to time.

“HIPAA Regulations” means the federal regulations issued pursuant to the Health Insurance Portability and Accountability Act and codified at 45 C.F.R. Parts 160 and 164, as amended by HIPAA and the HITECH Act.

“Infringement Claim” means a claim that Participant’s use of any Licensed Materials other than a Third-Party Product in accordance with the terms and conditions of this Agreement infringes a copyright or patent of a third party (other than an Affiliate) that is enforceable in the United States.

“Licensed Materials” means the Software and the Documentation.

“Malfunction” means a reproducible material failure of the Software to provide the operational functionality described in the Documentation.

“Participant Data” means all data entered into the Software by Participant’s Authorized Users or entered into the Software by or on behalf of Participant pursuant to conversion of data from another system, in either case as such data is maintained in the Software from time to time during this Agreement.

“Patient” means an individual who is at least 18 years of age and is receiving or has received health care services from or through a health care provider that utilizes the Software.

“Permissible Purposes” means Participant’s Treatment or Emergency Treatment of its Patients or Enrollees, as well as Participant’s Care Coordination for its Patients or Enrollees, using features of the Software such as: patient monitoring and vital sign data; contact management; Watershed Health notes; monitoring calendar; biometric graphs; collaborating physician list with contact information; provider appointments; medication and allergy lists; team roster and contact information; a problem list, symptom list, and other elements of the care plan for a Patient or Enrollee; secure messaging; and document storage. Permissible Purposes shall also mean purposes specifically authorized by federal and state laws and regulations and approved by Watershed Health.

“Personal Health Record” or “PHR” means an electronic record of identifiable health information on individual(s) that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.

“PHI” means Protected Health Information as defined in 45 C.F.R. §160.103.

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended.

“Problem Report” means a written report delivered to Watershed Health by Participant describing a suspected Malfunction and identifying in reasonable detail the basis for such suspicion.

“Psychotherapy Notes” means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the Patient’s medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

“Security Standards” mean the Standards for Security of ePHI at 45 C.F.R. Part 160 and Part 164, Subparts A and C, as amended.

“Sensitive Health Information” means PHI and ePHI that is subject to particular legal protections under state and/or federal laws, including without limitation Psychotherapy Notes.

“Software” means the software application and related services known as the Watershed Health Quality Improvement Program (WHQIP) that is provided to licensees on a software-as-a-service (SaaS) basis, together with all Ancillary Modules and any associated database structures and queries, user interfaces,

system interfaces, tools, and the like, and any and all revisions, modifications, and updates of the foregoing, all as may be delivered or made available by Watershed Health to Participant pursuant to this Agreement.

“Super User” means the person identified by Participant (pursuant to Watershed Health’s procedures for doing so in effect from time to time) who is authorized to authorize and terminate the authorization of Authorized Users, to update Participant’s online Registration information, and to accept notices from Watershed Health as provide in this Agreement, as such person may be changed by Participant from time to time in accordance with the procedures set forth in this Agreement.

“Third-Party Licensor” means a third party whose software products (“Third-Party Products”) have been made available to Watershed Health for distribution and licensing under the terms of its agreement with Watershed Health (a “Third-Party Agreement”).

“Treatment” means the provision, coordination, or management of medical care, health care, and related services by one or more health care providers, including the coordination or management of health care with a third party; consultation between health care providers relating to a Patient; or the referral of a Patient for health care from one provider to another.”

“Use” means (i) accessing and operating the Software from a location within the United States in accordance with the terms of this Agreement in conjunction with the provision or monitoring of health care services to Patients and Enrollees, the administration of personnel providing or monitoring such health care services, or Participant’s internal business purposes in support of the foregoing, and (ii) reading of a copy of Documentation by a human (with or without the aid of a machine or device) in connection with accessing and operating the Software.

“WHQIP Participation Policies” means those policies adopted by Watershed Health that govern use of the Software and information maintained therein, as such policies are amended and replaced from time to time, as set forth at www.watershedhealth.com/legal.

“Workforce” means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for Participant, is under the direct control of Participant, whether or not they are paid by Participant.

II. License and Participation. Subject to the terms and conditions of this Agreement, Watershed Health grants to Participant a non-exclusive, non-transferable license during the term of this Agreement for Use of the Software and Documentation by Participant’s Authorized Users to access and exchange PHI and ePHI for Permissible Purposes. THE SOFTWARE SHALL NOT BE USED FOR ANY OTHER PURPOSE WHATSOEVER AND SHALL NOT BE COPIED OR INCORPORATED INTO ANY OTHER COMPUTER PROGRAM, HARDWARE, SOFTWARE, FIRMWARE, OR PRODUCT. Participant may encourage Patients or Enrollees to register for use of the Software and may invite health care providers and health plans that are actively engaged in the Treatment or Emergency Treatment of, or Care Coordination for, such Patients or Enrollees to become licensees of the Software by entering agreements with Watershed Health (on such terms and conditions as Watershed Health determines), and to take such other steps as may be reasonably necessary to manage the Treatment, Emergency Treatment, Care Coordination, or other health care services provided to such Patients or Enrollees; provided, however, that PHI and ePHI maintained in or exchanged through the Software shall not be used for provider credentialing, utilization review, benefit determinations, or any other uses primarily related to the payment of claims for Treatment, Emergency Treatment, or Care Coordination without prior written approval from Watershed Health.

III. Responsibilities of Watershed Health.

A. Hosting and Equipment. Watershed Health shall, either directly or through a contract with a third party Business Associate, host all equipment, software, and services necessary for the operation and maintenance of the Software. Watershed Health shall make the Software available to Participant and its Authorized Users only for Permissible Purposes. Watershed Health shall use its best efforts to make the Software available to Participant twenty-four (24) hours per day, seven (7) days per week; provided

however, that the Software's availability may be temporarily suspended for regular maintenance or unscheduled interruptions. Watershed Health shall use its best efforts to provide reasonable notice of any such suspension or interruption, and to restore the Software's on-line availability. Participant shall be solely responsible for providing or securing PHI through other means during any periods when the Software is not available.

