

**CAPITAL PARTNERS IN CARE (CPC)  
HEALTH INFORMATION EXCHANGE (HIE)  
PARTICIPATION AGREEMENT**

This CAPITAL PARTNERS IN CARE (CPC) HEALTH INFORMATION EXCHANGE (HIE) PARTICIPATION AGREEMENT (the “**Agreement**”) is entered into effective as of January 1, 2019 (the “**Effective Date**”), by and between the DISTRICT OF COLUMBIA PRIMARY CARE ASSOCIATION (“**DCPCA**”), a not-for-profit District of Columbia corporation, and [REDACTED], a District of Columbia corporation (“**Participant**”). DCPCA and Participant are referred to individually as a “**Party**” or, collectively, as the “**Parties**.”

**RECITALS**

**WHEREAS**, DCPCA is a non-profit organization that, among other things, facilitates the operation of the CAPITAL PARTNERS IN CARE HEALTH INFORMATION EXCHANGE (“**CPC-HIE**”), a community health information exchange established in 2015.

**WHEREAS**, the CPC-HIE is designed to interconnect clinicians with interoperable health information technology for the purpose of meeting Triple AIM objectives, including increasing patient care quality, achieving economic efficiencies in providing health care service, facilitating care coordination and producing population health analytics;

**WHEREAS**, DCPCA is working with technology providers, hospitals and hospital systems, other healthcare providers, and other stakeholders throughout Washington, DC, Maryland and Virginia to maintain and optimize an operational health information exchange system (the “**CPC-HIE System**”) that will be the primary technology component of CPC-HIE;

**WHEREAS**, the CPC-HIE System is an “opt out” model HIE where the patients of each Participant have the right and opportunity to decline participation;

**WHEREAS**, the CPC-HIE System will facilitate the exchange of certain clinical information to be used for certain authorized purposes as set forth in this Agreement; and

**WHEREAS**, Participant is a healthcare provider organization that retains information about the patients treated by its providers. Pursuant to this Agreement, Participant will make certain relevant patient information accessible through the CPC-HIE System to individuals authorized to access the CPC-HIE System.

**NOW, THEREFORE**, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, the Parties hereby agree to the foregoing and as follows:

**AGREEMENT**

1. **Definitions.** Capitalized terms used in this Agreement without definition shall have the following meanings:

1.1 “**Applicable Law**” means the federal, state and local laws, rules, policies or regulations adopted by administrative agencies that are applicable to either DCPCA or Participant or a Party's rights or obligations under this Agreement, including, without limitation, laws, rules

and regulations applicable to the confidentiality of patient records and the protected information of Participants, such as HIPAA and HITECH, the applicable statutes, rules, and regulations of Washington, DC, and all applicable health care fraud and abuse statutes, rules and regulations.

1.2 **"Authorized Users"** means any individual that: (a) is authorized by a Participating Provider or by DCPCA; (b) has entered into a Terms of Use Agreement (as defined in Section 2.4(d)); and (c) is authorized by applicable law to access the information stored in the CPC-HIE System for the purposes described in this Agreement, including, without limitation, healthcare providers, employees, contract employees, independent contractors, officers or directors of Participant or DCPCA.

1.3 **"Board of Directors"** means the board of directors of DCPCA.

1.4 **"DCPCA Member"** means an entity that has a current valid Participation Agreement with DCPCA.

1.5 **"Confidential Information"** includes, but is not limited to, the following information: (a) Any designs, drawings, procedures and trade secrets, including any specifications and documentation; (b) Each Party's research and development, pricing and new product and marketing plans, unless and until publicly disclosed; (c) Nonpublic financial and administrative information concerning each Party; (d) Each Party's confidential information, records and other material regarding its business; and each Party's clients, patients, physicians, providers, provider groups, members, employees, vendors, products, methods, processes, systems, business plans or marketing methods and strategies, and costs; and (e) Any other non-public information of either Party, including the terms and conditions of this Agreement and any password or other identifier issued by DCPCA. **"Confidential Information"** will not include any information which: (i) is or becomes known publicly through no fault of the receiving Party; or (ii) is learned by the receiving Party from a third party entitled to disclose it; or (iii) is already known to the receiving Party before receipt from the disclosing Party as shown by the receiving Party's written records; or (iv) must be disclosed under operation of law, provided that, to the extent permitted by Applicable Law, the disclosing Party gives the other Party reasonable notice to allow the non-disclosing Party to object to such disclosure and such disclosure is made to the minimum extent necessary to comply with the law.

1.6 **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended and as implemented by the HIPAA Regulations.

1.7 **"HIPAA Regulations"** means the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160, 162 and 164) promulgated by the U.S. Department of Health and Human Services.

1.8 **"HITECH"** means Title XIII (the Health Information for Economic and Clinical Health Act) of the American Recovery and Reinvestment Act of 2009.

1.9 **"Operating Committee"** means the committee as constituted and operating pursuant to Section 11.

1.10 “**Participant Agreement**” means a legally binding agreement with the DCPCA for access to the CPC-HIE System.

1.11 “**Participating Provider**” means any participating healthcare provider, including Participant or healthcare organization, that executes a Participation Agreement.

1.12 “**CPC-HIE System Information**” means, collectively, all data input and maintained in the CPC-HIE System, whether submitted by Participant, any other Participating Provider or DCPCA.

## 2. **Data Sharing and Access.**

2.1 **CPC-HIE System.** In general terms, the CPC-HIE System will be software and hardware managed by or on behalf of DCPCA through which Authorized Users may access CPC-HIE System Information. Through third party technology providers, DCPCA shall use commercially reasonable efforts to facilitate access by Participant to the CPC-HIE System 24 hours a day and 365 days per year (subject to the terms hereof).

### 2.2 **Limitations on the Use and Disclosure of Data Provided by Participating Providers.**

(a) **General Access to and Permitted Use of Protected Health Information.** Authorized Users may access protected health information (“**Protected Health Information**” or “**PHI**”) as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) (45 C.F.R. Parts 160-164) and other Confidential Information provided by Participating Providers and made accessible through the CPC-HIE System for the following purposes: (a) treatment purposes, when the patient who is the subject of the PHI is under the active care of the Authorized User; (b) payment purposes, when the Authorized User is facilitating payment for treatment rendered to the subject of the PHI; (c) uses and disclosures based on a consent or authorization provided by the subject of the PHI; (d) as required by law; and (e) such other purposes permitted by law that are expressly authorized by this Agreement. Participant may not access any PHI or other Confidential Information submitted by any Participating Provider for any other purposes without the express written agreement of DCPCA and the applicable Participating Provider. Participant will ensure that it has policies in place consistent with Section 2.3(d) governing the obligations of Authorized Users.

