



**Terms and Conditions
for
Participation Agreement**

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1. Introduction

1.1 Nature of Organization

The Idaho Health Data Exchange, (IHDE) is an Idaho nonprofit corporation under Section 501(c)(6) of the Internal Revenue Code.

1.2 Purposes

IHDE is organized to facilitate health information sharing and aggregation for the purpose of treatment, payment and healthcare operations in a manner complying with all applicable laws and regulations, including those protecting privacy and security of health information.

1.3 Description of Program

IHDE facilitates the operation of the “Program,” a secure, web-based, clinical messaging system and search engine for patient health, demographic, and related information. It assists users in locating and aggregating patient data held by multiple health care organizations for the purpose of treatment, payment and healthcare operations in a manner complying with all applicable laws and regulations, including those protecting privacy and security of health information. Program services promote efficiency of communication in care, patient safety and enhance patient health. This Program, and the services it provides, is described in the IHDE Program Manual (the “Program Manual”).

1.4 Change or Termination of Program

IHDE may change the Program, or may cease providing the Program, at any time. Changes to the Program that reduce or limit the functionality or levels of service provided shall be made with the prior approval of IHDE Board of Directors, unless circumstances beyond IHDE’s control require the change. IHDE will give at least ninety (90) days written advance notice to Data Provider/Users of such changes, unless circumstances beyond IHDE control require the change.

2. Definitions

“Authorized User” means a party designated by a Data Provider/User or the IHDE as having job duties necessitating access to the Program meeting the conditions specified in [Section 5 \(Authorized Users\)](#).

“Data Provider/User” means a party designated to use the Program, including an employee of the Data Provider/User and/or a credentialed member of the Data Provider/User’s medical staff, or an individual designated to use the Program on behalf of IHDE including an employee of IHDE.

“Business Associate” has the meaning as defined in 45 CFR 160.103.

“Data Provider” means a party registered with IHDE to provide patient data to IHDE for use through the Program.

“Data User” means a party registered with IHDE to use the Program to obtain patient data.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the HIPAA regulations promulgated at 45 CFR (Code of Federal Regulations) Parts 160 and 164.

“Data Provider/User Type” means the category to which a Data Provider/User is assigned based upon their role in the health care system, as described in [Section 4.2 \(Data Provider/User Type\)](#).

“Participation Agreement” means a legally binding agreement between IHDE and a Data Provider/User. Under the Participation Agreement, IHDE registers the Data Provider/User in accordance with, and the Data Provider/User agrees to comply with, these Terms and Conditions.

“Patient Data” means patient health, demographic and related information entered by a Data Provider under [Section 7.2 \(Provision of Data\)](#).

“Program” means IHDE secure, electronic, Internet-based, authenticated, record-locator service-based, peer-to-peer computer system and search engine for patient health, demographic, and related information which assists users in locating and aggregating patient data held by multiple health care organizations for the purpose of treatment, payment and healthcare operations. This includes the information-sharing and aggregation services and/or software described in [Section 1.3 \(Description of Program\)](#) for which the Data Provider/User registers as described in [Section 4.1 \(Participation Agreement Required\)](#).

“Physician” means a licensed Medical Doctor, licensed Physician’s Assistant, or a licensed Nurse Practitioner.

“IHDE Program Manual” means the documents that together, with the “IHDE Terms and Conditions for Participation Agreement” form the policies and procedures under which IHDE provides the Program.

“Security Administrator” means the individual designated by a Data Provider/User who is responsible to submit Authorized User access requests and access terms to the IHDE on behalf of the Data Provider/User.

“Terms and Conditions” means these Terms and Conditions for Participation Agreements set forth in this document, as amended, repealed, and/or replaced from time to time as described herein.

“Vendor” means each third party vendor of software, hardware and/or related services that, together with the software, hardware and/or related services provided by other Vendors, comprise the Program.

“Vendor Agreement” means each agreement between IHDE and a Vendor, respecting that Vendor’s provision of software or hardware and/or performance of related services.

3. Terms and Conditions and the Program Manual

3.1 Generally

These Terms and Conditions apply to the provision and operation of the Program, and the relationships among IHDE, Data Provider/Users and certain others.

3.2 Program Manual

The Program Manual sets forth the policies and procedures under which IHDE shall provide the Program, and shall be consistent with these Terms and Conditions. The Program Manual is incorporated by reference into, and thus is a part of, these Terms and Conditions.

3.3 Development and Notice of Changes to Terms and Conditions and Program Manual

IHDE is solely responsible for the development of these Terms and Conditions and the Program Manual. IHDE shall notify, in writing, all Data Provider/Users of any proposed changes to the Terms and Conditions or the Program Manual at least thirty (30) days before implementation of the changes. A Data Provider/User may withdraw from participation within the thirty (30) day notice period if they do not agree to the proposed changes. However, if the change is required in order for

IHDE and/or Data Provider/Users to comply with applicable laws or regulations, IHDE may implement the change and provide notice to Data Provider/Users within a shorter period of time that IHDE determines is appropriate under the circumstances.

4. Participation Agreements

4.1 Participation Agreement Required

Only parties who enter into Participation Agreements with IHDE and who sign the Business Associate Agreement shall be permitted to access the Program. A Data Provider/User shall be a Data Provider or a Data User or both, as specified in that Data Provider/User's Participation Agreement.

4.2 Data Provider/User Type

Each Data Provider/User shall be registered under the Participation Agreement to participate in one of the following Data Provider/User Types:

- a) Physician or medical group
- b) Hospital
- c) Independent laboratory
- d) Independent radiology
- e) Pharmacy
- f) Long-term care
- g) Home health care
- h) Insurer

4.3 Entering into a Participation Agreement

To participate in the Program, a party must enter into a Participation Agreement with IHDE, in writing, in accordance with this Section. Such a Participation Agreement shall describe the following:

- a) The Data Provider/User's Type, as described in [Section 4.2](#).
- b) Whether the Data Provider/User is a Data Provider or a Data User, or both.
- c) The Data Provider/User agrees to comply with these Terms and Conditions and the Program Manual.
- d) Other terms and conditions outlined in the Participation Agreement, the Program Manual, the Security Policy, the Terms and Conditions and the Privacy Policy.