- B. Technical Support.** During the term of this Agreement, Watershed Health shall provide limited support services to assist Participant in the installation, implementation, and Use of the Software. Watershed Health shall provide general support during Watershed Health's normal business hours of 8 a.m. to 5 p.m. Central Time, Monday through Friday, except for business holidays observed by Watershed Health. Participant may request support by sending an e-mail to support@watershedhealth.com or by such other method as Watershed Health may direct from time to time.
- C. Maintenance and Enhancement.** In response to a Problem Report, Watershed Health shall use commercially reasonable efforts to correct a reported Malfunction or to provide a reasonable workaround sufficient to alleviate any material adverse effect of the problem on the utility of the Software, provided Participant assists Watershed Health in its efforts to correct a Malfunction by making available information, documentation, access to personnel, and testing reasonably requested by Watershed Health from time to time to assist Watershed Health in identifying and correcting the problem. In the event a Malfunction exists due to an error in Documentation, Watershed Health may correct such Malfunction by providing corrected Documentation; provided, however, that no revision, modification, or update to Documentation shall eliminate or materially diminish any operational functionality of the Software previously described therein. From time to time at its sole discretion, Watershed Health also may implement releases of the Software that contain changes, updates, patches, fixes, enhancements to functionality, and/or additional functionality.
- D. Supported Environment.** Watershed Health's support and maintenance obligations pursuant to this Agreement are conditioned on Participant's Use of the Software in an information technology environment meeting the Environment Specifications.
- E. Watershed Assist.** When elected by Participant, Watershed Health provides certain additional care navigation services. Such services shall be agreed to by the parties under a separate agreement.
- F. Protection of PHI and Other Sensitive Information.** Watershed Health shall have access to PHI made available by health care providers and health plans in order to facilitate Participant's provision of Treatment, Emergency Treatment, Care Coordination, and other health care services to its Patients or Enrollees, as applicable. Watershed Health shall also have access to PHI made available by health care providers and health plans to assist in the operation of the Software, for testing and performance verification, and for investigations relating to compliance with this Agreement and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, and any regulations promulgated thereunder. Watershed Health shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement or the BAA attached hereto. For Patients and Enrollees who have executed the EULA, Watershed Health shall be deemed to maintain a Personal Health Record (PHR) pursuant to the applicable federal and state laws for such records.

IV. Responsibilities of Participant.

- A. Authentication Information and Data Security.** Participant shall cause each Authorized User to change his or her Authentication Information at such intervals and upon such circumstances as Participant deems appropriate and prudent or as directed by Watershed Health in its sole discretion. Participant shall maintain or cause to be maintained the confidentiality of all Authorized User Authentication Information. Participant shall be solely responsible for all use or misuse of its Authorized User Authentication Information, and Watershed Health shall have no obligation to monitor for or report any use or attempted use of Participant's Authorized User Authentication Information. All Authorized User Authentication Information shall be deemed to be Confidential Information. PARTICIPANT SHALL ENSURE THAT ITS AUTHORIZED USERS NOT SHARE AUTHENTICATION

INFORMATION OR ATTEMPT TO ACCESS THE SOFTWARE WITHOUT PROVIDING VALID AUTHENTICATION INFORMATION. Watershed Health shall not be liable to Participant for any loss or damage arising out of or relating to Participant's failure to maintain its obligations set forth in this paragraph. Except to the extent of Watershed Health's obligations pursuant to its provision of hosting services, Participant shall be solely responsible for and shall maintain, in connection with the operation of the Software, adequate technical, physical, and procedural access controls and system security requirements and devices. Participant shall indemnify, defend, and hold harmless Watershed Health and its directors, officers, managers, members, and employees from and against any loss, cost, or liability (including without limitation reasonable attorney fees and expenses) resulting from or relating to a claim of a third party with respect to a breach of data security resulting from Participant's negligence or its breach of the obligations set forth in this paragraph. Participant's defense and indemnification obligations specified in this paragraph will be conditioned on Watershed Health's notifying Participant promptly in writing of such claim or threat thereof (whether or not litigation or other proceeding has been filed or served) and giving Participant full and exclusive authority for, and information for and assistance with, the defense and settlement (subject to Watershed Health's reasonable approval) of such claim and any subsequent appeal.

- B. Restrictions.** Participant shall not do, nor shall it authorize any person to do, any of the following: (i) use the Licensed Materials for any purpose or in any manner not specifically authorized by this Agreement; (ii) make any copies or prints, or otherwise reproduce or print, any portion of the Licensed Materials, whether in printed or electronic retrieval format, except as expressly provided in this Agreement; (iii) distribute, republish, download, display, post, or transmit any portion of the Licensed Materials except as explicitly authorized by this Agreement (by way of clarification, the production of reports generated by the Software shall not be deemed a violation of this clause); (iv) create or recreate the source code for any or all of the Software, or re-engineer, reverse engineer, decompile, disassemble, modify, or alter any or all of the Software except as may be expressly authorized in this Agreement; (v) modify, adapt, translate, or create derivative works based upon any part of the Licensed Materials, or combine or merge any part of the Licensed Materials with or into any other software, content, or documentation except as expressly authorized by this Agreement; (vi) refer to or otherwise use any part of the Licensed Materials in any effort to develop a program having any functional attributes, visual expressions, or other features similar to those of the Licensed Materials or to compete with Watershed Health except as may be expressly authorized by this Agreement; (vii) remove, erase, or tamper with any copyright, logo, or other proprietary or trademark notice printed or stamped on, affixed to, or encoded or recorded in the Licensed Materials, or fail to preserve all copyright and other proprietary notices in any copy (whether authorized or unauthorized) of any portion of the Licensed Materials made by Participant; (viii) except as otherwise expressly provided by this Agreement, sell, market, license, sublicense, distribute, rent, loan, operate for, or otherwise provide to any third party any right to possess or utilize any portion of the Licensed Materials without the express prior written consent of Watershed Health (which may be withheld by Watershed Health for any reason or conditioned upon execution by such party of a confidentiality and non-use agreement and/or other such other covenants and warranties as Watershed Health in its sole discretion deems desirable); (ix) use the Licensed Materials to gain or attempt to gain unauthorized access to any software or services for which Participant has not paid the applicable fees to use or any software or computer systems belonging to any third party that has access to the Software; or (x) attempt to do or assist any party in attempting to do any of the foregoing.
- C. Appointment of Super User.** Participant shall designate a Super User, who shall serve as the principal contact with Watershed Health under this Agreement, and who shall perform such other duties and responsibilities as outlined elsewhere herein. Watershed Health shall issue Authentication Information directly to Participant's Super User. Should Participant's Super User be changed, such change shall immediately be communicated to Watershed Health in order to allow for the disabling of the Authentication Information provided to the Super User. No Super User shall be permitted to disclose or transfer Authentication Information to another individual.
- D. Access to the Software by Participant's Workforce.** Participant shall strictly control access to the Software by Participant's Workforce through the establishment of a role-based access system that will limit access to the Software to only Participant's Authorized Users. Participant, through its Super User,

shall designate, maintain, and certify the official list of Authorized Users to Watershed Health. Authorized Users shall include only those members of Participant's Workforce who require access to the Software to facilitate the use or disclosure of PHI for a Permissible Purpose as part of their job responsibilities.

