

Please read this carefully. It is a legal agreement between you, either on behalf of your organization and its authorized users, or on your own behalf, and [Entity] (the “Network”). All capitalized terms shall have the meanings set forth below. The Network may modify or amend these Terms by posting a copy of the modified or amended Terms. You will be deemed to have agreed to any such modification or amendment by your decision to continue using the Services following the date in which the modified or amended Terms are posted on the Network’s website.

For individual Authorized Users

I am agreeing to these terms on my own behalf. I have read and understand the terms below (collectively, the “Terms”) and will adhere to the requirements of an “Authorized User” (as defined in the Terms) of the organization I have identified in the registration process. I understand and agree that the Network and its licensors, if any, may enforce the Terms below directly against me. If I do not agree to the Terms, I am not entitled to use the Services and will cease to do so immediately.

For Organizations

By agreeing to these terms, the organization identified in the registration process (the “Participant”) is agreeing to abide by the terms below (collectively, the “Terms”) and to ensure all its Authorized Users also so comply. The individual agreeing to these terms on behalf of Participant represents and warrants that he or she has the authority to agree to these Terms on behalf of Participant. Participant agrees that the Network and its licensors, if any, may enforce the Terms against Participant. If Participant does not agree to the Terms, Participant is not entitled to use the Services and must cease any such use immediately.

TERMS OF SERVICE

These Terms govern use of the Services (as defined below), which may include computer software (including any online and electronic documentation) and associated media and printed materials. These Terms apply to updates, enhancements or other add-on components that the Network may provide or make available, unless the Network provides other terms with the update, enhancement or add-on component.

1. DEFINITIONS

1.1. Where the following terms appear in these Terms with initial capitalization, they shall have the meaning set forth below (it being understood that such following definitions shall extend, as and where applicable, both to plural and singular usages of such terms and to other grammatical forms of such terms):

“*Applicable Laws and Standards*” means all applicable federal, state, and local laws, statutes, acts, ordinances, rules, codes, standards, regulations and judicial or administrative decisions

promulgated by any governmental agency, as any of the foregoing may be amended, modified, codified, reenacted, promulgated or published, in whole or in part, and in effect from time to time which is enforceable against a Party. Without limiting the generality of the foregoing, “Applicable Laws and Standards” includes HIPAA, as defined below.

“**Authorized User**” means a person or entity exchanging healthcare information via the Participant through the Services in a manner consistent with Permissible Use as defined in the Master Use Case Agreement and any exhibits thereto.

“**Confidential Information**” means information, whether provided or retained in writing, verbally, by electronic or other data transmission or in any other form or media whatsoever or obtained through on-site visits at either Party’s facilities and whether furnished or made available before or after the Effective Date of these Terms, that is confidential, proprietary or otherwise not generally available to the public. Confidential Information does not include information that, as established by reasonable proof, (a) has been previously published or is now or becomes public knowledge through no fault of the Receiving Party; (b) is, prior to its initial disclosure hereunder, in the rightful possession of the Receiving Party; (c) is acquired by the Receiving Party from a third party which has rightful possession, without any restrictions on its use or disclosure known to the Receiving Party; or (d) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information. Confidential Information shall not include PHI. The Party receiving Confidential Information shall be hereinafter referred to as the “**Receiving Party**” and the Party disclosing such Confidential Information shall be hereinafter referred to as the “**Disclosing Party**.”

“**Effective Date**” means the date on which Participant accepts these Terms.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (the “**HITECH Act**”), and the regulations promulgated thereunder at 45 C.F.R. Parts 160 and 164, each as may be amended from time to time.

“**HIPAA Addendum**” means the business associate agreement as may be modified from time to time, available at: <https://velatura.org/hipaa-addendum>, the terms of which are incorporated herein by reference.

“**Health Service Provider**” or “**HSP**” means a company or other organization that supports Participant by providing it with operational, technical, or health information exchange related services.

“**Initial Term**” shall have the meaning ascribed to it in the “**Term and Termination**” Section of these Terms of Service.

