

OHA DATA PROGRAM AGREEMENT

THIS OHA DATA PROGRAM AGREEMENT (the “Agreement”) is by and between the Oklahoma Hospital Association, an Oklahoma non-profit corporation located at 4000 N. Lincoln Boulevard, Oklahoma City, Oklahoma (“OHA”), and _____ (“Facility”). OHA and Facility are referred to herein jointly as the “Parties.”

BACKGROUND AND INTRODUCTION

OHA is establishing the Oklahoma Hospital Association Data Solutions Program (OHA Data Program) to collect and disseminate data and provide Oklahoma hospitals with tools and services to improve health care operations and the delivery of health care in Oklahoma and other states.

OHA will subcontract most of the data collection, storage, analysis and reporting duties and functions to a third-party entity with resources and experience to perform such services.

OHA also provides support for participating facilities’ quality improvement activities through statewide initiatives and the provision of facility-specific performance improvement reports.

Facility desires to participate in the OHA Data Program and submit Data (as defined below) to the OHA in furtherance of the activities described in this Agreement.

The Parties intend to enter into an Agreement for the collection and exchange of health care data as permitted under applicable federal and state laws and regulations including, but not limited to the Health Insurance Portability and Accountability Act of 1996 and 45 C.F.R. Parts 160 and 164, as amended from time to time, (referred to collectively as “HIPAA”) and the Health Insurance Technology for Economic and Clinical Health Act (HITECH) and the regulations promulgated under these statutes.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter made, the Parties hereby agree as follows:

Section I. Definitions.

A. “Data” means the inpatient and outpatient patient record information that Participants are required to submit to the Oklahoma State Department of Health (“OSDH”) in accordance with the provisions of the Oklahoma Health Care Information System Act, 63 O.S. §§ 1-115 through 1-122.; and any and all information related to the operations, management, functions, services or patients of a hospital or facility that is submitted by Facility to OHA for purposes of incorporation into and operation of the OHA Data Program.

B. “Data Contractor” means the third-party entity with which OHA contracts to facilitate the implementation of an OHA Data Program and to collect, aggregate, analyze and report Data for Participants. The Data Contractor will be a Subcontractor and Business Associate of the OHA. Initially, the Data Contractor is the Hospital Industry Data Institute (HIDI), a nonprofit Missouri corporation, owned by the Missouri Hospital Association.

C. “Participants” means all healthcare facilities that submit Data to OHA as part of the OHA Data Program.

D. “Protected Health Information” (PHI) has the same meaning as that term is defined in 45 C.F.R. § 164.103 and is individually identifiable health information transmitted by electronic media, maintained in electronic media or transmitted or maintained in any other form or medium. PHI includes electronic protected health information (ePHI) as defined in 45 C.F.R. § 160.103, limited to the electronic information created, maintained, or received by OHA from or on behalf of Facility hereunder.

Section II. Data Submission. Facility will submit Data directly to the Data Contractor as a part of the OHA Data Program. OHA will not receive or store any Protected Health Information (except for Limited

Data Sets) from Facility or other Participants, but will only coordinate the program and communications between the Data Contractor and Participants.

A. Facility will submit Data pursuant to the standard OHA Data Program timeline and will work with OHA to implement appropriate edits to such Data upon request. Facility will submit data on all inpatient discharges on or after October 1, 2017, and all outpatient services on or after October 1, 2017.

B. Data submitted as part of the OHA Data Program by Facility and other Participants will be used to develop, support and supply analytic tools, reports and models to Facility and other Participants for use in analyzing and predicting healthcare statistics, utilization, health statuses, outcomes and trends.

C. The Data Contractor, on behalf of OHA, shall be responsible for accurately processing the Data received from Facility in accordance with its standard editing routines. Neither the Data contractor nor OHA shall be responsible for the authenticity or quality of the Data submitted by Facility or any other Participant.

