

## HIPAA ADDENDUM

The parties to this HIPAA Addendum (“Addendum”) are Michigan Health Information Network Shared Services (“Network”) and the party entering into the Terms of Service (“Participant”). This Addendum supplements and is made a part of the Terms of Service between the Parties (“Terms”) available at [www.velatura.org/terms-of-service](http://www.velatura.org/terms-of-service).

For purposes of this Addendum, Participant is considered a Covered Entity and Network is considered a Business Associate of such Covered Entity.

### RECITALS

- A. Under the Terms, Participant wishes to send, receive, find, and use certain information with Network, some of which may constitute PHI. In consideration of the receipt of PHI, Network agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. Network and Participant intend to protect the privacy and provide for the security of PHI disclosed to Network under the Terms in compliance with HIPAA and the HITECH Act.
- C. As part of HIPAA, the Privacy Rule and Security Standards (defined below) require Participant to enter into a contract containing specific requirements with Network before the disclosure of PHI occurs.

In consideration for Network’s access to and/or use of PHI for those purposes allowed by HIPAA and consistent with the services that Network performs for Participant, and in consideration for the mutual promises and covenants set forth below, the parties agree as follows:

#### 1. **Definitions.** As used in this Addendum:

“**Breach Notification Standards**” means the HIPAA regulations governing notification in the case of breach of unsecured PHI as set forth at 45 CFR § Part 164, Subpart D, and all applicable stricter state and federal laws, as they exist now or as they may be amended.

“**Designated Record Set**” means a group of records maintained by or for Participant that is (i) the medical records and billing records about individuals maintained by or for Participant, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Participant to make decisions about individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Participant.

“**HIPAA**” means the Health Insurance Portability and Accountability Act, Public Law 104-91, and any amendments thereto.

“**HIPAA Transaction**” means Transactions as defined in 45 CFR § 160.103 of the Transaction Standards.

“**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.

“**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).

“**Minimum Necessary**” shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b).

“**Privacy Rule**” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR § Part 160 and Part 164, as they exist now or as they may be amended.

“**Protected Health Information**” or “**PHI**” shall have the meaning set forth at 45 CFR § 160.103 of HIPAA.

“**Required By Law**” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.

“**Secretary**” means the Secretary of the Department of Health and Human Services or his designee.

“**Security Incident**” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

“**Security Standards**” means the Security Standards, 45 CFR § parts 160, 162 and 164, as they exist now or as they may be amended.

“**Transaction Standards**” means the Standards for Electronic Transactions, 45 CFR § part 160 and part 162, as they exist now or as they may be amended.

1.1. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those used in the Privacy Rule or the HITECH Act, and any amendments or implementing regulations.

## **2. Obligations and Activities of Network.**

2.1. Network agrees that it shall not, and that its directors, officers, employees, contractors and agents shall not, use or further disclose PHI other than as permitted or required by this Addendum or as Required By Law.

2.2. Network agrees to use appropriate safeguards in accordance with the Privacy Rule to prevent use or disclosure of the PHI other than as provided for by this Addendum.

2.3. Network agrees to mitigate, to the extent required by law, any harmful effect that is known to Network of a use or disclosure of PHI by Network in violation of the requirements of this Addendum, including, but not limited to, compliance with any state law or contractual data breach requirements.

2.4. Network agrees to report to Participant any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware, or of any act or omission that violates the terms of this Addendum in accordance with the “**Breach Notification**” Section, below.

2.5. Network agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Network on behalf of Participant, agrees in writing to the same restrictions and conditions that apply through this Addendum to Network with respect to such information. Further, Network shall include in its contracts with agents or subcontractors the right to terminate the contract if the agent or subcontractor commits a material breach under the contract, and Network shall exercise such termination rights in the event of a material breach. These obligations do not pertain to subcontractors that act as mere conduits for the transport of PHI but do not access the information other than on a random or infrequent basis.

2.6. Network agrees to provide access, at the request of Participant, and in the time and manner designated by Participant, to PHI in a Designated Record Set, to Participant or, as directed by Participant, to an Individual in order to meet the requirements under 45 CFR § 164.524 and HITECH Act § 13405(e).

2.7. Network agrees to make any amendment(s) to PHI in a Designated Record Set that Participant directs or agrees to pursuant to 45 CFR § 164.526 at the request of Participant or an Individual, and in the time and manner designated by Participant. If Network provides Designated Record Sets to third parties, Network shall ensure such records are also amended.

2.8. Network agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Network on behalf of Participant, available to the Secretary, in a time and manner designated by Participant or the Secretary, for purposes of the Secretary determining Participant’s compliance with the Privacy Rule.