4.4 Discretionary Participation Agreements and Mandatory Terms and Conditions

IHDE may, at its sole discretion, enter into Participation Agreements with different terms and conditions than those set forth in this document. However, IHDE may not enter into a Participation Agreement inconsistent with the following provisions of these Terms and Conditions:

- a) [Section 2 \(Definitions\)](#)
- b) [Section 4.1 \(Participation Agreement Required\)](#)
- c) [Section 4.9\(b\) \(IHDE's Rights to Terminate\)](#)
- d) [Section 4.10 \(Effect of Termination\)](#)
- e) [Section 4.11 \(Survival of Provisions\)](#)
- f) [Section 5 \(Authorized Users\)](#)
- g) [Section 6 \(Data User's Use of Program\)](#)
- h) [Section 7.2 \(Provision of Data\)](#)
- i) [Section 7.3 \(Measures to Assure Accuracy of Data\)](#)
- j) [Section 7.4 \(License\)](#)
- k) [Section 7.5 \(Limitations on Use of Patient Data\)](#)
- l) [Section 9 \(Protected Health Information\)](#)

- m) [Section 10 \(Other Obligations of Data Provider/Users\)](#)
- n) [Section 13 \(Proprietary Information\)](#)
- o) [Section 14 \(Disclaimers, Exclusions of Warranties and Indemnifications\)](#)
- p) [Section 15 \(Insurance and Indemnification\)](#)
- q) [Section 16.1 \(Applicable Law\)](#)
- r) [Section 16.3 \(Third-Party Beneficiaries\)](#)
- s) [Section 16.4 \(Supervening Circumstances\)](#)
- t) [Section 16.5 \(Severability\)](#)
- u) [Section 16.7 \(Waiver\)](#)

4.5 Changes to Terms and Conditions and Program Manual Incorporated by Reference

IHDE may amend, repeal and replace these Terms and Conditions and/or the Program Manual at any time. IHDE shall give Data Provider/Users notice of changes, as described in [Section 3.3 \(Development and Dissemination; Amendments\)](#). Subject to [Section 4.7 \(Termination Based on Objection to Change\)](#), any changes to these Terms and Conditions or the Program Manual shall automatically be incorporated by reference into each Participation Agreement. The changes are legally binding upon IHDE and the Data Provider/User, as of the effective date of the change.

4.6 Changes to Participation Agreements

IHDE may, consistent with these Terms and Conditions, change or amend any Participation Agreement at any time, with ninety (90) days prior notice to the Data Provider/User. Subject to [Section 4.7 \(Termination Based on Objection to Change\)](#), any such change to a Participation Agreement is legally binding upon IHDE and the Data Provider/User as of the effective date of the change.

4.7 Termination Based on Objection to Change

If a change to these Terms and Conditions, or the Program Manual, or a Participation Agreement affects a right or obligation of the Data Provider/User under their Participation Agreement, and they object to that change, the Data Provider/User may terminate their Participation Agreement. The Data Provider/User must give IHDE notice of termination within ninety (90) days following IHDE notice of the change. The termination of the Data Provider/User's Participation Agreement shall be effective as of the effective date of the change to which they object. However, any change to these Terms and Conditions or the Program Manual or to a Participation Agreement that IHDE determines is required to comply with any federal, state, or local law or regulation shall take effect as of the effective date IHDE determines is required. In this case the termination of the Participation Agreement based on the Data Provider/User's objection to the change shall be effective as of IHDE receipt of the Data Provider/User's notice of termination.

4.8 Data Provider/User's Other Rights to Terminate

- a) For Participants that have been billed and have paid the participation fee for the first twelve months of participation, the Participation Agreement will commence on the Effective Date and will remain in effect for a period of twelve (12) months. Thereafter, this Agreement shall automatically renew for successive terms of one (1) year each, unless the Data Provider/User provides IHDE with written notice of non-renewal. Such notice must be given at least ninety (90) days before the expiration date of the then-current term.
- b) For Participants that have had the participation fee for the first twelve months of participation waived, the Participation Agreement will commence on the Effective Date. Thereafter, this agreement will automatically renew for successive terms of one (1) year each, unless the Data Provider/User provides IHDE with written notice of non-renewal. Such notice must be given at least ninety (90) days before the expiration of the then-current term.
- c) Except as provided in [Section 4.7 \(Termination Based on Objection to Change\)](#), a Data Provider/User may terminate their Participation Agreement any time after the first twelve (12) months from effective date of contract without cause. The Data Provider/User must give IHDE

- at least ninety (60) days' notice of the termination.
- d) A Data Provider/User may terminate their Participation Agreement, if IHDE fails to perform a material responsibility listed in the Participation Agreement, and that failure continues uncured for a period of thirty (60) days after the Data Provider/User gives IHDE notice of that failure and requests that IHDE cure that failure.
 - e) Notwithstanding any other provision of this Section, the Data Provider/User may terminate their Participation Agreement as set forth in [Section 9.5 \(Special Termination\)](#).

4.9 IHDE's Rights to Terminate

- a) Except as provided in a Participation Agreement entered into under [Section 4.3 \(Entering into a Participation Agreement\)](#), IHDE may terminate any Data Provider/User's Participation Agreement at any time without cause. IHDE must give the Data Provider/User at least thirty (30) days advance notice of the termination.
- b) IHDE may terminate any Data Provider/User's Participation Agreement if they fail to perform a material responsibility arising out of the Participation Agreement, and that failure continues uncured for a period of thirty (30) days after IHDE gives the Data Provider/User written notice of that failure and requests the Data Provider/User cure that failure.

4.10 Effect of Termination

Upon termination of a Data Provider/User's Participation Agreement that party shall cease to be a Data Provider/User. After termination neither the former Data Provider/User nor their Authorized Users shall have any rights to use the IHDE Program. A former Data Provider shall have no obligation to provide data following the termination of their Participation Agreement. Within thirty (30) days of the effective date of the of the termination, each party will return to the other all Proprietary Information belonging to the other or certify the destruction of such Proprietary Information if agreed to by the party who originally disclosed the Proprietary Information. A former Data Provider may direct IHDE to implement measures, as described in the Program Manual, to make data provided before the termination stored in the IHDE-provided hardware, unavailable to other Data Provider/Users or others. However, Data Users may continue to use data provided to them before such action by IHDE, under the license described in Section 7.4 (License). All licenses or other rights to use the Program granted to the Data Provider/User shall end automatically upon the termination of the Data Provider/User's Participation Agreement. IHDE shall continue to abide by the terms of the Business Associate Addendum upon termination of the Participation Agreement.