1. Participant, through its Super User, shall ensure that each Authorized User establishes Authentication Information sufficient to allow the Authorized User access to the Software. Such Authentication Information shall meet the minimum requirements established by Watershed Health, and shall otherwise be unique to each Authorized User. An Authorized User shall be required to enter his or her Authentication Information prior to accessing or Using the Software,
 2. Participant, through its Super User, shall immediately terminate access to the Software for any Authorized User who is no longer authorized by Participant to access or Use the Software. Participant's Super User shall also immediately amend the status of any Authorized User whose job responsibilities have changed in a manner that affects the Authorized User's role-based access to the Software. Participant shall be responsible for any act or omission arising out of the failure to disable or modify access of any of its Authorized Users in accordance with this Agreement.
 3. Participant is solely responsible for the actions and omissions of its Super User and Authorized Users. Participant shall be responsible for ensuring that its Super User and Authorized Users comply with the terms of this Agreement, the WHQIP Participation Policies, and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, and any regulations promulgated thereunder. Further, Participant shall be responsible for all acts and omissions of its Super User, Authorized Users, and all other individuals who may access or Use the Software through Participant or by any Authentication Information received or obtained by any Authorized User of Participant. Watershed Health reserves the right to terminate the Authorized User status of any individual for good cause, including misuse of his or her Authentication Information, or fraudulent activity.
- E. Participant's Hardware and Software.** Participant shall be responsible for procuring all hardware, equipment, and software necessary for it to effectively access, use and submit data through the Software. Participant shall be solely responsible for any expenses that it may incur in order to connect to, access and Use the Software. Participant shall ensure that its hardware, equipment, and software conform to the Environment Specifications and that all hardware and software used to interface with the Software are properly and securely configured. Any changes to the Environment Specifications shall be effective thirty (30) days following adoption by Watershed Health, unless Watershed Health determines that an earlier effective date is required to address a legal requirement, an imminent concern related to the privacy or security of PHI, or an emergency situation. Watershed Health may also postpone the effective date of a change if it determines, in its sole discretion, that additional implementation time is required.
- F. Responsibility for Clinical and Treatment Decisions.** The Software does not make clinical, medical, health care, or other decisions, and is not a substitute for a health care provider's professional judgment. Participant is solely responsible for confirming the accuracy of all PHI, and for making all Treatment, Emergency Treatment, Care Coordination and other decisions affecting its Patients or Enrollees. Participant specifically acknowledges and agrees that: (i) Watershed Health is acting solely as an information services provider and does not purport to be engaged in the practice of medicine or any other professional clinical activity and is not otherwise assuming any responsibility for the scope or quality of Treatment, Emergency Treatment, Care Coordination, or other health care services provided by Participant to its Patients or Enrollees; and (ii) neither Watershed Health nor any Watershed Health employee, affiliate, subsidiary, contractor, or representative shall have any responsibility of any kind to Participant, Patients, Enrollees or any other person, firm, corporation or entity for Treatment, Emergency Treatment, Care Coordination, or other health care services for or with respect to any Patient or Enrollee.
- G. Restrictions on Use of the Licensed Materials.** Authorized Users may access and Use the Licensed Materials only in accordance with the terms and conditions of this Agreement, the WHQIP Participation Policies, and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, and

any regulations promulgated thereunder. Participant shall implement internal policies and procedures to require and ensure compliance by Authorized Users with the requirements of this Agreement and the WHQIP Participation Policies. Participant agrees not to sublicense, assign, rent, sell, transfer, give, or otherwise distribute all or any part of the Licensed Materials, to any third party. Participant agrees not to reverse engineer, disassemble, decompile, modify, alter, or attempt to learn the source code or structure of the Software or any copy thereof, in whole or in part.

H. Protection of PHI and Sensitive Health Information. The parties acknowledge that health care providers other than Participant shall make PHI available to the Software. Accordingly, Participant and its Authorized Users shall comply with this Agreement and all applicable provisions of federal and state law regarding the protection of PHI and ePHI, including HIPAA, the HITECH Act, and any regulations promulgated thereunder. Participant acknowledges that the PHI maintained in the Software may not include the full and complete medical record or history for its Patients or Enrollees.

1. Participant and its Authorized Users shall access PHI and ePHI maintained in or exchanged through the Software only for a Permissible Purpose and shall use and disclose PHI or ePHI only for such Permissible Purpose. With the exception of disclosures for Treatment or Emergency Treatment, Participant will only access the minimum amount of PHI necessary to accomplish the intended purpose of the disclosure.
2. Participant shall review its privacy policies, notice of privacy practices, and other relevant documents and make any revisions to those documents that are necessary for Participant to remain in compliance with all applicable provisions of federal and state law regarding the protection of PHI and ePHI, including HIPAA, the HITECH Act, and any regulations promulgated thereunder.
3. Participant shall be solely responsible for maintaining reasonable quality control procedures for the accuracy, completeness, and quality of any PHI that it makes available to the Software. Watershed Health assumes no responsibility for the accuracy, completeness, and quality of Participant's PHI. Watershed Health is not required to return to a Participant any PHI exchanged through the Software with any Participant.
4. Participant shall, within twenty-four (24) hours of discovery, report any misuse of Authentication Information, Breach of PHI, or other HIPAA compliance issue relating to the Software to Watershed Health for investigation. Participant shall cooperate with Watershed Health in its investigation and corrective action.
5. Participant shall not include Sensitive Health Information in the PHI or ePHI exchanged through the Software or introduce it into the Software. To the extent that Participant inadvertently includes Sensitive Health Information, PHI, ePHI, or other information that is subject to the protections of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (42 U.S.C. 290ee-3) and regulations promulgated thereunder at 42 C.F.R. part 2, Participant shall be solely responsible for taking such corrective action as may be required by those statutes and regulations.

V. Permissible Uses of the Software.

A. Authorization for Transfer of PHI and ePHI. The parties acknowledge that Participant may use or disclose PHI or ePHI through the Software for the following purposes without authorization from Participant's Patients or Enrollees:

1. Participant may use or disclose PHI or ePHI through the Software to provide Treatment or Emergency Treatment to its Patients or Enrollees.
2. Participant may disclose PHI and ePHI to a health care provider that also participates in the Software for the Treatment or Emergency Treatment activities of such provider.

3. Participant may disclose PHI and ePHI to another Covered Entity that has or had a relationship with the Patient or Enrollee who is the subject of such PHI or ePHI for Care Coordination, provided that the information pertains to such relationship.
- B. EULA.** Watershed Health shall maintain an on-line process by which a Patient or Enrollee may elect to have the Software serve as a PHR. By agreeing to the terms and conditions of the EULA, the Software shall continue to maintain PHI for as long as the Patient or Enrollee chooses to participate in the PHR.