D. While developing and offering data products and services under this Agreement, OHA may need to use and/or disclose PHI. The parties understand and agree that OHA shall serve as a Business Associate to Facility in developing and offering data products and services that require the use and disclosure of PHI. Therefore, OHA shall fully comply with Exhibit A, the Business Associate Privacy/Security Addendum, to maintain the confidentiality and security of Facility's Data in accordance with the authorized uses and disclosures set forth in this Agreement. In addition, as required by HIPAA, OHA has entered into a Subcontractor Business Associate Agreement with HIDI.

Section III. Use and Disclosure of Data. Unless otherwise specified herein and provided that such uses or disclosures are permitted under state and federal laws, OHA may:

A. Use or disclose Data, including PHI, in its possession to the extent necessary to develop and operate the OHA Data Program, to develop and offer data products and services to Facility and other Participants through the OHA Data Program, and to perform other functions, activities, or services contemplated by this Agreement, as permitted by HIPAA and subject to applicable limits set forth in 45 C.F.R. §164.514 regarding limited data sets and 45 C.F.R. §164.502(b) regarding the minimum necessary requirements.

B. Disclose to its employees, agents and subcontractors Data necessary to develop and offer data products and services to Participants or conduct other activities authorized pursuant to this Agreement.

C. Create, use and disclose a limited data set in accordance with 45 C.F.R. § 164.514(e).

D. Use or disclose Data that has been de-identified in accordance with 45 C.F.R. § 164.514(a) and (b).

E. Access, use or disclose quality data incorporated into the OHA Data Program. The quality data may come from various sources, such as: (1) quality data that is extracted from Data reported to OHA by Facility; (2) other quality Data that Facility voluntarily reports to OHA; (3) quality Data reported to a third-party vendor, where Facility directs the third party to disclose specific information to OHA; and/or (4) Data that may be uploaded by Facility to the OHA Data Program from an electronic health record. Quality data, which may include PHI, may be used or disclosed for Facility's and other Participants' treatment or health care operations consistent with and subject to the requirements of HIPAA.

F. Create, use and disclose de-identified aggregated or unaggregated data for advocacy and government relations purposes, consistent with OHA's mission.

G. Provide data aggregation services relating to the health care operations of Facility and other Participants.

H. Use or disclose PHI to assist Facility and other Participants in carrying out treatment, payment or health care operations.

I. Use or disclose PHI as would be authorized under 45 C.F.R. § 164.512 or under HIPAA if Facility (and/or OHA) were to make such use/disclosure, including but not limited to, those required by law, including reports to the Oklahoma State Department of Health under the state's Health Care Information System Act on behalf of Participants

J. Use or disclose PHI for other public health activities or research purposes consistent with the provisions of 45 C.F.R. § 164.512(b) and 45 C.F.R. § 164.512(i).

K. Report violations of the law to appropriate federal and/or state officials as permitted by 45 C.F.R. § 164.502(j)(1).

L. Use or disclose PHI to manage OHA's internal business processes relating to its functions under this Agreement; for the proper management and administration of OHA; or to carry out the legal responsibilities of OHA, provided the disclosures are required by law, or OHA obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and further used or disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person will notify OHA of any instances of which he or she is aware wherein the confidentiality of the information has been breached.

Section IV. Vendors. Facility understands and agrees that OHA will utilize one or more Data Contractors in fulfilling part or all of the services and obligations set forth in this Agreement. As indicated above, the initial Data Contractor is HIDI, but OHA reserves the right to change Data Contractors or add new ones if in the best interest of the operation of the OHA Data Program.

Section V. Ownership of Data and Intellectual Property.

A. Facility shall retain ownership of the Data it submits to OHA.

B. HIDI, is the owner and operator of (i) HIDI Advantage™, a secure cloud-based data environment and tools; (ii) HIDINet, a data collection system, and (iii) Analytic Advantage®, a secure Web-based platform that provides analytic and reporting capabilities including secure access, HIDI-developed custom tools and reports and access to interactive reporting and dashboards (collectively referred to as "HIDI Tools"). HIDI and OHA have a contract under which these HIDITools are used to operate the OHA Data Program and provide data collection, analysis and reporting to Facility under this Agreement.