“**Master Use Case Agreement**” means the agreement, as may be modified from time to time, governing Use Cases, available at: www.velatura.org/muca, the terms of which are incorporated herein by reference.

“**Message Content**” means information which is sent, received, found, or used by a TDSO through the Services, including PHI, de-identified data, anonymized data, metadata, and data schema.

“**Minimum System Requirements**” means the minimum system requirements needed to access and use the Services, as may be modified from time to time, available at: <https://velatura.org/minimum-system-requirements/>, the terms of which are incorporated herein by reference.

“**Network Board**” means the organized body as defined by the bylaws of the Network that provides the Services. Unless otherwise noted, all references to the Network Board shall be deemed to include its designated executive(s).

“**Permissible Use**” shall have the meaning ascribed to it in the Master Use Case Agreement.

Commented [SN1]: Permissible Use encompasses the Governance Design Group’s concepts of “permitted purposes, uses and disclosures.” Distinctions are resolved at the individual Use Case Exhibit level.

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

“**Services**” means the services and functionality provided by the Network allowing the Participant to send, receive, find, or use Message Content to or from the Network as further set forth in the Master Use Case Agreement and exhibits thereto.

“**System**” means software, portal, platform or other electronic medium controlled by a TDSO through which the TDSO sends, receives, finds, and uses Message Content. For purposes of this definition, it shall not matter whether the TDSO controls the software, portal, platform or medium through ownership, lease, license or otherwise.

“**Term**” shall have the meaning ascribed to it in the “**Term and Termination**” Section of these Terms of Service.

“**Trusted Data Sharing Organization (TDSO)**” means an organization that has agreed to the terms of any form of data sharing agreement with the Network.

“**Use Case**” shall have the meaning set forth in the Master Use Case Agreement.

2. NETWORK SERVICES

2.1. **Grant of Right to Use.** The Network grants to Participant a nonexclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to have access to and use the Services in accordance with these Terms. The parties agree that nothing in these Terms is intended to transfer or assign any ownership interest or rights to Participant or Authorized Users. Participant may use the Services to send, receive, find, and use Message Content only for the purposes set forth in the Master Use Case Agreement, and any exhibits thereto, and subject to the additional terms and conditions set forth therein. This license does not grant any rights to obtaining future upgrades, updates, enhancements, or supplements of the Services. If upgrades, updates, enhancements, or supplements of the Services are obtained, however, the use of such upgrades or updates is governed by these Terms and any amendments to it unless other terms accompany the upgrades, updates or supplements in which case those terms apply.

2.2. **Network HISP.** If Participant or Authorized User is using the Network's Health Information Service Provider ("HISP") capability, Participant and each Authorized User is subject to the DirectTrust Directory Policy Agreement and additional HISP terms of use available at: www.velatura.org/HISP.

2.3. **Additional Restrictions.** Participant acknowledges and agrees that the Services constitute the trade secrets and confidential information of the Network and/or its service provider(s), if any. Participant further acknowledges that the Services may be protected by copyright law and international treaty provisions. Participant shall not permit any person under the control of Participant other than Authorized Users to access and/or use the Services. Participant shall not, nor shall it permit any Authorized User or third party, over which it exercises control, to duplicate, modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based on the Services. The Services shall not be copied or incorporated into any other computer program, hardware, firmware or product, except as specifically provided for under these Terms. Participant shall not obtain any rights to the Services except the limited rights to use the Services expressly granted in the "**Grant of Right to Use**" Section of these Terms.

2.4. **Suspension.** The Network and its licensors will be entitled, on reasonable grounds, including the reasonable belief of fraud or illegal activity by Participant or any Authorized User in their use of the Services, to suspend access to the Services.

3. RESPONSIBILITIES OF PARTICIPANT

3.1. **Minimum System Requirements.** Participant shall be responsible for procuring and maintaining, at its own expense, all equipment, software, services and testing necessary to effectively and reliably meet the Minimum System Requirements and participate in the Services.