4.11 Survival of Provisions

The following provisions of these Terms and Conditions shall continue to apply to a former Data Provider/User after termination of the former Data Provider/User's Participation Agreement:

- a) [Section 5.5.2 \(Responsibility for Conduct of Data Provider/User and their Authorized Users\)](#)
- b) [Section 9 \(Protected Health Information\)](#)
- c) [Section 13 \(Proprietary Information\)](#)
- d) [Section 15.2 \(Indemnification\)](#)

5. Authorized Users

5.1 Identification of Authorized Users

Each Data Provider/User is responsible for designating the Authorized Users for its organization. Each Data Provider/User must designate a Security Administrator (SA).

5.2 Certification of Authorized Users

5.2.1 Certification of Authorized Users by Data Provider/User

When a Data Provider/User identifies an Authorized User to IHDE under [Section 5.1 \(Identification of Authorized Users\)](#), they shall also certify to IHDE that the Authorized User:

- a) Has completed a training program provided by IHDE in accordance with [Section 10.5 \(Training\)](#) or another training program approved by IHDE.
- b) Will be permitted to use the Program only as reasonably necessary for the performance of Data Provider/User's activities under the User Type registered with IHDE under [Section 4.2 \(Data Provider/User Type\)](#);
- c) Has agreed not to disclose any user IDs, passwords and/or other security measures issued to them under [Section 5.3 \(Passwords and Other Security Mechanisms\)](#) to any other party.
- d) Has acknowledged in writing that failure to comply with these Terms and Conditions may result in the withdrawal of Program use privileges and may constitute cause for disciplinary action by the Data Provider/User.
- e) Has complied with all other requirements as described in the Program Manual.

5.2.2 Certification of IHDE Authorized Users

IHDE shall require that each IHDE Authorized User:

- a) Has completed a training program provided or approved by IHDE in accordance with [Section 11.4 \(Training\)](#).
- b) Will be permitted to use the Program only as reasonably necessary for the performance of IHDE activities in accordance with these Terms and Conditions.
- c) Has agreed not to disclose any user IDs, passwords and/or other security measures issued to the Authorized User under [Section 5.3 \(Passwords and Other Security Mechanisms\)](#) to any other party.
- d) Has acknowledged in writing that failure to comply with these Terms and Conditions may result in the withdrawal of Program use privileges and may constitute cause for disciplinary action by IHDE.
- e) Has complied with all other requirements as described in the Program Manual.

5.3 Passwords and Other Security Mechanisms

- a) IHDE shall issue a unique user ID, password and/or other security measure, as described in the Program Manual, to each Authorized User to permit the Authorized User to access the Program. IHDE shall issue user IDs, passwords and/or other security measures based on the information given by the Data Provider/User under [Section 5.1 \(Identification of Authorized Users\)](#), and such other information as IHDE determines appropriate.
- b) The unique user ID, password and/or other security measure shall be provided by the IHDE directly to the Authorized User. IHDE shall notify the Data Provider/User SA of the issuance of the user IDs, passwords and/or other security measures to their Authorized Users.
- c) The Data Provider/User SA shall inform IHDE, under [Section 5.1 \(Identification of Authorized Users\)](#), when an individual is removed from their list of Authorized Users.
- d) IHDE shall immediately cancel and de-activate the user ID, password and/or other security measure of any individual who is no longer an Authorized User.

5.4 No Use by Other than Authorized Users

Both IHDE and the Data Provider/User shall restrict access to and use of the Program only to the Authorized Users identified to IHDE in accordance with [Section 5.1 \(Identification of Authorized Users\)](#) and the IHDE Authorized Users.

5.5 Responsibility for Conduct of IHDE, Data Provider/User and Authorized Users

5.5.1 Responsibility for Conduct of IHDE and IHDE Authorized Users

IHDE shall be solely responsible for all its acts and omissions and those of IHDE Authorized Users. This includes any individuals who access or use the Program using any user names and

passwords and/or other security measures issued to or used by any IHDE Authorized User, or issued by IHDE to any individual other than an Authorized User, lawfully or unlawfully. Program and/or patient data or other confidential and/or other information accessed in connection with user names and passwords and/or other security measures issued to or used by any IHDE Authorized User, and all such acts and omissions, shall be deemed to be the acts and omissions of IHDE.

5.5.2 Responsibility for Conduct of Data Provider/User and their Authorized Users

The Data Provider/User shall be responsible for all their acts and omissions and those of their Authorized Users. This includes all individuals who lawfully access or use the Program either through the Data Provider/User or by through any user names and passwords and/or other security measures issued by IHDE to the Data Provider/User's Authorized Users. Program and/or patient data or other confidential and/or other information accessed by user names and passwords and/or other security measures issued to the Data Provider/User or any of their Authorized Users, or received or obtained, directly or indirectly, from them, and all such acts and omissions shall be deemed to be the acts and omissions of the Data Provider/User.

5.6 Rights of Authorized Users

An Authorized User shall have no rights to access the Program or any patient data or other Program information except for those purposes specified in the Participation Agreement or otherwise granted to the Authorized User by IHDE or by the Data Provider/User. Any granted rights of an Authorized User shall cease upon the termination of that Authorized User by IHDE or the Data Provider/User.

5.7 Termination of Authorized Users

IHDE and the Data Provider/User shall require all their Authorized Users to use the Program only in accordance with the Participation Agreement, these Terms and Conditions, the Program Manual, the Privacy Policy and the Security Policy. Any Authorized Users failing to act in accordance with the Participation Agreement, these Terms and Conditions, the Program Manual, the Privacy Policy and the Security Safeguards Policy will be disciplined in accordance with IHDE or the Data Provider/User disciplinary policies and procedures. Such disciplinary action may include termination.

6. Data User's Use of Program

The terms of [Section 6. \(Data User's Use of Program\)](#) shall apply to a Data User registered with IHDE under the Participation Agreement.