VI. Charges; Payments; Taxes.

- A. Fees and Expenses.** In addition to any fees or expenses set forth in an addenda with regard to Ancillary Modules, Participant shall pay all fees, expenses, and other charges set forth in this Agreement to be paid by Participant, including without limitation the subscription or license fees and such other amounts, if any, as are described or referred to in the Registration.
- B. Invoices; Payments.** Amounts due hereunder shall be paid in the manner established during Registration or as subsequently established by access to Participant's Registration through Super User login to the administrative portion of the Software. If applicable, Participant authorizes Watershed Health to charge or debit automatically, using Participant's selected payment method, all such amounts, including amounts due upon renewal of this Agreement. If Participant's payment method is credit or debit card or bank draft, Participant hereby authorizes Watershed Health (or its representative) to charge or debit such payment source on a recurring basis without further notice to Participant. Participant is responsible for providing complete and accurate billing and contact information to Watershed Health. If Watershed Health offers Participant an option to be invoiced and Participant elects such option, payment on each such invoice shall be due within 30 days from the date thereof or on such other terms as may be set forth in the Registration. All payments shall be made in U.S. Dollars. Payments not received within 30 days after the due date shall accrue interest from such due date at the rate of 2% per month or, if less, at the highest rate permitted by applicable law.
- C. Taxes.** Participant shall pay when due (and Watershed Health at its discretion may collect and pay on Participant's behalf) all taxes, levies, or assessments based on or in any way measured by this Agreement, the Licensed Materials, and the services provided hereunder, excluding taxes based on Watershed Health's net income, but including sales and use taxes and personal property taxes, if any; provided, however, that if Participant notifies Watershed Health in writing that Participant is exempt from paying applicable state, county, city, or other local sales or use taxes and delivers to Watershed Health a copy of Participant's tax exemption certificate or other evidence satisfactory to Watershed Health demonstrating such exemption, Watershed Health shall not collect and pay such taxes on Participant's behalf except pursuant to an order from a court of competent jurisdiction or notice from such taxing authority. If Participant has notified Watershed Health of such a tax exemption, Participant shall notify Watershed Health promptly of any change in the status of such exemption.

VII. General Terms and Conditions.

- A. Health Quality Metrics.** Participant acknowledges that a principal objective of the parties and other entities that utilize the Software is to improve the quality of health care and patient outcomes. In furtherance of this objective, Provider consents to Watershed Health's compiling statistics regarding the Participant's use of the Software to determine quality metrics as described under the "Metrics Methodology" tab of the "Tools" section within the "Admin" area of the Software, as updated by Watershed from time to time ("Watershed Health Quality Metrics"); provided, however, that no Watershed Health Quality Metrics shall identify any Authorized User or other individual. Any provision of this Agreement to the contrary notwithstanding, Watershed Health shall cease publishing Watershed Health Quality Metrics regarding Participant within the Software promptly following the expiration or any termination of this Agreement and thereafter shall not disclose such Watershed Health Quality Metrics to any third party except as set forth regarding Confidential Information in Sections VII(F)(3) and VII(F)(4).

- B. Third-Party Agreements.** Participant acknowledges that the Software includes certain third-party software, hardware, and services which may have been licensed to Watershed Health by Third-Party Licensors, and that the rights granted under this Agreement are subject in every respect to the terms and conditions of Watershed Health's Third-Party Agreements with such vendors. The license terms and conditions of Watershed Health's Third-Party Agreements are set forth at <https://watershedhealth.com/legal> and are incorporated into this Agreement by this reference.
- C. Ownership.**
- 1. Licensed Materials.** As between Watershed Health and Participant, Watershed Health has and retains exclusive and valid ownership of the Licensed Materials, the names and marks thereof, and all intellectual property and proprietary rights therein. Participant acknowledges that the foregoing constitute valuable assets and may constitute trade secrets of Watershed Health.
 - 2. Suggestions, Joint Efforts, and Health Quality Metrics.** Participant may suggest, and the parties may discover or create jointly, findings, inventions, improvements, discoveries, or ideas arising from or relating to the Software that Watershed Health, at its sole option, may incorporate in the Licensed Materials or in other products or services that may or may not be made available to Participant. Any such finding, invention, improvement, discovery, or idea, whether or not patentable, that is conceived or reduced to practice during the term of this Agreement, whether by a party alone or by the parties jointly, arising from or related to this Agreement or the Licensed Materials and all Health Quality Metrics shall be and remain solely the property of Watershed Health and may be used and (subject to Section VII(A) regarding Health Quality Metrics) may be sold, licensed, or otherwise provided by Watershed Health to third parties, or published or otherwise publicly disclosed, in Watershed Health's sole discretion without notice, attribution, payment of royalties, or liability to Participant. Participant hereby assigns to Watershed Health any and all right, title, and interest, including without limitation copyright and patent rights, in and to any such findings, inventions, improvements, discoveries, ideas, and Health Quality Metrics. Unless otherwise expressly agreed in writing, Participant shall not obtain any right, title, or interest in or to anything created or developed by Watershed Health in connection with or incident to this Agreement other than the license expressly set forth herein.
- D. Excluded Provider.** Each party hereby represents that it is not now and at no time has been excluded or debarred from participation in any federally-funded health care program, including without limitation Medicare and Medicaid. Each party agrees to notify the other immediately of any such exclusion or debarment, which shall be deemed a breach of this Agreement pursuant to which the other party may terminate this Agreement, as of the effective date of such exclusion or debarment, by written notice to the excluded or debarred party, without prejudice to any other rights and remedies available to such party.
- E. Confidentiality.** Without limiting any other provisions of this Agreement or granting by implication any rights with respect to any particular item, and whether or not otherwise meeting the criteria described herein, the following shall be deemed conclusively to be Confidential Information: (i) all information that is a trade secret of a party pursuant to applicable law; and (ii) to the extent not generally known to the public or to third parties in the relevant industry, all data, documents, flow charts, logic diagrams, design concepts, technical information, processes, standards, specifications, improvements, inventions, procedures, know-how, formulae, algorithms, source and executable codes, scripts, file layouts, database arrangements, test materials, business concepts and methods, financial information, sales and marketing information, development plans, business plans, strategies, forecasts, Participant lists, Participant Data, and passwords, entry codes, access sequences, or the like of a party.
- 1. Security of Confidential Information.** In addition to any other restrictions or obligations imposed at law or provided under this Agreement, each party possessing Confidential Information of the other party will maintain all such Confidential Information under secure conditions, using reasonable security measures and in any event not less than the same security procedures used by such party for the protection of its own Confidential Information of a similar kind.