C. The parties understand and agree that the reports and other data products provided through the OHA Data Program, including but not limited to the structure and design of the reports, risk and predictive models, databases, data files and work, including software code, produced pursuant to this Agreement or conceived for the purpose of developing the data products or services under this Agreement shall be the sole and exclusive intellectual property of HIDI. HIDI holds all such copyrights and other propriety rights in and ownership of such work. *Accordingly, Facility agrees that it will not prepare derivative works or copy, reproduce, remanufacture, or in any way duplicate, sell, lease, lend, transfer, assign, appropriate or use all or part of the intellectual property except as expressly authorized in this Agreement.*

Section VI. Access to and Use of OHA Data Program.

A. The OHA Data Program will be available to Facility via a secure web site, using passwords assigned to Facility's designated users by OHA. Only the users designated by Facility may access the OHA Data Program.

B. Facility agrees not to provide, disclose, sell, loan, lease, transfer or otherwise make available the OHA Data Program or any part thereof, to any person or entity, except to its employees and

Consultants (as defined below) strictly in accordance with this Agreement and applicable HIPAA minimum necessary rules.

C. Facility is responsible for (1) ensuring the protection and confidentiality of its assigned passwords; (2) any access or use made with its passwords; and (3) changing its password(s) if it believes that a password has been stolen or might otherwise be misused. Facility shall notify OHA immediately of any unauthorized use of its passwords or any other breach of security that is suspected by Facility.

D. If Facility retains a third-party consultant or vendor ("Consultant") to perform services on its behalf, Facility may request that a Consultant be given direct access to the OHA Data Program on its behalf, provided that the Consultant executes confidentiality and use agreements required by the OHA.

E. Facility shall be solely responsible for ensuring that its employees and Consultants comply with the obligations set forth herein and shall promptly notify OHA of, and shall otherwise cooperate with OHA in preventing, any unauthorized access or use of the OHA Data Program by Facility's employees and Consultants.

F. Facility shall not use the OHA Data Program or any information, tools, analyses or reports obtained from the program: (1) to compete with the products and services offered by OHA or its subsidiaries; (2) for any advertising purposes that compare Facility to other Participants or that group Participants, either directly or indirectly; or (3) in any other manner prohibited in this Agreement.

Section VII. Fees.

A. Fees for access to the web-based HIDI platform(s) for data collection, reporting, and analytic functions ("Required program fees") will be paid by Facility to OHA annually. Fees will be based on the combined annual count of inpatient discharges and outpatient surgeries provided by Facility in the 12-month period that ended on the most recent September 30, multiplied by a unit cost.

- 1) Until December 31, 2019, the unit cost is zero.
- 2) Beginning January 1, 2020, the unit cost will be \$0.25.
- 3) The unit cost may be amended by OHA with 180 days' advance notice to Facility.

B. Limited Data Sets, updated quarterly and including all Data for the most recent four quarters, are available to Facility optionally under the terms of a Data Use Agreement and upon payment of associated fees.

- 1) Until December 31, 2019, the annual subscription fee for the Limited Data Set is waived.
- 2) Effective January 1, 2020, the annual subscription fee will be determined by OHA with 180 days' advance notice to Facility. The annual subscription fee will not exceed \$10,000.00.

C. In addition to the standard reports and products provided to all Participants through the OHA Data Program, certain additional reports, products, or services may be provided upon request to Facility by the OHA directly or by a fully-owned subsidiary of the OHA. Charges for special reports, products, or services shall be quoted by OHA or its subsidiary, as applicable, and agreed upon in advance by Facility.

Section VIII. Term.

A. This Agreement shall be in force as of the date it is signed by both parties and will continue in effect until the Agreement is terminated in writing upon 180 days' notice by either Party.

Section IX. Miscellaneous.

A. If any one or more of the provisions of this Agreement shall for any reason be held to be unenforceable in any respect under applicable law, such unenforceability shall not affect any other provision, but this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

B. A Party's failure to enforce at any time any of the provisions herein shall not be construed as a waiver of the right of such Party thereafter to enforce such provisions.

C. Facility and OHA agree to take any action necessary to amend this Agreement from time to time as may be necessary for any party to comply with the requirements of HITECH Act and/or HIPAA and any implementing regulations or guidance. Amendments shall only be effective if executed in writing and signed by both Parties.