3.2. **Compliance in Using, Disclosing and Obtaining Information.** The Network and Participant are each separately responsible for ensuring that it complies with Applicable Laws and Standards and the applicable Use Case in sending, receiving, finding, or using information using the Services. Participant is responsible for obtaining and requiring its Authorized Users to obtain any authorization or consent from any individual whose PHI it sends, receives, finds or uses through the Services. With respect to those activities involving the use or disclosure of PHI, the Parties shall comply with the HIPAA Addendum. In addition to those requirements in the HIPAA Addendum, in the event Participant sends or receives Message Content for which Participant is not authorized to send or receive, Participant will immediately inform the Network, delete such Message Content, and require its Authorized Users to do so.

3.3. **Patient Care.** Participant shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from, or in any way related to, the use of the Services or the Message Content made available thereby. The Network does not assume any role in the care of any patient.

3.4. **System Security.** Participant shall be responsible for maintaining a secure environment to

connect to the Services which permits compliance with the HIPAA Addendum, all Applicable Laws and Standards, and any Use Case.

3.5. **Authorized Users.** Participant will ensure that each Authorized User complies with these Terms and the documentation including all Use Case documentation, as may be amended from time to time, and any instruction issued by the Network and its licensors with respect to the use of the Services.

3.6. Participant may not use the Services if (a) it is prohibited by law from sending, receiving, finding, or using Message Content through the Services, or (b) it is not fully able and competent to enter into a binding contract with the Network regarding the use of the Services.

3.7. To the extent that Participant delegates its duties under these Terms to a third party (by contract or otherwise) and such third party will have access to Message Content, that delegation shall be in writing and require the third party to agree to the same restrictions and conditions that apply through these Terms to Participant.

3.8. Participant hereby represents that at the time of sending, the Message Content it sends is a faithful representation of the data contained in, or available through, its System.

3.9. Participant represents and warrants that at the time of disclosure it has sufficient authority to send such Message Content.

3.10. Participant represents and warrants that at the time of receipt it has sufficient authority to find such Message Content.

3.11. Participant has valid and enforceable agreements with each of its technology partners, including HSPs, that require the technology partner to, at a minimum: (i) comply with Applicable Laws and Standards and (ii) protect the privacy and security of any Message Content to which it has access. Participant shall direct its HSPs and other technology partners to reasonably cooperate with the Network and the other TDSOs on issues related to the Services, under the direction of Participant.

4. USE CASES

4.1. **Use Case Oversight and New Use Cases.** The Parties acknowledge that the Network Board has full authority to adopt new Use Cases, the right to prioritize Use Cases to be developed or modified and to oversee and adopt changes to Use Cases. Network Board may delegate oversight and change management for some Use Cases.

5. DISCLAIMER OF WARRANTY

THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND AND THE NETWORK HEREBY DISCLAIMS ALL WARRANTIES EXPRESS AND IMPLIED WITH REGARD TO THE SERVICES AND THESE TERMS INCLUDING ANY IMPLIED WARRANTY OF TITLE, NON-INFRINGEMENT, OF MERCHANTABILITY OR QUALITY,

OR OF FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, THE NETWORK DISCLAIMS ANY WARRANTY THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE NETWORK OR ELSEWHERE WILL CREATE ANY WARRANTY. PROVIDED THE NETWORK HAS PROPERLY INSTALLED, CONFIGURED, TESTED, SECURED, AND MAINTAINED THE SERVICES, THE NETWORK SHALL HAVE NO RESPONSIBILITY FOR OR LIABILITY RELATED TO THE ACCURACY, CONTENT, CURRENCY, COMPLETENESS, OR DELIVERY OF ANY MESSAGE CONTENT PROVIDED BY A TDSO TO THE SERVICES. THE NETWORK ASSUMES NO LIABILITY AND DOES NOT MAKE ANY WARRANTIES RELATING TO THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES. FOR PURPOSES OF THIS DISCLAIMER, ALL REFERENCES TO THE NETWORK WILL INCLUDE THE NETWORK'S SERVICE PROVIDERS, SUPPLIERS, AND VENDORS. Some states, territories and countries do not allow certain warranty exclusions, so to that extent the above exclusion may not apply to Participant.