(b) **Healthcare Operations.** Participant may use the data submitted by Participant (“**Participant Information**”) for its own healthcare operations purposes. In addition, Participant may use the data submitted by any other Participating Provider (“**Participating Provider Information**”) for Participant’s healthcare operations (and hereby permits use of Participant Data for use by other Participating Providers’ healthcare operations) so long as:

(i) Participant and the relevant Participating Providers whose information is being accessed have or had a relationship with the individual who is the subject of the PHI being accessed, the PHI pertains to such relationship, and the use is for (A) conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to

improving health or reducing healthcare costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment; or (B) reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing or credentialing activities; or

(ii) Such data is used for the purpose of health care fraud and abuse detection or compliance.

(c) **Policies and Procedures; Retention and Re-Use of Data.**

(i) Participant shall comply with Policies and Procedures as adopted by the Operating Committee in respect of the CPC-HIE, as amended by the Operating Committee from time to time in its reasonable discretion and communicated to the Participant (the “**CPC-HIE Policies and Procedures**”).

(ii) Participant shall be responsible under Applicable Law, as well as the terms of the Agreement, for data received through the CPC-HIE and may maintain such data in accordance with the Participant’s record retention policies and procedures, which policies and procedures shall (1) comply with Applicable Law and (2) meet or exceed industry standards in all material respects. Recipients may use, re-disclose and deidentify such data and may create derivative data or incorporate data into other data, records, or data-bases of Participant, all subject to Applicable Law and any applicable provisions of the CPC-HIE Policies and Procedures. After data is initially received by a Participant through the CPC-HIE and it becomes part of the Participant’s records, other data or databases, (A) Participant shall own such data, provided that Participant shall continue to comply with Applicable Law and the confidentiality terms of this Agreement in respect thereof; and (B) DCPCA shall not be liable, and shall have no obligation, in respect of such data or its uses by Participant. Participant shall have no obligation to return or destroy data received through the CPC-HIE in the event of termination or expiration of the Agreement or termination for any reason of this Agreement by the source of the data, whether another Participant or a Third Party Data Source.

(d) **De-Identified and Aggregated Data.** Except with the prior approval of the Operating Committee and prior written consent of the applicable Participating Providers, Participant may not aggregate Participant Information with any other Participating Provider Information, even if such data is de-identified. In addition, Participant may not de-identify any other Participating Provider Information. Notwithstanding the foregoing, Participant hereby permits DCPCA to de-identify such data and/or aggregate such de-identified data to be used and/or disclosed for the following purposes: (i) evaluating the success of the CPC-HIE; (ii) for conducting audits or quality assurance surveys; (iii) the use of Participant data or the extraction of information from Participant data for analytic, predictive, population care management or other business purposes; and (iv) the CPC-HIE’s internal purposes only (as facilitated by the DCPCA). Upon request, during the Term of this Agreement, DCPCA shall use commercially reasonable efforts to provide to Participant reasonably requested reports, statistical summaries, or audit findings including, but not limited to, information indicating the number of accesses by such Participant.

Notwithstanding the foregoing, nothing herein shall obligate DCPCA to provide reports containing de-identified or aggregated information derived from information provided by other Participating Providers if such Participating Providers have prohibited such use.

(e) **Access By Governmental or Public Health Authorities.** Except as otherwise expressly permitted by this agreement, DCPCA agrees that no Participant Information or Confidential Information, will be disclosed to any third party, unless otherwise required by law or with the consent of Participant and, if required by law, the authorization of the individual who is the subject of the Participant Information. The Parties understand and agree that Participant Information, including PHI, may be used and disclosed for research, public health or other purposes permitted by applicable laws, including through use and disclosure of a limited data set. The Parties understand and agree that DCPCA may have legal obligations to such authorities' rights to access PHI when a legitimate public health need to access this information exists, consistent with state and federal law and regulations governing access to PHI by public health authorities.

(f) **Disclosure Compelled by Legal Process.** In the event DCPCA receives a demand, summons, subpoena, court order, or other demand for compulsory disclosure (an "**Order**") requesting Participant Information, DCPCA agrees, unless prohibited by law from doing so, to promptly notify Participant and provide Participant with an opportunity to object to disclosure and have its objections resolved prior to disclosing the Participant Information. In the event Participant receives an Order requesting PHI accessible through the CPC-HIE System or other data originating with another Participating Provider, Participant must, unless prohibited by law from doing so, promptly notify DCPCA and the other Participating Provider and cooperate with the other Participating Providers in contesting disclosure if requested to do so. In addition, Participant shall cooperate with other Participating Providers with regard to such Orders if another Participating Provider receives an Order with respect to Participant Information. Notwithstanding the foregoing, nothing herein shall prevent Participant from complying with such Order if it reasonably believes it is required to do so.

(g) **Patient Consents.** Participant shall conform with the applicable requirements of HIPAA and all other applicable federal, state and local laws, rules and regulations ("**Applicable Law**") with respect to the submission and use of Participant Information and Participating Provider Information. In no event shall Participant submit any data to the CPC-HIE System if such data is subject to Applicable Law that would not permit use and disclosure by other Participating Providers and Authorized Users as set forth in this Section 2.2. Specifically, but without limitation of the foregoing, if Participant is subject to a more stringent state or local law with respect to mental health records or other special category of PHI, Participant shall ensure that it either: (a) does not submit such records or information to the CPC-HIE System; or (b) has obtained all necessary consents, permissions or written authorization that comply with Applicable Law (collectively, "**Patient Consents**") from the patients whose data will be submitted. It is noted that Patient Consent for use and disclosure and access by other Participating Providers to certain types of PHI is required by the laws of the District of Columbia and the Commonwealths of Maryland and Virginia. IN ALL CASES, IT SHALL BE PARTICIPANT'S OBLIGATION AND DUTY TO VERIFY COMPLIANCE WITH ALL APPLICABLE LAW WITH RESPECT TO THE SUBMISSION AND USE OF ANY PHI SUBMITTED TO THE CPC-HIE SYSTEM. PARTICIPANT AND DCPCA SHALL EACH HAVE A DUTY TO PROMPTLY NOTIFY THE OTHER PARTIES OF ANY ACTUAL OR SUSPECTED LACK OF COMPLIANCE WITH

CONSENT REQUIREMENTS WHICH ARE KNOWN OR SHOULD BE KNOWN TO THE PARTY. HOWEVER, IN NO EVENT SHALL DCPCA BE RESPONSIBLE FOR ANY SUCH DETERMINATIONS AND PARTICIPANT SHALL DEFEND, INDEMNIFY AND HOLD DCPCA, OTHER PARTICIPATING PROVIDERS AND THE CPC-HIE HARMLESS FROM ANY CLAIMS, LIABILITIES, COSTS AND/OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) RELATING TO ANY FAILURE TO OBTAIN APPROPRIATE PATIENT CONSENTS FROM ANY PATIENT.