6.1 Grant by IHDE

IHDE grants to each registered Data User, and each Data User accepts, a nonexclusive, personal, nontransferable, limited right to access and use the Program. The Data User must have access to and use the Program only for the purpose of improving the quality of health care treatment. The Data User must remain in full compliance with these Terms and Conditions and the Participation Agreement. IHDE retains all other rights to all the components the Program. No Data User shall obtain any rights to the Program except for the limited rights expressly granted by these Terms and Conditions.

6.2 Services

Data Provider/User(s) registered as a Participant under the Participation Agreement shall receive the Services selected by the Participant on the IHDE Service Menu.

6.3 Permitted Uses

A registered Data User may use the Program only for the purposes described in [Section 5a, Permitted Uses of Data](#), of the IHDE Program Manual.

6.4 Non-Permitted Uses

A Data User shall not use or permit the use of the Program for any prohibited use described in Section 5b, Non-Permitted Uses of Data, of the IHDE Program Manual.

7. Data Provider's Obligations

The terms of [Section 7. \(Data Provider's Obligations\)](#) shall apply to that Data Provider registered with IHDE as a Data Provider under the Participation Agreement.

7.1 Grant by IHDE

IHDE grants to each Data Provider, and each Data Provider accepts, a nonexclusive, personal, nontransferable, limited right to the Program. The Data Provider must have access to and use the Program only for the purpose of improving the quality of health care treatment. The Data Provider must remain in full compliance with these Terms and Conditions and the Participation Agreement. IHDE retains all other rights to all the components the Program. No Data Provider shall obtain any rights to the Program except for the limited rights expressly granted by these Terms and Conditions.

7.2 Provision of Data

7.2.1. Data Providers Generally

Except as provided in [Section 7.2.2 \(Special Provisions in Data Providers' Participation Agreements\)](#), each Data Provider shall participate in and maintain their connection to the Program's record locator service based, peer-to-peer network. They shall provide through the Program the patient data described in the Program Manual under Section 7, Provision of Data and Section 7, Data Monitoring & Management as required for the Data Provider Type has registered under [Section 4.2 \(Data Provider/User Type\)](#).

7.2.2 Special Provisions in Data Providers' Participation Agreements

If the Data Provider's Participation Agreement expressly provides that the scope of the patient data provided shall be different from that generally required of their Data Provider Type, then the Data Provider shall provide the patient data described in that Participation Agreement.

7.3. Measures to Assure Accuracy of Data

Each Data Provider shall, in accordance with the requirements described in the Program Manual under Section 7, Data Monitoring & Management use reasonable and appropriate efforts to assure that all patient data it provides to the Program is accurate, free from serious error, reasonably complete, and provided in a timely manner.

7.4 License

Subject to [Section 7.5 \(Limitations on Use of Patient Data\)](#), the Data Provider grants to IHDE a fully-paid, worldwide, non-exclusive, royalty free right and license (i) to permit others to access and use through the Program all patient data entered by the Data Provider in accordance with these Terms and Conditions, and (ii) to use such patient data to carry out IHDE duties under these Terms and Conditions, including system administration, testing, problem identification and resolution, management of the Program, data aggregation activities as permitted by applicable state and federal laws and regulations. This includes compliance with regulations promulgated under HIPAA, and others as necessary and appropriate. Ownership of and title to the submitted data remains the property of the Data Provider. IHDE acknowledges that it will not acquire any rights in any of the Data of Data Provider and that it may only use such Data for purposes that have been set forth in this Agreement.

7.5 Limitations on Use of Patient Data

Patient data entered by a Data Provider shall not be used for any of the following purposes:

7.5.1. Uses Prohibited by Policies and Procedures

Any use prohibited by the Program Manual under Section 5b, Non-Permitted Uses of Data.

7.5.2. Uses Prohibited by Law

Any use prohibited by the laws of the United States of America or of the State of Idaho. The Data Provider and IHDE shall comply with all applicable laws and regulations.

8. Services, Software and/or Hardware Provided by IHDE

8.1 Description

IHDE shall from time to time enter into agreements with one or more Vendors to arrange for the provision of software, hardware and related services necessary for the availability and the performance of the Program for Data Provider/Users. A description of IHDE arrangements for such software, hardware and/or related services is set forth in the Program Manual under Section 8, System and Services. IHDE obligations to provide or arrange for the availability and the performance of the Program shall be limited to the obligations undertaken by the Vendors under their Vendor Agreements with IHDE, unless otherwise specified in these Terms and Conditions or in the Participation Agreement.

8.2. Grant of License

IHDE grants to each Data Provider/User a non-exclusive, personal, nontransferable, limited license to use the Associated Software and the Associated Hardware, as described in Section 8a of the Program Manual, for access to, or use of, the Program. For the purpose of accessing the Program, IHDE represents and warrants to each Data Provider/User that IHDE has the legal right and power to grant the license described in this Section 8.2 (Grant of License). The scope of such license, and these Terms and Conditions, are limited by the terms and conditions of the licenses and other rights to the Associated Software and Associated Hardware, granted to IHDE by the vendor(s) thereof. IHDE shall make the terms and conditions of such licenses and other rights available to each Data Provider/User upon request.

8.3 Terms and Conditions Applicable to IHDE third party Products and Services

IHDE may arrange for third party software providers to provide certain electronic health record, clinical messaging and related services described in the Program Manual. Each Authorized User shall, as an express condition to accessing and using the IHDE clinical Portal agree to any conditions displayed on initial IHDE sign-on.

9. Protected Health Information (PHI)

9.1 Compliance with Program Manual

IHDE and the Data Provider/User shall comply with the standards for the confidentiality, security, and use of patient health information as listed in the IHDE Privacy Policy. This includes protected health information as described in HIPAA. Each Data Provider/User shall comply with such standards as a “covered entity” under HIPAA. The IHDE shall execute a Business Associate Agreement with each Data Provider/User. They shall remain bound by the Business Associate Agreement terms during the effective period of participation.

Compliance with Applicable Law

IHDE and each Data Provider/User, and their agents and employees, shall comply with the requirements for the privacy, security, and use of patient health information imposed under the laws of the United States of America and of the State of Idaho. IHDE use of data will be subject to this Agreement and the Business Associate Agreement incorporated herein.