5. PAYMENT

5.1. **Fees.** If the parties mutually agree on fees, any such fees and payments shall be set forth through a separately negotiated Statement of Work (as that term is defined in the “**Services**” Section of these Terms) effective only if agreed to by both Parties.

6. CONFIDENTIALITY

6.1. **Use and Disclosure Restrictions.** Each party will not use the other party's Confidential Information except as expressly permitted herein, and will not disclose such Confidential Information to any third party, except to employees and consultants who have a bona fide need to know such Confidential Information; provided, that each such consultant first executes a written agreement (or is otherwise already bound by a written agreement) that contains use and nondisclosure restrictions at least as protective of the disclosing party's Confidential Information as those set forth herein. However, each party may disclose Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that to the extent practicable the disclosing party gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors. Notwithstanding the foregoing, the Network may provide a copy of a redacted version of these Terms to Services service provider(s) upon request, such redaction to include at least any Confidential Information of Participant.

6.2. **Equitable Relief.** Each party acknowledges that the unauthorized disclosure or use of the disclosing party's Confidential Information is likely to cause irreparable harm to the disclosing party, for which the award of damages will not be an adequate remedy. Consequently, the disclosing party shall be entitled to obtain preliminary and permanent injunctive relief to restrain such unauthorized disclosure or use, in addition to any other relief to which the disclosing party

may be entitled at law or in equity.

6.3. **Protected Health Information.** The terms and conditions of the HIPAA Addendum shall apply to the parties' use, access and disclosure of PHI.

7. TERM & TERMINATION

7.1. **Term.** These Terms will commence on the Effective Date and will remain in effect for as long as Participant uses the Services (the "**Term**").

7.2. **Termination.** At Participant's discretion, if Participant no longer wishes to be bound by these terms (subject to the "Survival" Section), it must stop using the Service. Participant must provide at least ninety (90) days' notice prior to its termination of the use of the Services.

7.3. **Survival.** The rights and obligations of the parties under Sections 2, 3, 4, 5, 6 (to the extent of fees due and owing as of termination), 6.1-6.2 (to the extent a receiving party retains possession of Confidential Information stored on backup media), 7.3, 8, 9, 11.2, 11.3, and 11.5 will survive any expiration or termination of these Terms.

8. INDEMNIFICATION

Unless otherwise prohibited by applicable law, Participant agrees to defend, indemnify and hold harmless (including payment of reasonable attorneys' fees) the Network from and against any liability, claim, action, loss, damage, or expense (including court costs and reasonable attorneys' fees) based on any third-party claims arising out of, or relating to: (a) unauthorized or inappropriate use of or modifications by Participant to the Services; or (b) the Network's sending, receiving, finding, or using any Message Content sent, received, found, or used by Participant, except to the extent such sending, receiving, finding, or using Message Content by the Network is in violation of these Terms.

9. LIMITATION OF LIABILITY

9.1. **EXCLUSION OF DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE USE, PERFORMANCE OR OPERATION OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2. **TOTAL LIABILITY.** THE PARTIES' TOTAL CUMULATIVE LIABILITY TO EACH OTHER OR TO ANY THIRD PARTY FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO, AND WILL NOT EXCEED, THE GREATER OF TOTAL AMOUNTS PAID OR PAYABLE UNDER THESE TERMS OR \$10,000, WHETHER ARISING UNDER THESE TERMS OR ANY ATTACHMENTS.

9.3. **Acknowledgement of Risk.** The foregoing limitations and exclusions of liability do not apply to (i) the indemnification obligations set forth in the “**Indemnification**” Section of these Terms; or (ii) to claims arising out of or related to either party’s infringement or misappropriation of the other party’s intellectual property rights. With this sole exclusion, the parties acknowledge and agree that the provisions hereof that disclaim warranties, exclude consequential damages or other damages or remedies or limit liability shall remain fully valid, effective and enforceable in accordance with their respective terms, even under circumstances that cause an exclusive remedy to fail of its essential purpose.