(h) **License to Participant Information.** As between the Parties, Participant shall retain full ownership of its Participant Information. Subject to Participant's right to terminate this Agreement as set forth in Section 8 below, Participant grants to DCPCA and the other Participating Providers a fully-paid, worldwide, non-exclusive, royalty-free right and license to permit access to, and permit use through the CPC-HIE System of, the Participant Information by all Authorized Users consistent with the terms of this Agreement and the CPC-HIE Policies (as defined in Section 2.3(b)). In addition, Subject to Participant's right to terminate this Agreement as set forth in Section 8 below, Participant grants to DCPCA and the other Participating Providers a fully-paid, worldwide, non-exclusive, royalty-free right and license to access and use the Participant Information: (i) to exercise DCPCA's rights and carry out its obligations under this Agreement, including, without limitation, as necessary for system administration (including performance measurement), testing, problem identification and resolution, (ii) the proper management and administration of DCPCA, and (iii) as necessary for DCPCA to comply with and carry out its legal responsibilities under and in accordance with all Applicable Law.

### 2.3 **DCPCA Obligations.**

(a) **Governance.** DCPCA will create the Operating Committee as set forth in Section 11. The Parties acknowledge and agree that DCPCA is evaluating a long-term strategy for enhancing and maintaining CPC-HIE operations, which may include the payment of fees by Participating Providers for such services. Notwithstanding the foregoing, DCPCA shall not have any obligation to maintain the CPC-HIE's operations after the expiration or termination of this Agreement.

(b) **CPC-HIE Policies.** The Operating Committee will develop written policies and procedures in consultation with Participant concerning the access, use and disclosure of PHI and other data within the CPC-HIE System, as it deems appropriate from time to time, and consistent with the terms of this Agreement ("**CPC-HIE Policies**"). In the event of a conflict or inconsistency between the CPC-HIE Policies and this Agreement, this Agreement shall govern to the extent of such conflict.

(c) **CPC-HIE Operations.** DCPCA shall obtain and maintain all hardware and software necessary to operate the CPC-HIE and shall use commercially reasonable efforts to make the CPC-HIE reasonably available to Participant as well as to maintain the security and data integrity of the CPC-HIE.

(d) **DCPCA Participating Provider Agreements.** DCPCA will include in its Participant Agreements with Participating Providers (including, without limitation, through the CPC-HIE Policies), including this Participation Agreement, obligations for Participating Providers to have policies in place that require that their Authorized Users:

(i) have received training regarding the confidentiality of PHI under the Privacy Rule and other applicable federal, state and local laws, to protect Confidential Information and PHI in compliance with the Privacy Rule and other applicable laws;

(ii) only access the CPC-HIE for purposes of Treatment, Payment, or Health Care Operations purposes (as such terms are defined by HIPAA) relating to a patient or as otherwise permitted by this Agreement;

(iii) agree to maintain the technical, physical and administrative security of the CPC-HIE including holding any passwords, or other means for accessing the CPC-HIE, in a confidential manner and to release them to no other individual;

(iv) agree and understand that their failure to comply with the terms of this Agreement may result in their exclusion from the CPC-HIE.

(e) **Data Breaches.** DCPCA shall promptly notify Participant of any data breach for which it becomes aware involving Participant Information and shall not make any notification to a patient unless required by law, but only after notifying Participant of the Data Breach.

(f) **Participant Investigations.** In the event DCPCA is notified by Participant that it is conducting an investigation into the inappropriate access, use or disclosure of Participant Information submitted to the CPC-HIE, DCPCA shall upon request and within a reasonable period, provide to Participant all data and information reasonably requested by Participant which is necessary to determine whether any inappropriate access, use or disclosure of Participant's Information has occurred or is in jeopardy of occurring. Notwithstanding the foregoing, nothing herein shall require DCPCA to disclose to Participant any information which it is not permitted to disclose pursuant to a Participant Agreement with another Participating Provider or which it is not permitted to disclosure under law.

## 2.4 **Participant Obligations.**

(a) **Data Transfer.** Participant shall make reasonable efforts to provide a technical mechanism that transmits to the CPC-HIE System a copy of all demographic, registration, presenting complaint, and such other patient record information mutually agreed to by Participant and DCPCA and consistent with the CPC-HIE Policies. Participant shall be solely responsible for procuring all such hardware or software required to access the CPC-HIE System. The Parties acknowledge that Participant may have internal restrictions on the types of data that it may disclose. Nothing in this Agreement shall require Participant to provide CPC-HIE with such data, provided that Participant has notified DCPCA on or prior to the date hereof of what data categories are not being provided to the CPC-HIE System (and promptly notifies DCPCA of any future changes to such categories) and will cooperate with DCPCA to develop a technical mechanism to address notice to other Participating Providers of such missing data categories.

(b) **Notice of HIE Participation.** Participant shall be responsible for providing prior notice to all patients that their PHI will be transmitted to the CPC-HIE, unless the patient elects to "opt out" of the CPC-HIE participation in accordance with the policies and procedures established by the CPC-HIE.

(c) **CPC-HIE Policies.** Participant shall abide by the CPC-HIE Policies as in effect from time to time. Participant shall not be bound by any CPC-HIE Policy, whether newly created or modified version of an existing CPC-HIE Policy, until Participant receives a written or electronic copy of the CPC-HIE policy from DCPCA.

(d) **Authorized Users/Terms of Use Agreement.** Prior to accessing any PHI or other confidential information accessible through the CPC-HIE System, and prior to receiving a user ID and password, Participant shall require all of its Authorized Users to sign the “**Terms of Use Agreement**” attached as Exhibit A, and thereafter Participant shall require each new Authorized User to sign the Terms of Use Agreement before receiving any such access. The Terms of Use Agreement shall remain in effect during the term of this Agreement and may be modified from time to time by DCPCA. In the event the Terms of Use Agreement is modified by DCPCA, the revised version of the Terms of Use Agreement will be made available and Authorized Users shall be required to sign such modified version prior to further use of the CPC-HIE System.

(e) **Suspension or Revocation of Access.** In the event Participant or DCPCA reasonably believes that any Authorized User’s access rights should be suspended or revoked or has knowledge that any Authorized User has violated this Agreement (including, without limitation, the CPC-HIE Policies) or the Terms of Use Agreement, Participant or DCPCA shall promptly inform the other Party. DCPCA reserves the right to disable or restrict any Authorized User’s access to the CPC-HIE System where such Authorized User does not comply with the terms of this Agreement (including, without limitation, the CPC-HIE Policies) or the Terms of Use Agreement. In addition, where such Authorized User is an employee, contract employee, independent contractor, officer, director of Participant, DCPCA shall disable the Authorized User’s user ID and password at Participant’s request. Participant shall notify DCPCA promptly when an individual no longer is permitted to access the CPC-HIE System.