9.2 Business Associate Agreements with Third Parties

In performance of IHDE responsibilities described in these Terms and Conditions, IHDE may enter into agreements with one or more Covered Entities, as described in the Program Manual.

9.3 Action upon Termination

The destruction or return to the Data Provider/User of their Protected Health Information after the end of their Participation Agreement is not feasible. Therefore, after the end of their Participation Agreement, IHDE shall extend the protections provided by the Business Associate Agreement.

9.4 Special Termination

If the Data Provider/User determines that IHDE has violated a material term of the Business Associate Agreement, and IHDE fails to remedy the violation within ten (10) days following receipt of written notice, the Data Provider/User may immediately terminate their authorization for IHDE to act in the capacity of Business Associate to the Data Provider/User.

If IHDE determines the Data Provider/User knowingly or willfully violated the IHDE Privacy or or Security Safeguards Policy or failed to comply with the restrictions on the use of protected health information imposed under the laws of the United States of America and the State of Idaho, IHDE may immediately terminate Data Provider/User access to the Program.

9.5 Policies and Standards

IHDE will implement and comply with policies and standards that reasonable and appropriate to ensure that all Data Exchanges are authorized, and to protect data from improper access, tampering or unauthorized disclosure. Such policies and standards will include administrative, physical and technical safeguards, that are reasonably necessary to secure the data. IHDE and Data Provider/User will comply with the Security Safeguards Policy and Privacy Policy as established by IHDE.

10. Other Obligations of Data Provider/Users

10.1 1 Compliance with Laws and Regulations

The Data Provider/Users shall adhere in all respects to the provisions of these Terms and Conditions, in compliance with applicable federal, state and local laws, ordinances and regulations.

10.2 2 System Security

The Data Provider/User shall implement security safeguards with respect to the Program in accordance with the Program Manual.

10.3 3 Software and Hardware Provided by Data Provider/User

Each Data Provider/User shall be responsible for procuring all hardware and software necessary to access the Program, as listed in Section 8d, Data Source/User's Required Hardware and Software of the IHDE Program Manual. The Required Hardware and Software shall conform to IHDE's specifications in effect as the data of the signature of the Participation Agreement. IHDE may change such specifications from time to time at their discretion. IHDE will give at least ninety (90) days written notice to each Data Provider/User affected by the change. As part of the Data Provider/User's obligation to provide Required Hardware and Software, the Data Provider/User shall be responsible for ensuring that all the computers to be used to interface with the Program

are properly configured. This includes the operating system, web browser, and Internet connectivity.

10.4 Malicious Software, Viruses, and Other Threats

The Data Provider/User and IHDE shall use reasonable efforts to ensure their connection to and use of the Program does not include any program, routine, subroutine, or data which will disrupt the proper operation of the Program or any part of the Program, or any hardware or software used by IHDE in connection with the Program. This includes the medium containing any data or other information provided to the Program. The Data Provider/User shall use reasonable efforts to ensure that any method of transmitting their data will not introduce any program, routine, subroutine, or data which will disrupt the proper operation of the Program. The Data Provider/User and IHDE shall use reasonable efforts to ensure the Program or any part thereof or any hardware, software or data used by IHDE or any other Data Provider/User in connection with the Program is not destroyed, damaged, or rendered inoperable.

10.5 Training

The Data Provider/User shall provide appropriate and adequate training to all of their Authorized Users in the provisions of the Terms and Conditions for the Participation Agreement, as well as applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including requirements imposed under HIPAA.

11. IHDE Operations and Responsibilities

11.1 1 Compliance with Laws and Regulations

IHDE shall adhere in all respects to the provisions of these Terms and Conditions, in compliance with applicable federal, state, and local laws, ordinances and regulations.

11.2 2 Compliance with Terms and Conditions

IHDE shall require that all Data Provider/Users enter into a Participation Agreement, or other legally binding agreement, to comply with these Terms and Conditions

11.3 Maintenance of program

IHDE shall maintain the functionality of the Program as described in the Program Manual Section 8, System and Services. IHDE shall, in a timely manner, provide such service, security, and other updates as are commercially appropriate. IHDE shall implement security measures with respect to the Program as described in the Program Manual.

11.4 Training

11.4.1 Training of IHDE Personnel

IHDE shall provide appropriate and adequate training to all their personnel. This includes IHDE Authorized Users. Training will include the provisions of applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including requirements imposed under HIPAA.

11.4.2 Training of Data Provider/Users and Their Authorized Users

IHDE shall provide, or arrange for, the initial training to each Data Provider/User, their “Train the Trainer Designee,” and their Authorized Users at no additional cost to the Data Provider/User. Training will cover the Data Provider/User’s and the Authorized User’s rights and obligations under their Participation Agreement and these Terms and Conditions. Training will include the access and use of the Program, including such user manuals and other resources IHDE determines appropriate to support the Program. Subsequent training and training materials will be provided by

the Train the Trainer Designee including training for new or additional Authorized Users added by the Data Provider/User. Such training can be provided by the IHDE at the request of the Data Provider/User, on a time and materials basis. Training is further described in the Program Manual under Section 8f, Training.

11.5 Telephone and/or E-Mail Support

IHDE shall provide, or arrange for, telephone and/or e-mail support and assistance in resolving difficulties in accessing and using the Program. Such support is described in the Program Manual under Section 8g, Support.

11.6 Audits and Reports

IHDE shall provide reports to Data Provider/Users as is described in the Program Manual Section 4b, Audits and Reports.

11.7 Malicious Software, Viruses, and Other Threats

IHDE shall use reasonable efforts to ensure their connection to and use of the Program does not include any program, routine, subroutine, or data which will disrupt the proper operation of the Program or any part of the Program, or any hardware or software used by IHDE in connection with the Program. This includes the medium containing any data or other information provided to the Program. IHDE shall use reasonable efforts to ensure that any method of transmitting their data will not introduce any program, routine, subroutine, or data which will disrupt the proper operation of the Program. IHDE shall use reasonable efforts to ensure the Program or any part thereof or any hardware, software or data used by IHDE, or any Data Provider/User in connection with the Program, is not destroyed, damaged, or rendered inoperable.