10. SERVICES

10.1. **Statement of Work.** Each purchase of services by either the Network or Participant shall be documented in a signed statement of work substantially in the form supplied by the Network (the “**Statement of Work**” or “**SOW**”). The current templates for all SOWs are located at: www.velatura.org/SOW-templates. Before any SOWs may be entered into between the Parties, both Parties must fully execute the Master Service Agreement (“**MSA**”) located at www.velatura.org/MSA, the terms of which are incorporated herein by reference, and the Master Statement of Work (“**MSOW**”) located at: www.velatura.org/MSOW, the terms of which are incorporated herein by reference. Note: The MSA and MSOW are zero-dollar master agreements which enable future SOWs between the Parties.

11. GENERAL

11.1. **Assignment.** Neither Party may assign or transfer any or all of its rights and/or obligations under these Terms or any part of it, nor any benefit or interest in or under it, to any third party without the 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 the Network or Participant.

11.2. **Governing Law.** These Terms will be governed by and construed in accordance with the laws of the [designated jurisdiction] without reference to or application of conflict of laws rules or principles.

11.3. Dispute Resolution.

11.3.1. As a Party’s sole remedy when a dispute arises between either Participant and the Network or between Participant and another TDSO (a “**Dispute**”) regarding these Terms, Participant will send written notice to the appropriate Network Committee. Such written notice shall set forth in detail and with clarity the problems that Participant has identified. Within sixty (60) calendar days of receiving the notice, such Network Committee will convene a meeting of the subcommittee with responsibility over dispute resolution (the “**Dispute Resolution Subcommittee**”). The Dispute Resolution Subcommittee will be comprised of individuals selected by the Network Board in accordance with its policies and procedures. During this meeting, each TDSO will be able to present its version of the Dispute and any information that it believes is pertinent to the Dispute Resolution

Subcommittee's decision. The Dispute Resolution Subcommittee will have the ability to request additional information from the TDSOs to help it make its determination. The Dispute Resolution Subcommittee, however, will not have the authority to compel a response or the production of testimony or documents by the TDSOs. To the extent that the TDSOs do respond to requests of the Dispute Resolution Subcommittee by producing documents, TDSOs will have the ability to mark the documents produced as "Confidential Information" and the Dispute Resolution Subcommittee will treat those documents in accordance with the "**Confidentiality**" Section of these Terms.

11.3.2. Within fifteen (15) calendar days of the Dispute Resolution Subcommittee meeting, the Dispute Resolution Subcommittee will issue a written, nonbinding recommendation for the Network Board. Within sixty (60) days of receipt of the Dispute Resolution Subcommittee recommendation the Network Board will issue a final decision resolving the Dispute

11.3.3. Notwithstanding the foregoing, in the event of a Dispute wherein Participant maintains a reasonable belief of imminent harm, Participant may ask that the Executive Director of Network request the chairman of the Network Board to call an emergency meeting of the Network Board to issue a final decision resolving the Dispute.

All such discussions shall be treated as Offers to Compromise Under Rule 408 of the Federal Rules of Evidence.

11.4. **Severability.** If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision of the Terms will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

11.5. **Waiver.** No failure or delay by any Party in exercising its rights under these Terms shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.

11.6. **Notices.** Any notice, request, demand or other communication required or permitted to be given under these Terms will be given in writing (including via email), will reference these Terms and will be deemed properly given: (a) when actually delivered in person; (b) two (2) business days after deposit with a nationally recognized express courier; or (c) five (5) business days after mailing via certified mail, postage prepaid. Any such notice, request, demand or other communication, if sent to the Network, will be sent to: [email address], and if to Participant will be sent to the e-mail address(es) provided by Participant during registration. Either Party may change its address for notices under these Terms by giving written notice to the other Party by the means specified in this Section. Notwithstanding the foregoing, any written notice required to be sent under the "**Term and Termination**" Section of these Terms must be sent by U.S. mail (first-class, airmail or express) or commercial courier.