2.9. Network agrees to document disclosures of PHI, and information related to such disclosures, as would be required for Participant to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act § 13405(c). Network agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

2.10. Network agrees to provide to Participant or to an Individual, in the time and manner designated by Participant, information collected in accordance with Section 2.9 of this Addendum, to permit Participant to respond to a request by an Individual for an accounting of disclosures of PHI during the six (6) years prior to the date on which the accounting was requested, in accordance with 45 CFR § 164.528.

2.11. In the event Network receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Network will respond as permitted by 45 CFR § 164.512(e) and (f).

2.12. Network will not make any communications to individuals in violation of the restrictions on marketing in HITECH Act § 13406(a) and without the prior consent of Participant.

2.13. If Network will communicate with any individuals who are the subject of PHI originating from or prepared for Participant, Network agrees to implement procedures to give timely effect to an individual's request to receive communications of PHI by alternative means or at alternative locations, pursuant to 45 CFR § 164.522(b), so as to ensure that PHI will only be communicated to those individuals designated in such a request as authorized to receive the PHI. If Network provides records to agents, including subcontractors, who may also communicate with the individual, Network shall ensure that the individual's request for communications by alternative means is provided to and given timely effect by such agents.

2.14. Network shall not directly or indirectly receive or provide remuneration in exchange for any PHI in violation of any final regulations promulgated by the Secretary under HITECH Act § 13405(d) once such regulations become effective.

2.15. Electronic Transactions. Network hereby agrees that, to the extent that it is electronically sending any of the HIPAA Transactions for Participant, the format and structure of such transmissions shall be in compliance with the Transaction Standards.

2.16. Electronic Data Security. To the extent that Network sends, receives, finds, or uses electronic PHI, Network hereby agrees that it:

2.16.1. Has implemented and documented administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that Network sends, receives, finds, or uses on behalf of Participant consistent with the requirements at 45 CFR §§ 164.308, 164.310, 164.312 and 164.316;

2.16.2. Will ensure that any agent, including a subcontractor, to whom Network provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect the PHI; and

2.16.3. Will keep records of all Security Incidents involving PHI of which Network becomes aware, and will report to Participant all significant Security Incidents of which Network becomes aware.

2.17. Breach Notification. The parties have in place policies and procedures that are designed to detect inappropriate acquisition, access, use or disclosure of unsecured PHI, as that term is defined in HITECH, and each party trains its work force and agents on these procedures. Each party agrees that it will notify the other party within ten (10) business days of discovering an inappropriate acquisition, access, use or disclosure of PHI sent, received, found, or used by, to, through, or on behalf of the other party, and, as soon as reasonably practicable, but in no event later than thirty (30) calendar days of discovery will provide the other party with the identification of each individual whose PHI has been or is reasonably believed to have been breached during such incident, and any other information required pursuant to 45 C.F.R. §§ 164.400-414. Each party will assist the other party in assessing whether the Breach compromises the security or privacy of the PHI of the individuals whose information is involved. In the event that individuals

whose data is affected by the impermissible acquisition, access, use or disclosure must be notified pursuant to the HIPAA Breach Notification Standards or other applicable law, the party responsible for the Breach will provide such notification at its own expense without unreasonable delay and in compliance with applicable law or reimburse the reasonable costs of the party that bears the responsibility to provide notification.

2.18. If Participant delegates the performance of a particular Privacy Rule obligation to Network, Network will comply with the requirements of the Privacy Rule that would apply to Participant in the performance of such obligation.

### **3. Permitted Uses and Disclosures by Network**

3.1. General Use. Except as otherwise limited in this Addendum, Network may use or disclose PHI on behalf of or to provide services to Participant for the following purposes, if such use or disclosure of PHI would not violate the Privacy Rule if done by Participant or the minimum necessary policies and procedures of Participant: transmission of electronic health information and management of the Network Services.

3.2. Specific Use and Disclosure Provisions. Except as otherwise limited in this Addendum, Network may disclose PHI to carry out the legal responsibilities of Network and for its own proper management and administration, provided that disclosures are required by law, or Network obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and 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 Network of any instances of which it is aware in which the confidentiality of the information has been breached. All other disclosures shall be subject to Participant's prior written permission.

### **4. Obligations of Participant.**

4.1. Participant shall notify Network of any limitation(s) in the notice of privacy practices of Participant in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Network's use or disclosure of PHI. Network will give timely effect to such limitations.

4.2. Participant shall notify Network of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Network's use or disclosure of PHI. Network will give timely effect to such changes or revocations.

4.3. Participant shall notify Network of any restriction to the use or disclosure of PHI that Participant has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Network's use or disclosure of PHI. Network will give timely effect to such restrictions.

4.4. Participant shall not request Network to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Participant, except as specifically allowed by the "**Specific Use and Disclosure Provisions**" Section of this Addendum.