12. Fees and Charges

12.1 Agreed-Upon Fees

Service fees and charges for participation in the Program are listed in the IHDE Participant Services schedule, which is incorporated by reference into each Participation Agreement (PA). The Participation Agreement entered into under [Section 4.3 \(Entering into a Participation Agreement\)](#), may specify service fees and charges under the Agreement different from the IHDE Participant Services.

12.2 2 Service Fees

Each Data Provider/User shall pay to IHDE the service fees, in accordance with the IHDE Participant Services and Section 9, Fees and Charges of the IHDE Program Manual, unless stated otherwise in the Participation Agreement. The service fees will be those in effect at the time of the execution of the Participation Agreement, for those services for which the Data Provider/User has registered.

12.3 3 Changes to Fee Schedule

IHDE may change its Fee Schedule at any time, after thirty (30) days prior written notice to Data Provider/Users; provided, however, the Data Provider/User shall not be responsible for any increases in fees during the remainder of the then-current term.

12.4 Miscellaneous Charges

The Data Provider/User shall pay IHDE charges for goods or services provided at the User's request that are not specified in IHDE Participant Services schedule in effect at the time of service, unless the Data/Provider User's Participation Agreement provides otherwise.

12.5 5 Payment

Data Provider/User service fees, and any miscellaneous charges are due within thirty (30)

business days of the date the IHDE invoice is mailed to the Data Provider/User's address as shown on the Data Provider/User's Agreement or e-mailed in accordance with the Participation Agreement.

12.6 Interest

Undisputed service fees and miscellaneous charges not paid to IHDE within thirty (30) business days following the due date are subject to interest. Interest will be assessed thereafter at the rate of one and one-half percent (1½ %) per month on the outstanding balance, or the highest amount permitted by law, whichever is less.

12.7 7 Suspension of Service

Failure to pay undisputed service fees and miscellaneous charges within sixty (60) business days following the due date may result in termination of the Data Provider/User's access to the Program after ten (10) days advance notice. A reconnection fee will be assessed to reestablish connection after termination due to non-payment. Other terms applicable to suspensions and reestablishments of service are set forth in the Program Manual.

12.8 Taxes

All service fees and miscellaneous charges shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future. The Data Provider/User shall pay any tax (excluding taxes on IHDE net income) that IHDE may be required to collect or pay, now or at any time in the future, imposed upon the sale or delivery of items and services provided under these Terms and Conditions.

12.9 Tax Exempt Data Provider/User

Data Provider/Users exempt from sales and use taxes will not be required to pay taxes imposed upon the sale or delivery of items and services provided under these Terms and Conditions when a valid exemption certificate is provided timely to IHDE. IHDE shall cooperate with Data Provider/User as reasonably necessary to establish with a relevant taxing authority Data Provider/Users' exemption from any tax on the goods and services purchased under this Agreement. In the event such exemption is rejected, the Data Provider/User shall pay for taxes imposed in conjunction with this Agreement, including sales, use, excise, and similar taxes based on or measured by charges payable under this Agreement and imposed under authority of federal, state, or local taxing jurisdictions. This Data Provider/User obligation specifically excludes foreign, federal state, and local taxes based upon IHDE revenues, net income, number of employees, or corporate existence.

12.10 Other Charges and Expenses

The Data Provider/User shall be solely responsible for any other charges or expenses they may incur to access and use the Program. This includes telephone and equipment charges, and fees charged by third-party vendors of products and services, but not including any cost related to IHDE establishment or maintenance of the program.

13. Proprietary Information

13.1 1 Scope of Proprietary Information

In the performance of their responsibilities under these Terms and Conditions, IHDE or Data Provider/Users may come into possession of Proprietary Information of the other party. Under this document, "Proprietary Information" means all, intellectual property, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements of IHDE and the Data Provider/User, whether written or verbal, that

are confidential in nature. Proprietary Information shall not include any information that:

(a) Is in the public domain.

(b) Is already known or obtained other than in the course of the other party's performance under these Terms and Conditions.

(c) Is independently developed by any other party.

(d) Becomes known from an independent source having the right to disclose such information without breach of these Terms and Conditions, or any other confidentiality or nondisclosure agreement by such other party.

13.2 2 Nondisclosure of Proprietary Information

IHDE and the Data Provider/User shall keep and maintain in strict confidence all Proprietary Information received from the other, or from any of the other's employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their obligations under these Terms and Conditions. IHDE and the User shall not use, reproduce, distribute or disclose any Proprietary Information except as permitted by these Terms and Conditions. IHDE and the User shall prevent their employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure of Proprietary Information received under this Agreement. Proprietary Information of a party will be marked as such as set forth in Section 4.10 and returned or destroyed upon termination of this Agreement.

13.3 3 Equitable Remedies

All Proprietary Information represents a unique intellectual product of the party disclosing such Proprietary Information (the "Disclosing Party"). The unauthorized disclosure of said Proprietary Information would have a detrimental impact on the Disclosing Party. The damages resulting from this detrimental impact would be difficult to ascertain but would result in irreparable loss. It would require a multiplicity of actions at law and in equity in order to seek redress against the receiving party in the event of such an unauthorized disclosure. The Disclosing Party shall be entitled to equitable relief in preventing a breach of this [Section 13 \(Proprietary Information\)](#). Such equitable relief is in addition to any other rights or remedies available to the Disclosing Party.

13.4 4 Notice of Disclosure

Nothing in this [Section 13 \(Proprietary Information\)](#) shall prohibit a party from disclosing any Proprietary Information if the party becomes legally compelled to make the disclosure by reason of a subpoena, or order of a court, administrative agency or other governmental body of competent jurisdiction. Such disclosures are expressly permitted under this section. A party that becomes legally compelled to make a disclosure by reason of a subpoena, or order of a court, administrative agency or other governmental body of competent jurisdiction shall provide the other party with notice thereof. Notice will be given within five (5) calendar days, or, if sooner, at least three (3) business days before such disclosure will be made. This will enable the other party to seek a protective order, or other appropriate remedy. In no event shall a party be deemed to be liable under these Terms and Conditions for compliance with any subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction.