- 2. Non-Disclosure Obligation.** Except as otherwise may be permitted by this Agreement, neither party shall disclose any Confidential Information of the other party to any third party without the express prior written consent of the other party; provided, however, that either party may disclose appropriate portions of Confidential Information of the other party to those of its employees, contractors, agents, and professional advisors having a substantial need to know the specific information in question in connection with such party's exercise of rights or performance of obligations under this Agreement; provided, however, that all such persons (i) have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement and (ii) are bound either by contract, employment policies, or fiduciary or professional ethical obligation to maintain such information in confidence.
- 3. Compelled Disclosure.** If either party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose Confidential Information, or if it is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then such party will not be liable to the other party for disclosure of Confidential Information required by such order if such party complies with the following requirements: (i) if an already-issued order calls for immediate disclosure, then such party immediately shall move for or otherwise request a stay of such order to permit the other party to respond as set forth in this paragraph; (ii) such party immediately shall notify the other party of the motion or order by the most expeditious possible means; (iii) such party shall not oppose a motion or similar request by the other party for an order protecting the confidentiality of the Confidential Information, including not opposing a motion for leave to intervene by the other party; and (iv) such party shall exercise reasonable efforts to obtain appropriate assurance that confidential treatment will be accorded the Confidential Information so disclosed.
- 4. Non-Use Obligation.** Except as expressly authorized in this Agreement, during the term of this Agreement and forever thereafter (or for such shorter period as may be imposed by applicable law), neither party shall use any Confidential Information of the other party, except for the Permissible Purposes set forth in this Agreement or at the request of and for the benefit of such other party, without the express prior written consent of the other party. Notwithstanding the foregoing, and subject to any copyrights, mask work rights, or patent rights, the parties agree that as a result of exposure to Confidential Information of Participant, employees of Watershed Health may gain or enhance general knowledge, skills and experience (including ideas, concepts, know-how and techniques) related to Participant's business or software ("General Knowledge"). The subsequent use by these employees of such General Knowledge as retained in their unaided memories, without a reference to Confidential Information in written, electronic or other fixed form, shall not constitute a breach of this Agreement. Neither party shall have any obligation to limit or restrict the assignment of persons or pay royalties for any work resulting from the use of such General Knowledge.
- 5. Copying of Confidential Information.** Except as otherwise may be permitted by this Agreement, neither party shall copy or otherwise reproduce any part of any Confidential Information of the other party, nor attempt to do so, without the prior written consent of the other party. Except for any General Knowledge, any embodiments of Confidential Information of a party that may be generated by the other party, either pursuant to or in violation of this Agreement, will be deemed to be the sole property of the first party and fully subject to the obligations of confidence set forth herein.
- 6. Proprietary Legends.** Without the other party's prior written consent, neither party shall remove, obscure, or deface on or from any embodiment of any Confidential Information any proprietary legend relating to the other party's rights.
- 7. Reports of Misappropriation.** Each party immediately shall report to the other party any act or attempt by any person of which such party has knowledge or reasonably suspects (i) to use or disclose, or copy Confidential Information without authorization from the other party or (ii) to reverse assemble, reverse compile, or otherwise reverse engineer any part of the Confidential Information.

- 8. Post-Termination Procedures.** Except with respect to Participant Data or General Knowledge or as otherwise provided in this Agreement, immediately upon any termination of this Agreement or other termination of a party's right to possess and/or use Confidential Information, each party shall turn over to the other party (or destroy and certify the same in writing, if agreed in writing by the other party) any embodiments of any Confidential Information of the other party.

F. Warranties; Disclaimers.

- 1. Services.** Watershed Health warrants that it will perform the services provided hereunder in a workmanlike manner using duly qualified and experienced personnel.
- 2. Viruses.** Watershed Health represents that to its knowledge the Software does not contain any computer code designed to disrupt, disable, harm, or otherwise impede the operation thereof or of any associated software, firmware, hardware, computer system, or network (sometimes referred to as "viruses" or "worms") and warrants that it will take commercially reasonable efforts to ensure that no third party causes the same to be embodied in the Software.
- 3. WARRANTY DISCLAIMERS.** THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND WATERSHED HEALTH DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT WATERSHED HEALTH KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR OTHERWISE IS IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE. WATERSHED HEALTH EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN PARTICIPANT WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF.
- 4. Responsibility for Medical Use.** Participant shall indemnify, defend, and hold harmless Watershed Health and its directors, officers, managers, members and employees from and against any loss, cost, or liability (including without limitation reasonable attorney fees and expenses) resulting from or relating to a claim of a third party who is an end user of the Software or who uses or is affected by Participant Data, excluding claims to the extent based on acts or omissions of Watershed Health in violation of the End User License Agreement. Participant's obligations specified in this paragraph will be conditioned on Watershed Health's notifying Participant promptly in writing of such claim or threat thereof (whether or not litigation or other proceeding has been filed or served) and giving Participant full and exclusive authority for, and information for and assistance with, the defense and settlement (subject to Watershed Health's reasonable approval) of such claim and any subsequent appeal.
- 5. Other Disclaimers.** Participant will be exclusively responsible as between the parties for, and Watershed Health makes no warranty or representation with respect to, determining whether the Software will achieve the results desired by Participant, ensuring the accuracy of any data, and selecting, procuring, installing, operating, and maintaining the technical infrastructure for Participant's access to and use of the Software. Watershed Health shall not be liable for, and shall have no obligations with respect to, any aspect of the Software that is modified by any person other than Watershed Health or its contractors, use of the Software other than in accordance with the most current operating instructions provided by Watershed Health, malfunctions or failures caused by defects, problems, or failures of hardware or software not provided by Watershed Health, or malfunctions or failures caused by acts or omissions of Participant or any third party. Participant acknowledges that the operation of the Software will not be error free in all circumstances, that all defects in the Software may not be corrected, and that the operation of the Software may be

interrupted for reasonable periods of time by reason of defect therein or by reason of fault on the part of Watershed Health. Due to the continual development of new techniques for intruding upon and attacking networks, Watershed Health does not warrant that the Software or any equipment, system, or network on which the Software is used or accessed will be free of vulnerability to intrusion or attack. To the extent that an alleged breach of warranty concerns a Third-Party Product that is subject to a more limited warranty under a Third-Party Agreement than provided under this Agreement, Watershed Health's obligations hereunder will be further limited accordingly.