D. Notwithstanding the expiration or termination of this Agreement or any renewal period, it is acknowledged and agreed that those rights and obligations of OHA which by their nature are intended to survive such expiration or termination shall survive.

E. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

F. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Oklahoma, without giving effect to its conflict of laws provisions.

G. This Agreement, including Exhibit A attached hereto and incorporated herein, represent the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, whether written or oral, pertaining thereto.

H. Notices under this Agreement will be made in writing to the Parties at:

If to OHA:

Oklahoma Hospital Association
Attn: Rick Snyder, Vice President
4000 N. Lincoln Blvd
Oklahoma City, OK 73105
Email: rsnyder@okoha.com

If to Facility:

Attention: _____
Email: _____

I. Nothing in this Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the Parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that their relationship shall be that of independent contractors.

J. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party may assign any of its rights or obligations

under this Agreement without the prior written consent of the other party, except the OHA may freely assign this Agreement and any of its rights or obligations hereunder to any wholly-owned subsidiary of OHA.

K. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all which together shall constitute one original Agreement. Facsimile signatures and electronic signatures shall be accepted and enforceable in lieu of original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated below:

Oklahoma Hospital Association

Patti Davis
President and CEO

Signature

Date

Printed Name

Title

Date

EXHIBIT A
BUSINESS ASSOCIATE PRIVACY/SECURITY ADDENDUM

1. DEFINITIONS

- 1.1 "Business Associate" has the same meaning as that term is defined in 45 C.F.R. § 164.103 and, in reference to the parties to this Agreement, shall mean the Oklahoma Hospital Association, its employees, agents and subcontractors.
- 1.2 "Covered Entity" has the same meaning as that term is defined in 45 C.F.R. § 160.503 and, in reference to the parties to this Agreement, shall mean a Participating Facility unless the context suggests otherwise.
- 1.3 "Data Aggregation" has the same meaning as that term is defined in 45 C.F.R. § 164.501.
- 1.4 "De-identified information" shall mean protected health information from which patient identifying and source identifying information has been removed pursuant to the standards set forth in 45 C.F.R. § 164.514.
- 1.5 "Disclosure" shall mean the permitted release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.
- 1.6 "Electronic protected health information" has the same meaning as that term is defined in 45 C.F.R. § 164.103.
- 1.7 "Encryption" shall mean a method of converting information in regular text into encoded text to protect and limit access to confidential information, i.e., protected identifying information.
- 1.8 "Health care operations" has the same meaning as that term is defined in 45 C.F.R. § 164.501.
- 1.9 "Health Information and Technology for Economic and Clinical Health Act" or "HITECH" shall mean the federal law and regulations pertaining to the electronic means of providing and maintaining confidentiality of protected health information.
- 1.10 "Health Insurance Portability and Accountability Act" or "HIPAA" shall mean the federal law, as amended, and derivative regulations pertaining to protecting and securing patient information confidentiality in the workplace.
- 1.11 "Individual" shall mean a person who is the subject of patient protected health information, as defined in 45 C.F.R § 160.103, and shall include a person who qualifies as a personal representative in accordance with State or other applicable law as specified in 45 C.F.R. § 164.502(g).
- 1.12 "Individually identifiable health information" has the same meaning as that term is defined in 45 C.F.R. § 164.103.
- 1.13 "Limited Data Set" has the same meaning as described in 45 C.F.R. 164.514(e)(2).
- 1.14 "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information found at 45 C.F.R. Parts 160 and 164, Subparts A and E.

- 1.15 "Protected health information" or "PHI" shall mean individually identifiable health information, including information transmitted or maintained in any form or medium that a Business Associate may receive or create in the course of fulfilling Business Associate's obligations hereunder. PHI includes genetic information, if it is individually identifiable.
- 1.16 "Required by Law" has the same meaning as that term is defined in 45 C.F.R. § 164.103 and as defined by any applicable Oklahoma law or regulation that is not preempted by HIPAA.
- 1.17 "Secretary" shall mean the Secretary of HHS or the Secretary's designee.
- 1.18 "Security incident" has the same meaning as that term is defined in 45 C.F.R. § 164.304.
- 1.19 "Security Rule" means the Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- 1.20 "Unsecured Protected Health Information" has the same meaning as that term is defined in 45 C.F.R. § 164.402.