14. Disclaimers, Exclusions of Warranties and Indemnifications

14.1 1 Carrier Lines

The Data Provider/User and IHDE acknowledge that access to the Program is provided over various facilities and communications lines. Information is transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers. These carrier lines are beyond the control of IHDE or the Data Provider/User. IHDE will encrypt data that is transmitted by IHDE. Neither IHDE nor the Data Provider/User assumes any liability for, or

relating to, the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines. This includes any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the Data Provider/User's risk and is subject to all applicable local, state, national, and international laws.

14.2 2 No Warranties

Access to the Program, and the information obtained by a Data User under the Program are provided "as is" and "as available" without any warranty of any kind, expressed or implied except as set forth in this paragraph. This includes implied warranties of merchantability, fitness for a particular purpose and, except as provided to the contrary in a vendor agreement, non-infringement. Notwithstanding the foregoing, IHDE represents and warrants that (i) it has obtained the rights from those third party vendors necessary to vest in or grant to the Data Provider/User the various rights necessary in and to this Agreement; (ii) any services performed by IHDE pursuant to this Agreement shall be performed in a professional manner, consistent with best practices in the industry and in a diligent, workmanlike, and expeditious manner; and (iii) it will use its best efforts to correctly transmit Data on a timely basis. The Data Provider/User shall be solely responsible for any and all acts or omissions taken or made in reliance on the system or the information in the system, including inaccurate or incomplete information. Except for damages resulting from a party's gross negligence, willful misconduct or a breach of Business Associate Addendum, it is expressly agreed that in no event shall IHDE or any Data Provider/User be liable for any special, indirect, consequential, or exemplary damages, including but not limited to, loss of profits or revenues, loss of use, or loss of information or data, whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if IHDE or the Data Provider/User has been apprised of the possibility or likelihood of such damages occurring. IHDE and each Data Provider/User disclaim any and all liability for erroneous transmissions and loss of service resulting from communication failures by telecommunication service providers or the system.

14.3 Other Data Provider/Users

By using the Program, each Data Provider/User acknowledges that other Provider/Users have access to the Program. Under these Terms and Conditions, other Data Provider/Users shall agree to comply with these Terms and Conditions concerning use of the information made available through the Program. The actions of such other parties are beyond the control of IHDE. Accordingly, IHDE does not assume any liability for, or relating to, any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the Program resulting from any action or failure to act of any Data Provider/User or other party other than IHDE; provided, however, IHDE shall not be excused from liability to the extent that IHDE has failed to redress, pursuant to the terms of this Agreement, contract breaches, legal breaches or patterns of misbehavior or misconduct by a Data Provider/User.

14.4 4 Data Provider/User's Actions

Each Data Provider/User shall be solely responsible for any damage to a computer system, loss of data, and any damage to the Program caused by that Data Provider/User or any party using a user ID assigned to the Provider/User or a member of their workforce.

14.5 Accuracy of Data

Each Data Provider/User shall be solely responsible for validating the accuracy of all output and reports, and protecting their data and programs from loss, by implementing appropriate security measures, including routine backup procedures. IHDE is not responsible for the content of any information transmitted or received through IHDE provision of the Program.

14.6 Inaccurate Data

By using the Program, each Data Provider/User acknowledges that all data accessed through the

Program originates from Data Providers and not from IHDE. All such data is subject to change arising from numerous factors. These include changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. IHDE neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of these Terms and Conditions, IHDE shall have no responsibility for, or liability related to, the accuracy, content, currency, completeness, or delivery of any data either entered by a Data Provider, or used by a Data User, under these Terms and Conditions.

14.7.7 Patient Care

Each Data Provider/User and their Authorized Users are 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 Program or the data made available thereby. No Data Provider/User or Authorized User shall have any recourse against, and through the Participation Agreements that apply thereto, each shall waive, any claims against IHDE for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the Program or the data made available thereby.

15. Insurance and Indemnification

15.1 Insurance

15.1.1 IHDE Insurance

IHDE shall obtain and maintain directors and officer's liability, commercial general liability, and network privacy and security coverage, or equivalent coverage provided under another policy, as well as general liability insurance coverage throughout the term of any Participation Agreement. IHDE will provide this insurance at its sole expense, in such amounts as IHDE shall determine reasonable and appropriate from time to time. Such insurance will protect IHDE, its Authorized Users, and its officers, directors, members, employees and other agents from and against any third-party claim or cause of action associated with the activities of IHDE contemplated by these Terms and Conditions. If any policy of insurance described in this [Section 15.1 \(Insurance\)](#) is issued on a "claims made" basis, IHDE shall, following the termination of any Participation Agreement, provide continuous coverage or obtain a policy of extended reporting ("tail") coverage for the longest extended reporting period commercially available.

15.1.2 Data Provider/User's Insurance

Each Data Provider/User shall obtain and maintain throughout the term of their Participation Agreement professional and general liability insurance coverage, as well as technology and information errors and omissions (TIE&O) insurance coverage, or equivalent coverage provided under another policy, as reviewed by IHDE. Each Data Provider/User shall provide such insurance at their sole expense, in such amounts as is reasonable and appropriate from time to time. Such insurance will protect the Data Provider/User, their Authorized Users, and their officers, directors, members, employees and other agents from and against any third-party claim or cause of action associated with the activities of the Data Provider/User contemplated by these Terms and Conditions. If any policy of insurance described in this [Section 15.1 \(Insurance\)](#) is issued on a "claims made" basis, the Data Provider/User shall, upon any termination of the Data Provider/User's Participation Agreement, provide continuous coverage or obtain a policy of extended reporting ("tail") coverage for the longest extended reporting period commercially available.

15.2 Indemnification

15.2.1. Generally

IHDE and each Data Provider/User (each, an “Indemnifying Party”) shall indemnify and hold the other free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, officers, directors, members, employees or other agents, including the Indemnifying Party's failure to comply with or perform their obligations under the applicable Participation Agreement. If the Data Provider/User is the Indemnifying Party, the Indemnifying Party shall indemnify and hold the other Data Provider/Users (each an “Indemnified Party”) free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, officers, directors, members, employees or other agents, including the Indemnifying Party's failure to comply with or perform their obligations under the applicable Participation Agreement.