G. Intellectual Property Indemnification.

- 1. Indemnity.** Watershed Health shall indemnify Participant and its directors, officers, and employees against any final judgment entered in respect of an Infringement Claim by a court of competent jurisdiction and against any settlements arising out of such a claim. Watershed Health's obligations specified in this paragraph will be conditioned on Participant notifying Watershed Health promptly in writing of the Infringement Claim or threat thereof (whether or not litigation or other proceeding has been filed or served) and giving Watershed Health full and exclusive authority for, and information for and assistance with, the defense and settlement of such claim and any subsequent appeal.
- 2. Remedies.** If an Infringement Claim has occurred or in Watershed Health's opinion is likely to occur, Participant agrees to permit Watershed Health, at its option and expense, either to (i) procure for Participant the right to continue using the Licensed Materials, (ii) replace or modify the same so that it becomes non-infringing, or (iii) immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Licensed Materials, in which case, if Participant possesses any Licensed Materials, Participant will return all copies thereof to Watershed Health and Watershed Health will refund to Participant the applicable license fees paid by Participant for the then-current term of this Agreement prorated for the portion of the term through the date of such termination.
- 3. Exceptions.** The foregoing notwithstanding, Watershed Health shall have no liability for, and Participant will indemnify Watershed Health and its directors, officers, managers, members and employees against, any claim arising from (i) the combination, operation, or use of any Licensed Materials with equipment, devices, or software not supplied by Watershed Health if such claim would not be valid but for such combination, operation, or use, (ii) modification of any Licensed Materials, (iii) Watershed Health's compliance with Participant's designs, specifications, or instructions, or (iv) Participant's use of the Licensed Materials after Watershed Health has informed Participant of modifications or changes in the Licensed Materials required to avoid such claims if such claim would have been avoided by implementation of Watershed Health's recommended modifications and Watershed Health has offered to pay Participant's out-of-pocket costs of implementing any such modifications.
- 4. EXCLUSIVE REMEDY.** THE FOREGOING STATES THE ENTIRE OBLIGATION OF WATERSHED HEALTH, AND THE EXCLUSIVE REMEDY OF PARTICIPANT, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS AND MISAPPROPRIATION OF TRADE SECRETS.

H. Risk Allocation.

- 1. EXCLUSION OF INDIRECT DAMAGES.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF OR DAMAGE TO DATA, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE), WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, SHOULD HAVE

ANTICIPATED, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

2. **MAXIMUM AGGREGATE LIABILITY.** OTHER THAN FOR A PARTY'S INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL A PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY OR THROUGH SUCH PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE FEES PAID HEREUNDER DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE ACT GIVING RISE TO CLAIM. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.
3. **Intentional Risk Allocation.** Each party acknowledges that the provisions of this Agreement were negotiated, as a material part of the agreement memorialized herein, to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions involved with this Agreement. The warranty disclaimers and limitations in this Agreement are intended, and have as their essential purpose, to limit the circumstances of liability. The remedy limitations and the limitations of liability are separately intended, and have as their essential purpose, to limit the forms of relief available to the parties.

I. Term; Termination.

1. **Term.** The term of this Agreement shall commence on the Effective Date and shall remain in effect for the period set forth in the Registration or, if none is specified, a period of one year (the "Initial Term"). Thereafter, unless otherwise set forth in the Registration, this Agreement shall automatically renew for successive one-year terms (each a "Renewal Term") until terminated by either party as provided herein.
2. **Termination for Convenience.** Either party may terminate this Agreement at any time without cause upon 60 days' advance written notice to the other party.
3. **Termination for Material Breach; Cure Period.**
 - a. In the event of a material breach of a provision of this Agreement, except as otherwise provided in the BAA, the notice and cure procedures set forth in this paragraph shall apply. The non-breaching party shall give the breaching party notice describing the breach and stating the time, as provided herein, within which the breach must be cured. If a provision of this Agreement sets forth a cure period for the breach in question, then that provision shall take precedence over any cure period set forth in this paragraph. No cure period shall be required, except as may be provided otherwise in this Agreement, if this Agreement sets forth specific deadline dates for the obligation allegedly breached. If the breach is (i) of an obligation to pay money or (ii) a non-willful breach of an obligation of a party relating to the other party's Confidential Information, then the breaching party shall have five business days to cure the breach after written notice thereof by the non-breaching party. If the breach is a willful breach of an obligation of a party relating to the other party's Confidential Information, then the non-breaching party, in its sole discretion, may specify in the notice of breach that no cure period will be permitted. If the breach is other than a breach of the kind described above in this paragraph, then the cure period will be thirty (30) days after the notice of the breach by the non-breaching party. If a breach of any provision of this Agreement has not been cured at the end

of the applicable cure period, if any (or upon such breach if no cure period is permitted), then the non-breaching party thereupon may terminate this Agreement by notice to the other party.

- b. This Agreement and the licenses granted to Participant herein shall terminate automatically, to the extent permitted by applicable law in the jurisdiction or jurisdictions in question, if Participant makes an assignment for the benefit of its creditors, files a petition in bankruptcy, receivership, reorganization, or other like proceeding under any present or future debtor relief law (or is the subject of an involuntary such petition or filing that is not dismissed within 60 days after the effective filing date thereof), or admits of a general inability to pay its debts as they become due. Any termination of this Agreement shall be in addition to, and not in lieu of, any other rights or remedies available at law or in equity.
 - c. Either Watershed Health or Participant may terminate this Agreement immediately upon written notice to the other party if either party makes a reasonable, good faith determination that its continued participation in this Agreement would cause it to violate any federal or state law or regulation applicable to it, or would place it at material risk of suffering any sanction, penalty, or liability. Likewise, either Watershed Health or Participant may terminate this Agreement immediately upon written notice to the other if the other party ceases operations.
4. **Effect of Termination.** Upon the termination of this Agreement for any reason, Watershed Health shall immediately cease providing access to the Software for Participant and its Authorized Users, and Participant and its Authorized Users shall stop accessing the Software. Neither party shall have any further obligations hereunder except for obligations accruing prior to the effective date of termination, and obligations, promises, or covenants contained herein which by their terms extend beyond the term of this Agreement.
5. **Termination of Third-Party Agreements.** Participant acknowledges that its use of Third-Party Products provided by a Third-Party Licensor as part of the Software is subject to immediate termination upon termination of the Third-Party Agreement between Watershed Health and such Third-Party Licensor. Notwithstanding the foregoing, any data from such Third-Party Products that has been included in the electronic medical record for a Patient or Enrollee prior to such termination may be retained in that electronic medical record after such termination. Participant acknowledges that upon termination of such Third-Party Agreement, it will not receive any updates to such Third-Party Product or data from such Third-Party Product.

J. Other Provisions.

- 1. **Notice.** Except as otherwise expressly provided herein, notices under this Agreement shall be made in writing (i) by personal delivery, provided that if the applicable person is an entity, such delivery shall be to an officer of such entity or, if none, to an individual serving in a similar capacity (in which case such notices shall be deemed given upon such personal delivery), (ii) by certified or registered U.S. mail, postage pre-paid (in which case such notices shall be deemed given on the second business day after deposit), (iii) with next-business-day instruction by a recognized overnight delivery service, pre-paid, with next-business-day delivery instruction (in which case such notices shall be deemed given on the next business day after deposit), or (iv) to Participant, by e-mail (in which case such notice shall be deemed given upon transmission unless Watershed Health receives a non-delivery email message within a reasonable time thereafter). Notices shall be sent to Watershed Health at Attn: CEO, Watershed Health, 28623 North Main Street, Suite C, Daphne, AL 36526, with copy to Alisa Chestler, Esq., Baker Donelson, 901 K Street, N.W., Suite 900, Washington, D.C. 20001, and to Participant at the address or email address for notices provided in the Registration. Either party may change its address for purposes of notice by notice thereof to the other party as provided herein.
- 2. **Survival.** The covenants herein concerning Confidential Information, indemnification, post-termination procedures, and any other provision that, by its nature, is intended to survive this Agreement shall survive any termination or expiration of this Agreement.