(f) **Security.** Participant shall not and shall not permit its Authorized Users to, share any information, including without limitation, passwords and usernames, with another person for the purpose of facilitating such person’s unauthorized access and use of the CPC-HIE System or CPC-HIE System Information. Participant shall be responsible for all acts or omissions (including, without limitation, all statements, transactions, or transmissions made or acts or omissions that occur through the use of registration information) of any Authorized Users of Participant. If Participant or any of Participant’s Authorized Users believes that an unauthorized person has or may have used an Authorized User’s registration information to access the CPC-HIE System or CPC-HIE System Information without authorization, Participant shall notify DCPCA promptly in writing.

(g) **Evaluation.** Upon DCPCA’s request, Participant will reasonably contribute to an evaluation identifying the strengths, weaknesses, efficacy, and usefulness of, and suggestions for improving, the CPC-HIE System. Such participation may include, without limitation, participation in interviews, completion of surveys, and submission of other written or oral evaluations.

2.5 **Compliance With Laws.** Each Party shall be responsible for ensuring that performance of its obligations and exercise of its rights under this Agreement complies with all Applicable Laws.



3. **Confidentiality.**

3.1 **Confidential Information.** The Parties may use and disclose the Confidential Information of the other Party only as necessary to perform their obligations under this Agreement and shall prevent unauthorized use, dissemination and disclosure of the other Party's Confidential Information. Each Party will confine knowledge of the other Party's Confidential Information only to its employees and agents who require such knowledge and use in the ordinary course and scope of their employment or retention by the respective Party in a manner consistent with the terms and conditions of this Section 3, and to such other persons who have a need to know such Confidential Information, in all cases in connection with the purposes of this Agreement.

3.2 **Obligations Upon Disclosure.** Upon a use or disclosure contrary to Section 3.1, or loss of, or inability to account for, any Confidential Information of the disclosing Party (a "**Confidentiality Incident**"), the receiving Party shall (a) notify the disclosing Party promptly in writing upon becoming aware of the Confidentiality Incident; (b) take such actions as may be necessary or reasonably requested by the disclosing Party to minimize the violation; and (c) cooperate in all reasonable respects with the disclosing Party to minimize the violation and any damage resulting there from.

3.3 **HIPAA Business Associate Agreement.** The Parties hereby agree to the terms and conditions of the HIPAA Business Associate Agreement, attached hereto as Exhibit B. In the event of a conflict between the terms of this Section 3 and the terms of the Business Associate Agreement, the terms of the Business Associate Agreement shall govern to the extent of such conflict.

4. **Ownership.**

4.1 **Preexisting Materials.** Each Party shall maintain ownership of its pre-existing works, materials, and data provided pursuant to this Agreement. Participant shall remain the sole owner of its systems. Each Party shall have a limited license to use the other Party's pre-existing materials solely for purposes of this Agreement during the term of this Agreement.

4.2 **Ownership of CPC-HIE System.** As between the Parties, the CPC-HIE System and all code, content, and other materials comprising the CPC-HIE System are owned by, and shall remain the sole property of DCPCA or its licensors. This Agreement does not convey to Participant any title in or to, or ownership of, the CPC-HIE System or of any part thereof or to any modifications, extensions, enhancements or derivative works made thereto (which shall be solely owned by DCPCA or its licensors), but only a right of limited access and use in accordance with this Agreement. Participant and Authorized Users shall have the limited right to access and use the CPC-HIE System during the term of this Agreement solely for purposes of this Agreement and shall not have the right to sublicense or provide any service bureau services or similar services to any third party through the CPC-HIE System.

5. **Fees and Other Costs.** Participant shall be assessed an annual CPC-HIE participation fee, as recommended by the Operating Committee and approved by the DCPCA Board of Directors, to cover CPC-HIE technology infrastructure and management costs. Participant shall be responsible for any costs necessary to connect to the CPC-HIE System, gather and provide the data required under this Agreement, and otherwise participate in CPC-HIE.

6. **Indemnification.** DCPCA and each Participant (each an “**Indemnifying Party**”) shall indemnify, defend, and hold the other Party (in such capacity, the “**Indemnified Party**”), and the other Participating Providers and their Authorized Users, affiliates, employees, agents, subcontractors and licensors (collectively, the “**Indemnities**”) harmless from and against any and all liability (including reasonable attorneys’ fees), injury, loss or damage related to: (a) the grossly negligent or intentional acts or omissions of the Indemnifying Party (or its Authorized Users); (b) any third party claims brought against the Indemnified Party arising from the Indemnifying Party’s (or its Authorized Users) grossly negligent, reckless, illegal or fraudulent acts or omissions; (c) the Indemnifying Party’s (or its Authorized Users) material breach of this Agreement; or (d) the Indemnifying Party’s (or its Authorized Users) violation of Applicable Law. Such indemnification is conditioned upon the Indemnified Party’s prompt written notification to the Indemnifying Party of the claim, demand or cause of action, cooperation of the Indemnified Party in defense and settlement of any such claim, demand or cause of action, as well as the right of the Indemnifying Party to control the defense of any such claim, demand or cause of action.

7. **Insurance.** The Parties acknowledges that they have, as of the Effective Date, commercial general liability coverage in the amount of \$2,000,000 in the aggregate and \$1,000,000 each occurrence. Nothing herein shall prohibit a Party from self-insuring or obtaining such coverage from a related third-party entity provided it can provide adequate evidence of such coverage upon request of the other Party.

8. **Term and Termination.**

8.1 **Term.** This Agreement shall continue in effect until terminated hereunder, commencing on the Effective Date unless terminated as set forth herein.

8.2 **Termination For Convenience.** Either Party may terminate this Agreement without cause or penalty at any time by providing ninety (90) days’ written notice to the other Party.

8.3 **Termination for Material Breach.** This Agreement may be immediately terminated by either DCPCA or Participant upon fifteen (15) days’ prior written notice to the other Party of a Default Event (as defined below); provided that such Default Event (if capable of cure during such period) has not been cured: (a) if the other Party materially breaches this Agreement; or (b) if the other Party makes a general assignment for the benefit of creditors, files a voluntary petition and bankruptcy or for reorganization or arrangement under any bankruptcy laws, a petition of bankruptcy is filed against the other Party, or a receiver or trustee is appointed for all or any part of the property or assets of the other Party; or (c) if Participant breaches any other agreement that materially affects Participant’s ability to effectively participate in the CPC-HIE (e.g., any Infrastructure Vendor Agreement) (each, a “**Default Event**”).

8.4 **Termination Due to Third Party Technology Providers.** DCPCA may terminate this Agreement immediately in the event: (a) the agreement by and between DCPCA and eClinicalWorks for the technology used to run the CPC-HIE System (the “**eClinicalWorks Agreement**”) terminates for any reason, or (b) any other agreement by and between DCPCA and a third party vendor that provides technology required to operate or maintain the CPC-HIE System terminates for any reason.