1. GENERAL ASSURANCES

- 2.1 Business Associate shall fully comply with HIPAA, HITECH and HIPAA regulations, to the extent applicable, as well as other related rules and regulations. Business Associate shall not use or disclose PHI other than as permitted or required by the Agreement, including all Exhibits or Attachments thereto, or as allowed by the HIPAA, HITECH, and HIPAA regulations, as well as other applicable federal or state statutes and related rules. Business Associate shall use appropriate and sufficient administrative, physical, and technical safeguards to secure PHI at all times. Business Associate shall ensure that any agent or subcontractor to whom it provides PHI received from or created by the Covered Entity agrees to the same protective security restrictions and conditions that apply relative to PHI, as set forth in this Exhibit A. Business Associate shall maintain policies and procedures for safeguards of PHI, which are compliant with all requirements of law as changes occur in such laws.

3. BUSINESS ASSOCIATE OBLIGATIONS

In performance of those Services, Business Associate shall:

- 3.1 Not use or disclose PHI other than as permitted or required by the Agreement, including all Exhibits or Attachments thereto, and for proper management and administration of Business Associate's business, or as required by applicable law;
- 3.2 Have in place documented policies and procedures for compliance with HIPAA, HITECH, and HIPAA regulations, as well as this Exhibit A;
- 3.3 On an on-going basis provide training for its employees pertaining to this Exhibit A and the obligations thereunder, including educating such employees that they may be subject to discipline for violating the terms of this Exhibit A and/or HIPAA, HITECH and the HIPAA regulations;
- 3.4 Employ appropriate and sufficient administrative, physical and technical safeguards with respect to electronic PHI in compliance with applicable federal and state laws and regulations;
- 3.5 Designate which of Business Associate's employees shall have access to PHI however maintained;
- 3.6 If required under 45 C.F.R. § 164.528, maintain an accounting of all disclosures of PHI made and allowed under this Exhibit A in order to assist the Covered Entity in its obligations to provide an accounting of disclosures;
- 3.7 Provide requested information to the Secretary as required during any compliance review, risk analysis, or investigation;
- 3.8 As provided in this Exhibit A, report to the Covered Entity any breach of confidentiality, a security incident, or a disclosure not allowed under this Agreement;
- 3.9 To the extent practicable, within thirty (30) days of a known compliance violation, mitigate any harmful effect that is known by Business Associate to be in violation of the requirements of HIPAA, HITECH, HIPAA regulations, and this Exhibit A;
- 3.10 Be liable for non-compliance of HIPAA, HITECH, and HIPAA regulations and, consequently, be subject to audits, compliance reviews, enforcement actions by HHS, and fines;
- 3.11 In the event of receipt of a subpoena, court order, or other demand for production of PHI, including, but not limited to, a demand from HHS, immediately inform OHA and shall only provide the minimum necessary to satisfy the demand.

4. USES AND DISCLOSURES OF PHI

- 4.1 Business Associate may use and disclose PHI for the purposes of performing the Services, as stated in the Agreement, including all Exhibits, Attachments and Amendments thereto, or for any purpose required by applicable law.
- 4.2 Business Associate may disclose PHI for the purpose of management and administration of its respective business or to carry out its legal responsibilities; provided (i) that the

disclosures are Required by Law or that Business Associate obtains reasonable assurances from the person or entity to which the information is disclosed that the information shall remain confidential and be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person or entity, and (ii) that the person or entity to whom the information is disclosed agrees to notify Business Associate within five (5) days of becoming aware of any instance in which the confidentiality of the information has been breached.