3. **Force Majeure.** Except with respect to any payment obligations and except as otherwise expressly provided in this Agreement, neither party shall be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control of such party, including without limitation acts of God, acts of terrorists or criminals, acts of domestic or foreign governments, change in any law or regulation, fires, floods, explosions, epidemics, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies, or the failure or non-performance of any third party service provider.
4. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Louisiana (other than its conflicts of law provisions) and venue shall be exclusive in the federal or state courts sitting in Orleans Parish, Louisiana.
5. **Assignment.** Participant may transfer or assign some or all of its rights and/or delegate some or all of its obligations under this Agreement only with the express prior written consent of Watershed Health, which may be granted or withheld in Watershed Health's sole discretion; provided, however, that Participant may assign all of its rights hereunder indivisibly to any Affiliate or to a purchaser of substantially all of Participant's assets so long as such assignee (i) agrees in writing to comply with Participant's obligations under, and to be bound by, this Agreement (this clause does not in itself authorize Participant to delegate its duties under this Agreement) and (ii) promptly notifies Watershed Health in writing of the same. Any purported transfer or assignment by Participant of any right under this Agreement otherwise than in accordance with the provisions of this paragraph shall be null and void and a breach of this Agreement. This Agreement shall be assignable by Watershed Health upon notice to Participant.
6. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns permitted by this Agreement.
7. **Entire Agreement.** Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein.
8. **Modification and Amendment.** No modification or amendment to this Agreement will be valid or binding unless in writing and duly executed by the party or parties to be bound thereby.
9. **Waiver.** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision and shall not be deemed to be a waiver of such provision or any other term, covenant, or condition contained herein. Any waiver by either party of any breach of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.
10. **Severability.** If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable would be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling, and/or the

controlling principle of law or equity leading to the ruling, subsequently is overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

- 11. Attorney's Fees.** If litigation or other action is commenced between the parties concerning any dispute arising out of or relating to this Agreement, the prevailing party will be entitled, in addition to any other award that may be made, to recover all court costs and other official costs and all reasonable expenses associated with the litigation or other action, including without limitation reasonable attorney's fees and expenses.
- 12. Injunctive Relief.** Recognizing the unique nature of the Licensed Materials and Confidential Information, Participant acknowledges that any violation by Participant of its covenants in this Agreement relating to Watershed Health's Confidential Information, including without limitation the Licensed Materials, would result in damage to Watershed Health that is largely intangible but nonetheless real and that is incapable of complete remedy by an award of damages. Accordingly, any such violation shall give Watershed Health the right to a court-ordered injunction or other appropriate equitable relief to enforce those covenants. Participant agrees to pay Watershed Health any reasonable expenses, including without limitation attorney fees and expenses, incurred in obtaining such specific enforcement (in addition to any other relief to which Watershed Health may be entitled).
- 13. Headings.** The headings of the sections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.
- 14. Counterparts.** This Agreement may be executed in multiple counterparts, and each manually-executed counterpart of this Agreement (whether delivered as originally executed or delivered in faxed or scanned electronic form) shall be deemed an original, all of which together shall constitute one and the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart hereof signed by each of the parties.

VIII. Business Associate Addendum.

- A. Effective Date.** This BAA is entered into as of the Effective Date of this Agreement between Watershed Health, as a Business Associate, and Participant, as a Covered Entity.
- B. Background and Purpose.** In providing services under the Agreement (the "Services"), Watershed Health may be provided with, have access to, or create PHI or ePHI that is subject to HIPAA and the HIPAA Regulations. The parties have entered into this BAA in compliance with the requirements of the HIPAA Regulations. This BAA will govern only with respect to Watershed Health's receipt, use, and creation of PHI on behalf of Participant pursuant to the Agreement.
- C. Definitions.** Unless otherwise defined in this Agreement, all capitalized terms have the same meanings set forth in the HIPAA Regulations, provided, however, that the meaning of "PHI" and "ePHI," respectively, is limited to information that Watershed Health received from or created or received on behalf of Participant as Participant's Business Associate.
- D. Permitted Uses and Disclosures of PHI.** Except as otherwise specified in this BAA, Watershed Health may make any and all uses and disclosures of PHI necessary to perform its obligations under the Agreement or as Required by Law. Unless otherwise limited by this BAA:
 - 1.** Watershed Health may use PHI in its possession for its proper management and administration and to carry out its legal responsibilities.

2. Watershed Health may disclose PHI in its possession to a third party for the purpose of its proper management and administration or to carry out its legal responsibilities, provided that the third party only uses or further discloses the PHI for the purpose for which it was received or as required by law, Watershed Health obtains reasonable assurances from the third party regarding the confidential handling of such PHI as required under the Privacy Rule, and the third party agrees to notify Watershed Health of any instance of which the third party recipient becomes aware that the confidentiality of such PHI has been breached.
3. Watershed Health may provide Data Aggregation services relating to Participant's Health Care Operations.
4. Watershed Health may de-identify any and all PHI obtained under the Agreement and use such de-identified data in accordance with the de-identification requirements of the Privacy Rule. The parties acknowledge and agree that once PHI is de-identified it is no longer subject to HIPAA. Notwithstanding the foregoing, Watershed Health shall not use the de-identified data other than to (1) improve the services and service offerings of Watershed Health, (2) provide data benchmarking or statistical reports in which a particular Covered Entity could not be identified, and (3) other defined uses with the written permission of Covered Entity.