8.5 **Termination Due to Changes in Law or Actions.** It is acknowledged by Participant and by DCPCA that the CPC-HIE may be affected by circumstances outside of the direct control of either Party. In particular, the ability of Participant and/or DCPCA to fulfill the obligations of this Agreement could be affected by changes in legislation, regulations, rules or procedures (collectively, “**Law**”) and/or actual or threatened decisions, findings or actions by governmental or private agencies or courts (collectively, “**Action**”). If, in the opinion of nationally-recognized counsel selected by DCPCA (the “**Opinion**”), such Law or Action would have the effect of subjecting either Party to civil or criminal prosecution under Applicable Law, or any other material adverse proceeding on the basis of its participation in the CPC-HIE, including, without limitation, any adverse effect on the DCPCA’s existing tax-exempt status, then the DCPCA and Participant will attempt in good faith to modify this Agreement to the minimum extent necessary, to comply with such Law or to avoid the Action, as applicable. If within ninety (90) days of providing written notice of such Opinion to the other Party, the Parties are unable to modify the Agreement to meet the requirements in question, then this Agreement shall be terminated upon the earlier of the following: (a) one hundred twenty (120) days subsequent to the date upon which either Party gives written notice to the other Party or (b) the effective date upon which the Law or Action prohibits the relationship of the Parties pursuant to this Agreement.

8.6 **Access to Data After Termination.** In the event of any expiration or termination of this Agreement, DCPCA shall, within sixty (60) days after the effective date of such expiration or termination, return or certify deletion of all Participant Information from the CPC-HIE and provide Participant with the opportunity to verify deletion upon request. Upon the effective date of expiration or termination, all access to, and use of, Participant Information by other Participating Providers shall cease. Notwithstanding the foregoing, DCPCA may maintain a copy of the Participant Information for archiving and compliance purposes. In the event another Participating Provider has relied on the Participant Information for an authorized purpose as set forth herein, and such information later becomes relevant to a claim brought against the Participating Provider, Participant shall cooperate with DCPCA and the Participating Provider and provide reasonable access to such Participant Information, subject to applicable law.

## 9. **Representations.**

9.1 **Participant Representations.** Participant represents and warrants that: (a) it has the necessary authority (including, without limitation, as applicable, Patient Consents) to submit Participant Information to the CPC-HIE System for access in accordance with this Agreement; and (b) it has taken reasonable measures to assure the accuracy of data transmitted to the CPC-HIE.

9.2 **Mutual Representations.** Each Party represents and warrants that: (a) it has implemented reasonable security and virus protection measures within their respective systems, and has taken reasonable measures to seek to ensure that such systems are otherwise safe and free of malicious code, viruses, Trojan horses, or similar code or vulnerabilities; (b) it has implemented reasonable administrative, technical, and physical safeguards to secure the PHI and otherwise is in compliance with Applicable Laws related to the privacy and security of PHI; (c) it shall use good faith efforts to perform its obligations under this Agreement and to commit such time and resources as are reasonably needed to perform its obligations; (d) all work shall be performed in a workmanlike, professional, and timely manner according to prevailing industry standards; (e) it is organized and validly existing under the laws of the jurisdiction of its organization and has full power and authority to enter into this Agreement and to carry out the provisions hereof; (f) it is

duly authorized to execute and deliver this Agreement and to perform its obligations hereunder; (g) this Agreement is a legal and valid obligation binding upon it and enforceable according to its terms; and (h) the execution, delivery and performance of this Agreement does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any Applicable Law.

9.3 **Disclaimer of Warranties.** EXCEPT AS SET FORTH IN THIS AGREEMENT, THE CPC-HIE SYSTEM IS PROVIDED “AS IS” AND WITHOUT WARRANTY OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE. DCPCA MAKES NO REPRESENTATION OR WARRANTIES REGARDING THE CPC-HIE SYSTEM’S OPERATION OR RELIABILITY OR THAT THE CPC-HIE SYSTEM WILL BE ERROR FREE OR UNINTERRUPTED. EXCEPT TO THE EXTENT CAUSED BY DCPCA’S INTENTIONAL OR GROSSLY NEGLIGENT ACTS OR OMISSIONS, DCPCA IS NOT LIABLE FOR THE ACCURACY, COMPLETENESS, TRANSMISSION, STORAGE, USE, AND BACK-UP OF ANY INFORMATION THAT PARTICIPANT, ANY OTHER PARTICIPATING PROVIDER OR DCPCA MAKES AVAILABLE THROUGH THE CPC-HIE SYSTEM.

10. **Limitation of Liability.**

10.1 **Incidental, Special, Consequential, and Other Damages.** EXCEPT AS SET FORTH BELOW IN SECTION 10.3, NEITHER PARTY SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR, AND EACH PARTY HEREBY WAIVES ANY CLAIMS FOR, ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ECONOMIC LOSS, LOSS OF PROFITS, REVENUE, EQUIPMENT USE, DATA OR INFORMATION OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY, USE OR PERFORMANCE OF THE CPC-HIE SYSTEM OR RELATED DOCUMENTATION BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 **Cap on Direct Damages.** EXCEPT AS SET FORTH BELOW IN SECTION 10.3, EACH PARTY’S TOTAL LIABILITY TO THE OTHER AND TO ANY OTHER PARTICIPATING PROVIDER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY, USE OR PERFORMANCE OF THE CPC-HIE SYSTEM BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY SHALL IN NO EVENT EXCEED THE AMOUNT OF ANY PROCEEDS MADE AVAILABLE THROUGH ANY INSURANCE REQUIRED TO BE CARRIED BY SUCH PARTY FOR SUCH CLAIM UNDER THIS AGREEMENT.

10.3 **Exclusions.** THE LIMITATIONS AND EXCLUSIONS OF LIABILITY SET FORTH IN THIS SECTION 10 OR ELSEWHERE IN THIS AGREEMENT SHALL NOT APPLY TO ANY BREACH OF SECTION 2.5 (COMPLIANCE WITH LAWS), MISAPPROPRIATION OR MISUSE OF DCPCA’S INTELLECTUAL PROPERTY OR THE CPC-HIE SYSTEM BY PARTICIPANT, OR ANY CLAIMS FOR INDEMNIFICATION HEREUNDER.

10.4 **Further Limitations.** Notwithstanding any other provision to the contrary in this Agreement, and except for acts or omissions under DCPCA's control which proximately cause an injury, loss or damages, DCPCA disclaims and shall have no liability to Participant or any affiliated third party for any injury, loss, or damage related to the occurrence of any act or omission related to: (a) Participant's failure to notify DCPCA that an individual is no longer authorized to access the CPC-HIE System; (b) harm purportedly caused by clinical action or inaction due to the display of information for a different patient than that requested due to mistaken identification by the patient data locator program; or (c) harm purportedly caused by clinical action or inaction due to failing to display patient data to the clinician for any reason or caused by inaccurate or incomplete data provided by any Participating Provider.