### **5. Term and Termination.**

5.1. Term. The term of this Addendum shall be effective so long as the Terms are in effect between the parties and shall terminate when all of the PHI in any form, recorded on any medium, or stored in any storage system provided by Participant to Network, or created or received by Network on behalf of Participant, is destroyed or returned to Participant, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section. This provision shall apply to PHI that is in the possession of Network or agents of Network. Network shall retain no copies of the PHI, except as provided in paragraph 5.4.2.

5.2. Termination for Breach by Network. Upon Participant's knowledge of a material breach of the terms of this Addendum by Network, Participant shall either:

5.2.1. Provide an opportunity for Network to cure the breach or end the violation and terminate their relationship and the Terms if Network does not cure the breach or end the violation within the time specified by Participant;

5.2.2. Immediately terminate its relationship with Network and the Terms if Network has breached a material term of this Addendum and cure is not possible; or

5.2.3. If neither termination nor cure are feasible, report the violation to the Secretary.

Participant's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights Participant has in the Terms, this Addendum or by operation of law or in equity.

5.3. Termination for Breach by Participant. Upon Network's knowledge of a material breach of the terms of this Addendum by Participant, Network shall either:

5.3.1. Provide an opportunity for Participant to cure the breach or end the violation and terminate their relationship and the Terms if Participant does not cure the breach or end the violation within the time specified by Network; or

5.3.2. Immediately terminate its relationship with Participant and the Terms if Participant has breached a material term of this Addendum and cure is not possible.

5.4. Effect of Termination.

5.4.1. Except as provided in paragraph 5.4.2 of this Section, upon termination of the Terms, for any reason, Network shall return or, at Participant's direction, destroy all PHI received from Participant, or created or received by Network on behalf of Participant in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of subcontractors or agents of Network. Network shall retain no copies of the PHI, except as provided in paragraph 5.4.2.

5.4.2. In the event that return or destruction of the PHI is infeasible, Network shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Network maintains such PHI.

## **6. Indemnification.**

Each party shall indemnify and hold harmless the other party and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by the indemnified party arising from a violation by the indemnifying party of its obligations under this Addendum. The indemnified party shall: (i) give the indemnifying party prompt written notice of such claim; and (ii) allow the indemnifying party to control, and fully cooperate with the indemnifying party (at the indemnifying party's sole expense) in, the defense and all related negotiations. The indemnifying party shall not enter into any stipulated judgment or settlement that purports to bind the indemnified party without the indemnified party's express written authorization, which shall not be unreasonably withheld or delayed.

## 7. Miscellaneous.

7.1. Amendment. No provision of this Addendum may be modified except by a written document signed by a duly authorized representative of the parties. The parties agree to amend this Addendum, as appropriate, to conform with any new or revised legislation, rules and regulations to which Participant is subject now or in the future including, without limitation, the Privacy Rule, Security Standards or Transactions Standards (collectively "Laws"). If within ninety (90) days of either party first providing written notice to the other of the need to amend this Addendum to comply with Laws, the parties, acting in good faith, are i) unable to mutually agree upon and make amendments or alterations to this Addendum to meet the requirements in question, or ii) alternatively, the parties determine in good faith that amendments or alterations to the requirements are not feasible, then either party may terminate this Addendum upon thirty (30) days' written notice.

7.2. Assignment. No party may assign or transfer any or all of its rights and/or obligations under this Addendum or any part of it, nor any benefit or interest in or under it, to any third party without the prior written consent of the other party, which shall not be unreasonably withheld, provided however, that this provision shall not apply where the assignment or transfer is effected by the sale or transfer of assets or of a controlling ownership interest in Network or Participant.

7.3. Survival. The respective rights and obligations of Network under the "**Effect of Termination**" Section of this Addendum shall survive the termination of this Addendum.

7.4. Interpretation. Any ambiguity in this Addendum shall be resolved to permit Participant to comply with the Breach Notification Standards, Privacy Rule, Security Standards, and Transaction Standards. If there is any inconsistency between this Addendum and any other agreement between the parties, the language in this Addendum shall control.

7.5. Third Party Rights. The terms of this Addendum are not intended, nor should they be construed, to grant any rights to any parties.

7.6. Minimum Necessary. Network agrees that, for all PHI that Network accesses or requests from Participant for the purposes of providing services, it shall access or request, and Participant shall provide, only that amount of information that is minimally necessary to perform such services. In addition, for all uses and disclosures of PHI by Network, Network shall institute and implement policies and practices to limit such uses and disclosures to that which is minimally necessary to perform its services. Network shall determine the amount minimally necessary

consistent with the requirements in the HITECH Act, § 13405(b), or as otherwise specified in regulations promulgated by the Secretary of the Department of Health and Human Services.

7.7. HITECH Act, § 13404. Network may use and disclose PHI only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR §164.504(e) and this Addendum.

7.8. Notice. All notices required under this Addendum shall be provided in accordance with the Terms.

7.9 Owner of PHI. Under no circumstances shall Network be deemed in any respect to be the owner of any PHI used or disclosed by or to Network by Participant.