E. Obligations of Participant.

1. Participant will not disclose to Watershed Health more PHI than the Minimum Necessary required to enable Watershed Health to carry out services pursuant to the Agreement, and only when such disclosure is required and will limit Watershed Health's access to Participant's ePHI to only such PHI as is needed to carry out Watershed Health's activities required to support the Agreement. The term Minimum Necessary is construed in accordance with the requirements in Section 13405(b) of the HITECH Act, or as otherwise specified in the HIPAA Regulations.
2. Participant will have in place appropriate privacy and security safeguards to prevent the unauthorized use and disclosure of PHI and will use appropriate administrative, technical, and physical safeguards consistent with 45 C.F.R. §§ 164.308, 164.310 and 164.312 to protect the confidentiality, integrity, and availability of ePHI it receives from or transmits to Watershed Health; will adopt, maintain, and update written policies and procedures consistent with the requirements of this Agreement, the WHQIP Participation Policies, and 45 C.F.R. § 164.316 with respect to such safeguards; and will impose appropriate sanctions against applicable employees, as appropriate, in the event such employee uses or discloses PHI in violation of the provisions of this Agreement, this BAA, of the WHQIP Participation Policies.
3. Participant will notify Watershed Health in writing of any:
 - a. limitations in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Watershed Health's use or disclosure of PHI;
 - b. restrictions to the use or disclosure of PHI to which Participant is subject or to which Participant has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Watershed Health's use or disclosure of PHI; and
 - c. changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Watershed Health's use or disclosure of PHI.
4. Participant will obtain any authorization or consents as may be required by law for any of the uses or disclosures of PHI.
5. Participant will not request that Watershed Health use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Participant.

F. Obligations of Watershed Health.

1. Watershed Health will not use or disclose PHI other than as permitted or required by the Agreement, this BAA or by law.
2. Watershed Health will use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Without limiting the foregoing, Watershed Health shall implement administrative, physical, and technical safeguards consistent with 45 C.F.R. §§ 164.308, 164.310 and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it receives, creates, transmits, or maintains on behalf of Participant, and adopt, maintain, and update written policies and proceedings consistent with the requirements of 45 C.F.R. §164.316 with respect to such safeguards.
3. Watershed Health will ensure that any agents and subcontractors to whom it provides PHI received from, or created or received by Watershed Health on behalf of Participant executes a written agreement with Watershed Health that contains the same or substantially similar restrictions and conditions set forth in the Business Associate provisions of the HIPAA Regulations that apply through this BAA to Watershed Health with respect to such information.
4. Watershed Health will, if requested by Participant in writing, and if the PHI in Watershed Health's possession constitutes a Designated Record Set, and if Watershed Health maintains the sole copy of and has sole access to such PHI, (a) make available to the Participant all PHI necessary for Participant to respond to individuals' requests for access to PHI about them; and (b) make available to the Participant PHI for amendment and incorporate any amendments to the PHI in accordance with the Privacy Rule.
5. Watershed Health will, if requested by Participant in writing, and if the PHI in Watershed Health's possession constitutes a Designated Record Set, make available to the Participant the information required for the Participant to provide an accounting of disclosures of PHI as required by, and in the timeframes specified in, the Privacy Rule.
6. Watershed Health will make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of HHS upon his or her request for purposes of determining the parties' compliance with HIPAA.
7. Watershed Health will notify Participant without unreasonable delay that a use or disclosure of PHI not provided for by this BAA has occurred ("Initial Notification").
8. Watershed Health will, in addition to the Initial Notification and in accordance with the requirements of 45 C.F.R. § 164.410, provide the following information to Participant following Watershed Health's determination that a Breach has occurred, to the extent the information is available:
 - a. the identification of each individual whose PHI has been, or is reasonably believed by Watershed Health to have been, accessed, acquired, used, or disclosed during the Breach (or, if such identities are unknown at that time, the classes of such individuals);
 - b. the date of discovery of the Breach;
 - c. a general description of the nature of the incident; and
 - d. any other available information that Participant is required to include in its notification to the individual under 45 C.F.R. § 164.404(c). If such information is not available at the time Watershed Health is required by this Section to notify Participant, Watershed Health will provide such information to Participant promptly as it becomes available.

9. Watershed Health will cooperate with Participant's commercially reasonable efforts to mitigate any harmful effect that is known to Participant of a use or disclosure of PHI by Watershed Health in violation of the requirements of this BAA.
 10. Watershed Health shall report to Participant in writing any Security Incident involving ePHI, other than a Security Incident that involves a use or disclosure of PHI reported pursuant to Section 7 of this BAA, within 30 days of Watershed Health's discovery thereof. The parties acknowledge and agree that this section constitutes notice by Watershed Health to Participant of the ongoing occurrence of events that may constitute Security Incidents but that are trivial, routine, do not constitute a material threat to the security of PHI, and do not result in unauthorized access to or use or disclosure of PHI (such as typical pings and port scans), for which no additional notice to Participant shall be required.
 11. Watershed Health will not use or further disclose PHI in a manner that would violate HIPAA if done by the Participant.
 12. Watershed Health will not sell PHI or disclose PHI for purposes of marketing or fundraising.
 13. Watershed Health will, to the extent that it is to carry out Participant's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Participant in the performance of such obligation.
- G. Remuneration.** Watershed Health shall not receive remuneration, directly or indirectly, in exchange for PHI; provided, however, that this prohibition shall not affect payment to Watershed Health by Participant pursuant to the Services.
- H. Termination.** This BAA will automatically terminate without any further action of the parties upon the termination or expiration of the Agreement.
1. Should either party become aware of a breach of a material term of this BAA by the other party, the non-breaching party will provide breaching party with written notice of such breach in sufficient detail to enable the breaching party to understand the specific nature of the breach. The non-breaching party will be entitled to terminate this BAA associated with such breach if, after the non-breaching party provides the notice to the breaching party, the breaching party fails to cure the breach within a reasonable time period specified by the non-breaching party in such notice; provided, however, that such time period specified by the non-breaching party will be based on the nature of the breach involved. In addition to any termination provisions provided by the Agreement, the breaching party consents to the non-breaching party's termination of the Agreement.
 2. Upon the termination of this BAA, Watershed Health will destroy all PHI, including such information in possession of Watershed Health's subcontractors, as a result of this Agreement and retain no copies, if it is feasible to do so. If more than one Covered Entity is utilizing the Software for the purpose of Care Coordination on behalf of the same Patient or Enrollee at the time of termination, destruction will be infeasible. If destruction is infeasible for this or other reasons, Watershed Health agrees to extend all protections, limitations, and restrictions contained in this BAA to Watershed Health's use or disclosure of any retained PHI, and to limit further uses and/or disclosures to the purposes that make the destruction of the PHI infeasible. This provision will survive the termination or expiration of this BAA and the Agreement. Notwithstanding the foregoing, to the extent an individual has executed a EULA with Watershed Health to maintain a Personal Health Record, such PHI shall convert to the ownership of the Patient or Enrollee and shall continue to be maintained pursuant to the EULA.

I. Miscellaneous.

1. The terms of this BAA will prevail in the case of any conflict with the terms of the Agreement or the WHQIP Participation Policies to the extent necessary to allow the parties to comply with the HIPAA Regulations.
2. Nothing in this BAA or the Agreement will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
3. To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of the parties or any one of them, the parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to these revised obligations.
4. Notices shall be provided in accordance with the terms of the Agreement.