10.5 **Patient Care, Utilization Management and Quality Management.** Participant and its employees and agents shall be solely responsible for all decisions involving patient care, utilization management and quality management for their patients. Subject to Section 10.3, Participant shall not have any recourse against, and Participant waives any claims, against DCPCA for any loss, damage, claim or cost relating to or resulting from its own use or misuse of the CPC-HIE System or data accessed through the system.

11. **Operating Committee.**

11.1 **Composition and Duties of Operating Committee.**

(a) The Operating Committee provides guidance to the DCPCA Board of Directors on matters related to the operation of the CPC-HIE, recommends policies and procedures related to the CPC-HIE, provides advice and recommendations to the DCPCA Board of Directors related to the admission or removal of new Participating Providers, provides advice and recommendations to the DCPCA Board of Directors related to modification of this Agreement, provides advice and recommendations to the DCPCA Board of Directors related to changes to the Terms of Use Agreement, and exercises such powers and duties assigned to it under this Agreement or as assigned to it by the DCPCA Board of Directors.

(b) The Operating Committee shall be comprised of the following (each of which shall be known as a "Operating Committee Member"):

(i) One individual from each DCPCA Member organization, to be appointed by the DCPCA Member; and

(ii) One individual appointed by the District of Columbia Primary Care Association who will be the Chair of the Operating Committee.

(c) Each appointed Operating Committee Member shall be entitled to one (1) vote, and serve a term of one year. No Participating Provider (either directly or through any subsidiary, parent, affiliate or any other related entity) shall be entitled to have more than one voting Operating Committee Member .

(d) Any appointed Operating Committee Member may be removed, with or without cause, by the entity that appointed the Operating Committee Member. When an Operating Committee Member ceases to meet the qualifications of the Operating Committee Member's respective position, such individual shall be removed automatically. Finally, the Operating

Committee, upon a vote of eighty percent (80%) of the Operating Committee (without taking into account the affected Operating Committee Member's vote), may remove an Operating Committee Member for cause. For these purposes, "cause" is defined as: (i) effectively abandoning the position by not attending scheduled Operating Committee meetings, or (ii) withholding consent on issues without a justifiable position that is stated in writing to the Operating Committee. Any position vacated by action of the Operating Committee under this Section shall be filled by the DCPCA Member organization in accordance with Section 11.1(e).

(e) In the event of a vacancy among the Operating Committee Members for whatever reason, the DCPCA Member organization shall designate a replacement representative within thirty (30) days of the vacancy. Such replacement Operating Committee Member shall serve for the remainder of the term vacated.

(f) DCPCA and the Participating Providers shall be able to fully rely on the actions and representations of a Participant's appointed Operating Committee Member or any proxy representative that the Participant chooses to send to a meeting or communicate with DCPCA or another Participating Provider, and shall be fully protected in such reliance.

(g) The Operating Committee will meet from time to time, but not without at least seven (7) days' written or e-mail notice to the Operating Committee Members. Operating Committee meetings may be held by teleconference, provided that the meetings otherwise meet the remaining provisions of this Section 11. The Operating Committee will meet to consider and make recommendations to DCPCA related to various issues surrounding the CPC-HIE, including, but not limited to: technical issues, confidentiality, the scope of Information stored and accessed by Participating Providers, the use of the Information, and any other issues related to the CPC-HIE or the Participating Providers' participation therein.

(h) The Operating Committee may seek input from other individuals (e.g., patient representatives, clinical subject matter experts (SME)), who are not Operating Committee Members but can provide insight to the Operating Committee on issues related to the management of the CPC-HIE. These individuals shall be considered non-voting advisors to the Operating Committee.

11.2 **Voting**. Each Operating Committee Member shall be entitled to exercise one vote on decisions made by the Operating Committee. At any meeting of the Operating Committee, provided a quorum (seventy per cent (70%)) of the Operating Committee Members are present, the Operating Committee may hold a vote on advice and/or recommendations to be provided to the DCPCA Board of Directors. Any such recommendation shall require a majority of those voting prior to being presented to the DCPCA Board of Directors. No decision made by the Operating Committee may contravene any provision of these Terms and Conditions or the spirit or intent thereof.

11.3 **Notice**. DCPCA shall provide written notice to Participating Providers of the dates, times, and agendas of Operating Committee meetings. Participating Providers may submit written comments to DCPCA regarding any item under Operating Committee consideration and may propose items for an Operating Committee agenda. Participating Providers who are not represented on the Operating Committee may attend meetings of the Operating Committee, but,

may not cast a vote on any decision of the Operating Committee. DCPCA shall provide written notice to Participating Providers of Operating Committee decisions.

12. **General.**

12.1 **Notices.** Except as otherwise provided herein, any notices or demands required by law or under the terms of this Agreement shall be in writing. The Parties shall deliver such notices or demands by hand, by certified or registered mail, or by facsimile, and addressed as set forth below. In the case of certified or registered mail, such notices shall be deemed given when deposited in the United States mail with postage prepaid. In the case of facsimile, notices shall be deemed given upon receipt of transmittal confirmation. Either Party may change its address at any time by giving thirty (30) days prior written notice to the other Party.

<b>Notices to DCPCA:</b>	<b>Notices to Participant:</b>
Name: Donna Ramos-Johnson Director and Chief Technology Officer	Name:
Address: 1620 I Street NW, Suite 300 Washington, DC 20006	Address:
Fax: (202)638-4557	Fax:
Email: <a href="mailto:dramosjohnson@dc pca.org">dramosjohnson@dc pca.org</a>	Email:

12.2 **Force Majeure.** If the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impractical by reason of any flood, riot, fire, judicial or governmental action, labor disputes, terrorism, act of God, telecommunications failure, failure of the Internet, or any other cause beyond the reasonable control of such Party, the affected Party shall not be deemed in breach or default of this Agreement for such nonperformance. The affected Party shall use reasonable and prompt efforts to correct any nonperformance.

12.3 **Independent Contractors and Assignment.** The Parties and their respective personnel are and shall be independent contractors by virtue of this Agreement, and neither Party shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other Party. Participant may not assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, without the consent of DCPCA and any attempt to do so shall be deemed a material breach of this Agreement, except that Participant may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, without the consent of DCPCA in connection the sale of all or substantially all of its business or assets.

12.4 **Choice of Law and Venue.** This Agreement shall be governed in all respects by the laws of the District of Columbia without regard to its conflict of law provisions. Venue and exclusive jurisdiction for all actions and proceedings relating to or arising out of this Agreement shall be in the state or federal courts located in Washington, DC.