15.2.2 Specific Indemnities

Notwithstanding [Section 15.2.1 \(Generally\)](#), IHDE and each Data Provider/User (each, an “Indemnifying Party”) shall hold the other (the “Indemnified Party”) free of, and harmless from, all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of any breach of confidentiality or security arising out of the act, or omission of, the Indemnifying Party or any of the Indemnifying Party's Authorized Users, officers, directors, members, employees or other agents.

15.2.3 IHDE Indemnification for Infringement

IHDE will indemnify and hold harmless each Data Provider/User, and their employees and agents from any damages, expenses, and cost, including reasonable attorney fees, arising out of claims by third parties that the use of the Data Exchange and any software provided by IHDE infringes any patents, copyrights or trademarks or is a misappropriation of trade secrets provided that Data Provider/User notifies IHDE in writing promptly upon discovery of any such claim and gives IHDE complete authority and control of, and full cooperation with, the defense and settlement of such claim.

15.2.4 Rules for Indemnification

Any indemnification made under these Terms and Conditions shall include payment of all costs associated with defending the claim or cause of action involved. This applies whether or not such claims or causes of action are meritorious, including reasonable attorneys' fees and any settlement by or judgment against the party to be indemnified. In the event that a lawsuit is brought against the party to be indemnified, the party responsible to indemnify that party shall, at their sole cost and expense, defend the party to be indemnified, if the party to be indemnified demands indemnification by written notice given to the indemnifying party within a period of time wherein the indemnifying party is not prejudiced by lack of notice. Upon receipt of such notice, the indemnifying party shall have control of such litigation but may not settle such litigation without the express consent of the party to be indemnified. This consent shall not be unreasonably withheld, conditioned or delayed. The indemnification obligations of the parties shall not, as to third parties, be a waiver of any defense or immunity otherwise available. The indemnifying party, in indemnifying the indemnified party, shall be entitled to assert in any action every defense or immunity that the indemnified party could assert on their own behalf.

16. General Provisions

16.1 Applicable Law

The interpretation of these Terms and Conditions and the resolution of any disputes arising under these Terms and Conditions and Data Provider/Users' Participation Agreements shall be governed by the laws of the State of Idaho. If any action or other proceeding is brought on or in connection

with these Terms and Conditions, or a Participation Agreement, the venue of such action shall be exclusively in Ada County, in the State of Idaho.

16.2 2 Non-Assignability

No rights of the Data Provider/User under their Participation Agreement may be assigned or transferred by the Data Provider/User, either voluntarily or by operation of law, without the prior written mutual consent of both parties.

16.3 Third-Party Beneficiaries

Except as provided in [Section 15.2 \(Indemnification\)](#) with respect to a Data Provider/User's indemnification of other Data Provider/Users, there shall be no third-party beneficiaries of any Participation Agreement.

16.4 4 Supervening Circumstances

Neither the Data Provider/User nor IHDE shall be deemed in violation of any provision of a Participation Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances not within its reasonable control. This [Section 16.4 \(Supervening Circumstances\)](#) shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money. Data Provider/User may terminate this Agreement pursuant to Section 4.7 (Termination Based on Objection to Change) in the event IHDE invokes this Section 16.4 for a period exceeding fifteen (15) days or more than twice in any calendar year.

16.5 5 Severability

Any provision of these Terms and Conditions or any Participation Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of these Terms and Conditions or any Participation Agreement, and such other provisions shall remain in full force and effect.

16.6 6 Notices

Any and all notices required or permitted under these Terms and Conditions shall be sent by United States mail, overnight delivery service, or facsimile transmission to the address provided to IHDE by the Data Provider/User, or such different addresses as a party may designate in writing. If the Data Provider/User has supplied IHDE with an electronic mail address, IHDE may give notice by email message addressed to such address. If IHDE receives notice that the email message was not delivered, it shall give the notice by United States mail, overnight delivery service, or facsimile.

16.7 Waiver

No provision of these Terms and Conditions, or any Participation Agreement, shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

16.8 8 Complete Understanding

With respect to any Participation Agreement, that Agreement and these Terms and Conditions together contain the entire understanding of the parties, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of any Participation Agreement, other than those contained or referenced in that Participation Agreement. All modifications or amendments to any Participation Agreement shall be in writing and signed by all parties.

16.9 Access to Books and Records

To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act") and the regulations promulgated there under are applicable to this Agreement, IHDE and the organizations related to it, if any, performing any of the duties pursuant to this Agreement valued at Ten Thousand Dollars (\$10,000) or more in any twelve (12)-month period shall, until four (4) years after the furnishing of Services pursuant to this Agreement, comply with requests by the Comptroller General, the Secretary of the Department of Health and Human Services, and their duly authorized representatives for access (in accordance with Section 952 of the Act) to any contract or agreement between IHDE and Data Provider/User for Services and to any contract or agreement between IHDE and such related organizations, as well as the books, documents and records of IHDE and its related organizations, if any, which are necessary to verify the cost of the Services provided. IHDE shall promptly advise Data Provider/User of such request and shall promptly provide to Data Provider/User copies of any documents so provided. Neither party shall be deemed to have waived any attorney-client or work-product privilege by virtue of this Section.

16.10 Regulatory Changes

The Program shall comply with law, and all operations and functions of the Program shall be consistent with legal, regulatory and accreditation requirements. On its own initiative and at the request of Data Provider/User, IHDE shall provide Data Provider/User with updates or new versions to make the Program comply with all generally applicable, federally mandated, regulatory changes and state mandated changes. Any such Program supplied pursuant to this Section shall be subject to the terms, conditions and obligations of this Agreement.

16.11 Excluded Provider

IHDE represents and warrants to each Data Provider/User, and each Data Provider/User represents and warrants to IHDE, that neither party nor their respective employees or agents have been placed on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. 1320(a)(7), have been excluded from government contracts by the General Services Administration or have convicted of a felony or any crime related the health care. IHDE and Data Provider/User will provide one another immediate written notice of any such placement on the sanctions list, exclusion or conviction. In the event that IHDE or any of its employees is excluded from any federal health care program, it shall be a material breach and Data Provider/User shall be entitled to immediately terminate the Agreement without penalty, unless Data Provider/User elects in writing to continue this Agreement.