11.7. **Third Party Agreements .** The Services may make use of third party software, content, and data (the "**Third Party Materials**"). Use of the Third Party Materials included in the Services may be subject to the third party terms and conditions found at www.velatura.org/third-party-

[terms-and-conditions/](#) (collectively “Third Party Terms”), in addition to the terms and conditions included above. Unless expressly provided otherwise in the Third Party Terms, Participant may only use the Third Party Materials in connection with its use of the Services. In the event of a conflict between these Terms and any Third Party Terms, the terms of the Third Party Terms shall control. Participant’s use of the Third Party Materials will indicate its agreement to be bound by the Third Party Terms. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT TO THE CONTRARY, NETWORK MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY THIRD PARTY MATERIALS. NETWORK EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE/NON-INFRINGEMENT, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY MATERIALS. NEITHER NETWORK NOR THE THIRD PARTIES FURNISHING THE THIRD PARTY MATERIALS WILL HAVE ANY LIABILITY TO PARTICIPANT OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER INCIDENTAL, DIRECT, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THE THIRD PARTY MATERIALS. IN ANY EVENT, THE TOTAL LIABILITY OF NETWORK AND THE THIRD PARTIES FURNISHING THE THIRD PARTY MATERIALS FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00). PARTICIPANT SHOULD CONSULT THE THIRD PARTY TERMS, IF ANY, FOR WARRANTY AND PERFORMANCE INFORMATION.

11.8. **Force Majeure.** Neither Party will be liable for any failure or delay in its performance under these Terms due to causes beyond its reasonable control, including denial-of-service attacks, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, acts of God or governmental action.

11.9. **Relationship of Parties.** The Parties to these Terms are independent contractors and these Terms will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other’s behalf without the other’s prior written consent.

11.10. **Third Party Beneficiaries.** No third party shall have the right to claim a beneficial interest in or to any right occurring by virtue of these Terms between Network and Participant.

11.11. **Counterparts.** These Terms may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

11.12. **Headings.** The headings in these Terms are for the convenience of reference only and have no legal effect.

11.13. **Insurance.** Throughout the Term of these Terms, the Parties shall maintain in force insurance at the amounts customarily and reasonably entered into for agreements of this type.

11.14. **Debarment, Suspension and Investigation.** Participant represents and warrants to the best of its knowledge that neither it, nor any of its employees directly involved in performing under these Terms: (a) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or contractor; (b) have been convicted of fraud in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction nor contract under a public transaction; or (c) are currently under a final order issued by any federal, state, local or international regulatory or law enforcement organization finding a violation of Applicable Laws and Standards related to the privacy or security of PHI that will materially impact the Participant's ability to fulfill its obligations under these Terms. Participant shall inform the Network if at any point during its participation in the Services it comes under such an order or any order that will materially impact the Participant's ability to fulfill its obligations under these Terms.

11.15. **Compliance with Fraud and Abuse Laws.** Neither Party has provided or received anything of value with the intent to induce referrals from or to the other Party. Notwithstanding any unanticipated effect of any of the provisions herein, neither Party shall intentionally conduct itself under the terms of these Terms in a manner to constitute a violation of the Medicare and Medicaid Fraud and Abuse Provisions (42 U.S.C. Sections 1395nn(b) and 1396h(b)), including the Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977 and the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. Sections 1320a-7 et seq.) or any other applicable federal, state or local law, rule, or regulation. The parties agree that the execution of certain Use Cases may require the addition of certain flow down terms. In such case, the Parties agree to comply with the terms of such flow down terms in the applicable Use Case.

11.16. **Order of Precedence.** Except as expressly stated otherwise in these Terms, in the event of any conflict or inconsistency between the terms of these Terms and any other document ancillary or relating thereto, the following order of precedence shall apply, but only to the extent of an express conflict or inconsistency: (a) the Attachments; (b) these Terms.

11.17. **Entire Agreement.** These Terms, including all Attachments, constitutes the complete understanding and agreement of the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to its subject matter. The Network may update these Terms from time to time. Unless otherwise specified in the applicable section, Participant's continued use of the Services serves as Participant's acceptance of the revised terms.