12.5 **Section Headings.** The section headings used in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement.

12.6 **Controlling Terms.** This Agreement (as supplemented by the CPC-HIE Policies and Procedures) constitutes the entire agreement between the Parties and supersedes all other prior

and contemporaneous agreements, understandings, and commitments among the Parties with respect to the subject matter hereof, except to the extent they are specifically incorporated into this Agreement. Any amendment or modification to this Agreement shall not be valid, enforceable or binding on the Parties unless such amendment or modification shall be in a written instrument duly executed by the authorized representatives of each Party. In the event of any conflict or inconsistency between a provision in the body of this Agreement and any Exhibit, Attachment, or Schedule hereof, the terms contained in the body of this Agreement shall prevail.

12.7 **Severability**. If any of the provisions of this Agreement are held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of the Agreement shall be construed as if not containing such provisions, and all other rights and obligations of the Parties shall be construed and enforced accordingly. The invalid or unenforceable provisions shall be reformed so as to be valid and enforceable while most closely approximating the original intent of the Parties.

12.8 **No Waiver**. No waiver or failure to exercise any option, right or privilege under the terms of this Agreement on any occasion or occasions shall be construed to be a waiver of the same or any other option, right or privilege on any other occasion.

12.9 **Third Party Beneficiaries**. eClinicalWorks is an intended third party beneficiary with respect to this Agreement.

12.10 **Successor Organization**. In the event that DCPCA transfers the licensing for the CPC-HIE System to another entity (“the Successor Organization”), this Agreement, including all amendments, shall transfer to the Successor Organization.

12.11 **Survival Of Obligations**. The provisions of this Agreement, that by their nature are intended to survive beyond the termination, cancellation or expiration of this Agreement, shall survive.

[Signature page follows]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original but all of which together shall constitute one Agreement on the dates first set forth above:

**DC Primary Care Association (DCPCA)**

**Participant**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_



Name: Tamara Smith

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

Title: President and CEO

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

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

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

Exhibit A

TERMS OF USE AGREEMENT

The undersigned \_\_\_\_\_ ("Authorized User") hereby acknowledges that DCPCA and Participant have entered into a **CAPITAL PARTNERS IN CARE (CPC) HEALTH INFORMATION EXCHANGE (HIE) PARTICIPATION AGREEMENT ("CPC-HIE Agreement")** for the sharing of electronic health information and records. This Agreement governs the use and disclosure of Protected Health Information (as defined in CPC-HIE Agreement and sometimes referred to therein as "PHI") by DCPCA, the Participant and their Authorized Users. The Authorized User shall have access to Protected Health Information. Pursuant to such access, the Authorized User agrees: (a) to be obligated under the terms and conditions of the CPC-HIE Agreement; and (b) to protect the confidentiality and security of Protected Health Information subject to this Agreement and the CPC-HIE Agreement, in accordance with applicable local, state and federal law, including without limitation, the federal Health Insurance Portability and Accountability Act of 1996 and its implementing regulations on privacy and security found at 45 C.F.R. Parts 160 and 164, as the same may be amended from time to time ("HIPAA").

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Address

**Exhibit B**

**BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is made and entered into effective as of January 1, 2019 (“Effective Date”) by and between **District of Columbia Primary Care Association** (“Business Associate”), a District of Columbia nonprofit organization with primary business offices at 1620 I Street NW, Suite 300, Washington DC, 20006 and [REDACTED] (“Covered Entity”), a not-for-profit District of Columbia corporation with primary business offices at [REDACTED].

WHEREAS, Covered Entity intends to enter into a Capital Partners in Care (CPC) Health Information Exchange (HIE) Participation Agreement (the “CPC-HIE Agreement”) with Business Associate, with the purpose of helping to facilitate the creation of an innovative patient care model that improves health care delivery and patient health outcomes. Business Associate will provide certain services to Covered Entity pursuant to the CPC-HIE Agreement. In connection with Business Associate's services, Business Associate creates or receives Protected Health Information from or on behalf of Covered Entity, which information is subject to protection under HIPAA, Codified at 45 CFR parts 160 and 164 (“HIPAA Regulations”). This Business Associate Agreement (“BAA”) shall supplement and/or amend the CPC-HIE Agreement only with respect to Business Associate's Use, Disclosure, and creation of PHI under the CPC-HIE Agreement to allow Covered Entity to comply with sections 164.502(e) and 164.314(a)(2)(i) of the HIPAA Regulations. Business Associate acknowledges that effective January 1, 2010, as a business associate, it is responsible to comply with the HIPAA Security and Privacy regulations pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), including Sections 164.308, 164.310, 164.312 and 164.316 of title 45 of the Code of Federal Regulations. Except as so supplemented and/or amended, the terms of the CPC-HIE Agreement shall continue unchanged and shall apply with full force and effect to govern the matters addressed in this BAA and in the CPC-HIE Agreement.

WHEREAS, in light of the foregoing and the requirements of HIPAA, the HITECH Act, and HIPAA Regulations, Covered Entity and Business Associate agree to be bound by the following terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS.**

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1.1. General. Terms used, but not otherwise defined, in this Agreement shall have the same meaning given to those terms by HIPAA, the HITECH Act and HIPAA Regulations as in effect or as amended from time to time.

1.2. Specific.

1.2.1. Administrative Safeguards. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards” in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business Associate's workforce, not Covered Entity's workforce, in relation to the protection of that information.

1.2.2. Breach. “Breach” shall have the same meaning as the term “breach” in 45 CFR §164.402.

- 1.2.3. Covered Entity. "Covered Entity" shall mean a covered entity as defined in 45 CFR §164.103 for whom Covered Entity provides services related to the use and disclosure of PHI.
- 1.2.4. "Data Aggregation" shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- 1.2.5. "Designated Record Set" shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- 1.2.6. Electronic Health Record. "Electronic Health Record" shall have the same meaning as the term "electronic health record" in the HITECH Act, Section 13400(5).
- 1.2.7. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996
- 1.2.8. HITECH Act. "HITECH Act" shall mean that portion of the American Recovery and Reinvestment Act of 2009 entitled the Health Information Technology for Economic and Clinical Health Act.
- 1.2.9. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.2.10. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164.
- 1.2.11. Protected Health Information. "Protected Health Information", "PHI", "Electronic Protected Health Information" or "ePHI" shall have the same meaning given to it in the "Privacy Rule" including but not limited to 45 CFR § 160.103, limited to the information Business Associate received from or created or received on behalf of Covered Entity as Covered Entity's Business Associate.
- 1.2.12. Required By Law. "Required by Law" shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR Sections 160.103 and 164.501.
- 1.2.13. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.2.14. Security Rule. "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts §160 and §164, Subparts A and C.
- 1.2.15. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in 45 CFR §164.402.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- 2.1. Business Associate agrees that it will not use or disclose PHI except as permitted or required by this Agreement, or as Required By Law.