- 4.3 As permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), Business Associate is permitted to perform data aggregation services relating to the health care operations of Covered Entities, including but not limited to combining Data from OHA Participating Facilities with Data of other Covered Entities to create a combined multistate database of aggregate data. Covered Entity understands and agrees that OHA will subcontract with HIDI, which may in turn subcontract such data aggregation services to a third party, including any related company of HIDI or the Missouri Hospital Association.
- 4.4 Business Associate may use PHI for public health activities or research purposes on behalf of Participating Facilities, consistent with the provisions of 45 C.F.R. § 164.512(b) and 45 C.F.R. § 164.512(i).
- 4.5 Business Associate may use PHI to assist the Covered Entity and other Participating Facilities in carrying out treatment, payment or health care operations consistent with the authorization requirements of 45 C.F.R. § 164.508 and/or 45 C.F.R. § 164.510.
- 4.6 Business Associate may use or disclose PHI in the form of Limited Data Sets for the purposes of research, public health or health care operations as permitted by and in compliance with 45 C.F.R. 164.514(e).
- 4.7 Business Associate may use or disclose data that has been de-identified in accordance with 45 C.F.R. § 164.514(a) and (b).
- 4.8 Business Associate may use or disclose PHI in its possession as directed in writing by the Covered Entity
- 4.9 Business Associate may use or disclose PHI pursuant to collaborative initiatives entered into by and between Business Associate and such other parties. Business Associate and the Covered Entity understand and acknowledge that additional written agreements may be required under HIPAA or other laws to participate in such initiatives or arrangements.
- 4.10 Business Associate may disclose the minimum necessary PHI to a subcontractor engaged to perform or assist in the performance of any of Business Associates' obligations to Covered Entity.

5. SECURITY OF PHI

- 5.1 Risk analysis is the assessment of the risks and vulnerabilities that could negatively impact the confidentiality, integrity, and availability of PHI. Business Associate shall perform, on an on-going basis, a risk analysis of the respective means it employs to access, analyze, store, and transmit information electronically or otherwise. Such analyses shall also apply to PHI.
- 5.2 Consistent with the security standards in 45 C.F.R. § 164.306, Business Associate shall implement appropriate safeguards to prevent the use or disclosure of PHI other than as

permitted in the Agreement, including all Exhibits and Attachments thereto, and by law. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that is created or that is provided to Business Associate by Covered Entity or HIDI. The standards developed shall comply with the HIPAA Security Rule. Business Associate shall properly train its employees on an on-going basis regarding the use of the safeguards and the necessity of preserving the security and confidentiality of PHI.

- 5.3 Business Associate shall document in writing the policies and procedures implemented and used to provide the safeguards relative to PHI. Such documentation shall be retained for six (6) years from the date of its creation or the date when it was last in effect, whichever is later.
- 5.4 Business Associate acknowledges that the Secretary shall have the right to audit records and practices related to use and disclosure of PHI to ensure compliance with the terms of HIPAA, HITECH, and the Privacy and Security Rules.

6. REPORTING A PRIVACY OR SECURITY BREACH

- 6.1 Business Associate shall inform Covered Entity in writing within two (2) days of receiving a report of a breach from HIDI. Business Associate will inform Covered Entity in writing within five (5) business days of the discovery of a breach, unauthorized disclosure or security incident related to any PHI or a Limited Data Set stored on its IT systems. A breach shall mean the acquisition, access, use, or disclosure of PHI in a manner described in 45 C.F.R. § 164.402. When a breach occurs, Business Associate shall notify Covered Entity and shall mitigate to the extent practicable any harmful effect that is known to be in violation of this Exhibit A and the law, and Business Associate shall fully inform Covered Entity of the actions taken by HIDI and/or OHA to mitigate the harmful effect of the breach.

7. NOTICE OF LIMITATIONS ON USE

- 7.1 Covered Entity shall notify Business Associate of any limitations in its Participating Hospitals' notice of privacy practices in accordance with 45 C.F.R. § 164.520 to the extent such limitation may affect Business Associate's or any subcontractor's use or disclosure of PHI. Further, Covered Entity shall notify Business Associate of any changes in or revocation of permission by an individual regarding the use or disclosure of PHI to the extent such change or revocation may affect Business Associate's or any subcontractor's use or disclosure of the information. Covered Entity shall also notify Business Associate of any restriction to the use or disclosure of PHI that a Participating Facility has agreed to in accordance with 45 C.F.R. § 164.522 to the extent such restriction may affect Business Associate's or any subcontractor's use or disclosure of PHI. Covered Entity shall not request Business Associate or any subcontractor to use or disclose PHI in any manner that would not be permissible under HIPAA or any state law if done by Covered Entity, or in any manner that is inconsistent with the testing of the Program.