- 2.2. Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures. Business Associate shall not use or disclose PHI except for the purpose of performing Business Associate's obligations under the CPC-HIE Agreement, including those obligations imposed by any exhibits.
- 2.3. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity and to prevent the use or disclosure of PHI other than as provided by this Agreement. Business Associate acknowledges that the Security Rule provisions regarding administrative safeguards, physical safeguards, technical safeguards, and policies and procedures and documentation requirements found in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 apply to Business Associate in the same manner as to Covered Entity.
- 2.4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.5. Business Associate agrees that it will report to Covered Entity any use or disclosure of PHI not allowed by this Agreement, including any breach of unsecured PHI, if it becomes aware of the use or disclosure, and any security incident of which it becomes aware.
- 2.6. Business Associate will ensure that any subcontractor to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate and to implement reasonable and appropriate safeguards with respect to such information, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2).
- 2.7. Within ten (10) days of request by Covered Entity, Business Associate agrees to provide Covered Entity access to PHI maintained in Designated Record Sets by Business Associate to enable Covered Entity to fulfill its obligations under the Privacy rule, including, but not limited to, 45 CFR Sections 164.524 and 164.526. Business Associate agrees to incorporate any amendments to PHI in accordance with 45 CFR 164.526.
- 2.8. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528. Such accounting shall be provided to Covered Entity at the address, and to the attention of, the department specified by Covered Entity at the time that such request for accounting is made, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures in accordance with 45 CFR Section 164.528.
- 2.9. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the U.S. Department of Health and Human Services ("Secretary") for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate shall notify Covered Entity regarding any information that Business Associate provides to the Secretary concurrently with providing such information to the Secretary, and upon Covered Entity's request, shall provide Covered Entity with a duplicate copy of such information.

- 2.10. Business Associate's responses to requests for action with respect to PHI described in this Section 2 shall be completed in a manner which complies with the timeliness requirements contained in the Privacy Rules.
- 2.11. Business Associate agrees to notify Covered Entity within forty eight (48) hours of discovering a breach of unsecured PHI pursuant to the requirements of 45 CFR § 164.410. To the extent possible, this notice will include the identification of each individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired, disclosed, or used during the Breach. Business Associate will provide Covered Entity with any additional information its obtains regarding the Breach of Unsecured PHI on an ongoing basis, and Business Associate will provide Covered Entity with all assistance and all information in Business Associate's possession reasonably needed by Covered Entity to comply with Covered Entity's breach notification obligations. Business Associate will implement a reasonable system for discovery of Breaches.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

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- 3.1. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI pertaining to Covered Entity for the purposes set forth in the parties' CPC-HIE Agreement, if the use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- 3.2. Specific Use and Disclosure Provisions:
  - 3.2.1. Except as otherwise limited in this Agreement, Business Associate may use PHI for its own proper management and administration or to carry out its legal responsibilities, provided the disclosures are Required By Law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - 3.2.2. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).
  - 3.2.3. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

### **4. OBLIGATIONS OF THE COVERED ENTITY**

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- 4.1. Covered Entity will inform Business Associate of its privacy practices and any agreed restrictions on PHI as follows:
- 4.2. Covered Entity shall advise Business Associate of any limitations in the notice of privacy practices that Covered Entity produces in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.3. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes affect Business Associate's use or disclosure of PHI.

- 4.4. Covered Entity shall notify Business Associate of any restrictions on use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect Business Associate's use or disclosure of PHI.
- 4.5. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity except where Business Associate has contracted to provide services that permit Business Associate to use or disclose PHI in order to engage in data aggregation or management and administrative activities of Business Associate.

## **5. TERM AND TERMINATION**

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- 5.1. Term. This Agreement shall be effective as of the date stated above and shall terminate when all PHI pertaining to Covered Entity which Business Associate maintains is destroyed or returned to Covered Entity (subject to Section 5.3 below), or, if it is not feasible to return or destroy PHI, protections are extended to such information in accordance with the Termination provisions in this Section.
- 5.2. Termination for Cause.
  - 5.2.1. If Covered Entity or Business Associate learns of a material breach by the other party, including a pattern of activity or practice that violates a party's obligations under HIPAA or this agreement, the non-breaching party shall: (1) provide written notice to the other party and (2) terminate this Agreement if the other party has not cured the breach or ended the violation within thirty (30) days of receiving the written notice. If the non-breaching party determines that neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.
  - 5.2.2. Covered Entity may terminate this Agreement effective immediately, if (1) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH, or other security or privacy laws, or (2) there is a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH, or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved.
- 5.3. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of such PHI; provided, that Business Associate shall be permitted to retain a copy of such PHI for archiving and compliance purposes. If return or destruction is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make the return or destruction of such PHI not feasible. If Covered Entity agrees that the return or destruction of PHI is not feasible, Business Associate shall retain the PHI, subject to all of the protections of this Agreement, and shall make no further use of such PHI.

## **6. MISCELLANEOUS**

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- 6.1. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, Breach Notification Rule, and Security Rule.

- 6.2. The respective rights and obligations of Business Associate related to the effect of termination of this Agreement shall survive termination of this Agreement.
- 6.3. Business Associate shall not be considered a fiduciary or plan administrator of the Covered Entity.
- 6.4. This Agreement is entered into for the benefit of Covered Entity and Business Associate. There are no third party beneficiaries to this Agreement. Business Associate's obligations are to Covered Entity only.
- 6.5. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity, Covered Entity or Business Associate to comply with the Privacy Rule and other requirements of HIPAA. This Agreement shall be interpreted without regard to the rule that a document is to be construed against the party which drafts it.
- 6.6. Business Associate agrees to indemnify Covered Entity and hold it harmless from any and all liabilities or damages, including penalties, costs or attorneys' fees, resulting directly or indirectly from Business Associate's breach of the terms of this Agreement, or resulting directly or indirectly from any breach of the HIPAA Rules by Business Associate, including any breach of the HIPAA Rules by one of Business Associate's employees, agents or contractors. Covered Entity agrees to indemnify Business Associate and hold it harmless from any and all liabilities or damages, including penalties, costs or attorneys' fees, resulting directly or indirectly from Covered Entity's breach of the terms of this Agreement, or resulting directly or indirectly from any breach of the HIPAA Rules by one of Covered Entity's employees, agents or contractors.

**[Signature page below]**



IN WITNESS WHEREOF, and intending to be legally bound, Covered Entity and Business Associate have executed this Agreement as of the Effective Date.

**Participant (Covered Entity)**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

**DC Primary Care Association (Business Associate)**

By: \_\_\_\_\_  
Name: Tamara Smith  
Title: President and Chief Executive Officer

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