8. TERM AND TERMINATION

- 8.1 The term of this Exhibit A shall be in effect as of the effective date of the Agreement and shall remain in effect until the Agreement is terminated by either Party hereto in writing. In the event of termination of the Agreement, the security and confidentiality provisions and obligations of this Exhibit A shall survive termination.

- 8.2 Upon a Party's determination that the other has committed a violation or material breach of this Exhibit A, the Party that discovered the violation or breach may take any one or more of the following steps:
- A. Provide an opportunity to cure the breach or end the violation, and if said violation or breach is not cured or ended within a reasonable time specified, terminate this Exhibit A;
 - B. Immediately terminate this Exhibit A if the other Party has committed a material breach of this Exhibit A and cure of the material breach is not possible; or
 - C. If neither termination nor cure is feasible, elect to continue this Exhibit A and report the violation or material breach to the Secretary.
- 8.3 Upon termination or expiration of the Agreement, in accordance with HIPAA, if Business Associate or HIDI determines that returning or destroying PHI is not feasible, Business Associate will notify Covered Entity of the circumstances making return or destruction infeasible and will extend the protections of this Exhibit A to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate or HIDI maintains such PHI.

9. AMENDMENT AND ASSIGNMENT

- 9.1 This Exhibit A may only be amended by agreement of the Parties in writing. This Exhibit A shall not be assigned to any third party, except for Business Associate's authority to assign its responsibilities hereunder to a subcontractor.

10. CONSTRUCTION AND INTERPRETATION

- 10.1 In the event any portion of this Exhibit A shall be deemed to be ambiguous or unclear, the question shall be resolved in favor of a meaning that complies with and is consistent with HIPAA, HITECH, and HIPAA Regulations. In the event any provision of this Exhibit A is found to conflict with HIPAA, HITECH, or HIPAA Regulations or any other related law or regulation designated herein, the Parties hereto shall execute an amendment in writing to comply with HIPAA, HITECH, and HIPAA Regulations requirements.

EXHIBIT B

OHA DATA PROGRAM PARTICIPATION FORM

***This form is required:** Please fill out requested information below:

Name of Healthcare Facility: _____

OHA Data Program Contacts.

- a) Main Contact: Person at Healthcare Facility with whom OHA will have primary correspondence regarding all issues pertaining to the OHA Data Program (*i.e.*, new policies, new software programs, billing issues, non-compliance issues, etc.), usually a C-level official or a leader in the planning or marketing department.

Name: _____

Title: _____

Phone: _____

Email: _____

- b) Data Submission Contact: Person primarily responsible for submitting OHA data on behalf of Healthcare Facility, usually an analyst in the planning/marketing or I.T. departments. Please include the name of the vendor for whom the individual works if he/she is not a hospital employee.

Name: _____

Title: _____

Vendor Name (if applicable): _____

Phone: _____

Email: _____

- c) Code/Query Writer: Person responsible for writing the code or query to extract the required data from your internal systems in order to submit OHA data?

Name: _____

Title: _____

Vendor Name (if applicable): _____

Phone: _____

Email: _____

d) Data Integrity Contact: Person with primary responsibility for reviewing the Edit/Review Reports and Data Verification Reports when OHA data is submitted?

Name: _____

Title: _____

Phone: _____

Email: _____

e) EHR Vendor: Name of Healthcare Facility's EHR Vendor:

_____ McKesson

_____ Epic

_____ CPSI

_____ MEDHOST

_____ Cerner

_____ Allscripts

_____ Meditech

_____ Athenahealth

_____ Other: _____

** Note: If you have any questions regarding this Exhibit B, or the OHA Data Program, please contact Rick Snyder at (405) 427-9537, or rsnyder@okoha.com.