EXCHANGE MEMBER AGREEMENT

Terms and Conditions

These Terms and Conditions are referenced, incorporated into an Order between MHiE and Exchange Member, as such terms are defined below, and govern the Agreement between MHiE and Exchange Member.

1. INTRODUCTION

1.1. Purposes.

1.1.1. By and through the MHiE System, MHiE seeks to reduce the cost and improve the quality and efficiency of health care provided by the Exchange Members, including the Exchange Member, through the electronic management and exchange of health information acquired or generated by the Exchange Members in providing and reporting on patient care items and services. The Exchange Members anticipate that the electronic management and exchange of such information will simultaneously help eliminate unnecessary repeat testing, increase the accuracy of medical diagnoses, improve medical treatment, facilitate transitions of care, and improve outcomes for patients.

1.1.2. The intent of MHiE and each of the Exchange Members, including the Exchange Member, under this Agreement is to share information via the MHiE System for Treatment, Payment and Health Care Operation purposes. Specifically, this Agreement is intended to provide a collaborative framework through which (i) Exchange Members can share information for Treatment, Payment and Health Care Operation purposes; and (ii) MHiE can conduct its operations as provided in this Agreement. Exchange Member authorizes MHiE and the other Exchange Members to use and disclose data generated and received for all such approved purposes. Consistent with these purposes, the initial goal of the MHiE is to receive data from Data Providers (as defined herein) and provide access to such data to Data Recipients (as defined herein).

1.2. Description of Services. MHiE operates a health information exchange to assist the Exchange Members in sharing patient information (the "MHiE System"). The MHiE System shall provide a mechanism for resolving conflicts among the disparate health information management systems and applications among the Exchange Members. MHiE shall make certain information-sharing and related services ("MHiE Services") available to Exchange Members as may be agreed upon between MHiE and each Exchange Member. An initial list of MHiE Services to be made available to Exchange Members is provided in Schedule 1.2, attached hereto and incorporated by reference herein, as may be amended from time to time. Each Exchange Member must subscribe to MHiE Services listed in Section 1.2 by indicating their selection on the Order.

1.3. Change or Termination of Services. MHiE may choose to participate in a National Health Information Network ("NHIN") or link with other regional networks in the future, and may change, add, or delete one or more MHiE Services, at any time in its sole discretion following thirty (30) days advance written notice to the Exchange Members.

2. DEFINITIONS

2.1. "Access Protocols" means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Exchange Member or any Authorized Users to access the Services.

2.2. "Agreement" shall mean this Exchange Member Agreement, which includes the Order, these Terms and Conditions, the Policies and Procedures, and all exhibits, schedules, and attachments incorporated herein and therein.

2.3. "Associated Software" shall have the meaning set forth in Section 10.1.

2.4. "Authorized User" shall mean an Exchange Member and individuals, i.e., natural persons, designated by an Exchange Member to access and use the MHiE System on behalf of the Exchange Member.

2.5. "Confidential Information" means any and all technical or non-technical information related to the past, current or proposed operations, products, technology, services and business of such party that is disclosed (whether orally, visually or through any tangible medium) or otherwise made available in any manner by the discloser to the recipient, or to which the recipient may gain access in the performance of this Agreement, and that the discloser designates as being confidential or which, under the circumstances of disclosure, would reasonably be considered to be confidential. Confidential Information specifically excludes Protected Health Information or PHI, which is addressed separately under this Agreement.

2.6. “Data Collection Device” means the data collection equipment provided by MHiE to collect and transmit Exchange Member Content and other data pursuant to this Agreement.

2.7. “Data Provider” shall mean an Exchange Member that is registered and has contracted to provide information to the MHiE for use through the MHiE System. A Data Provider can be, but is not necessarily, a Data Recipient.

2.8. “Data Recipient” shall mean an Exchange Member that is registered and has contracted to use the MHiE System to obtain health information. A Data Recipient can be, but is not necessarily, a Data Provider.

2.9. “Documentation” means the technical materials provided by MHiE to Exchange Member in hard copy or electronic form describing the use and operation of the Associated Software.

2.10. “Effective Date” shall have the meaning set forth in the opening paragraph of the Order.

2.11. “Exchange Member” shall have the meaning set forth in the opening paragraph of the Order.

2.12. “Exchange Members” shall mean organizations who have registered and contracted with MHiE to use the MHiE System and to act as a Data Provider and/or as a Data Recipient.
2.13. “Exchange Member Content” means any content owned, licensed from a third party, or developed by or on behalf of Exchange Member and used with the MHiE System. Exchange Member Content specifically excludes Protected Health Information or PHI, which is addressed separately under this Agreement.

2.14. “Exchange Member Type” shall mean the category of Exchange Member to which a particular Exchange Member is assigned based upon that Exchange Member’s role in the MHiE System and MHiE Services as described in Schedule 1.2 and the Exhibits. Each Exchange Member shall register to participate in one of the following Exchange Member Types: (a) medical practice (individual or group); (b) laboratory; (c) hospital; or (d) such other types as may be created by MHiE and listed in the Policies and Procedures from time to time. Exchange Member’s Type is indicated on the Order.

2.15. “Exchange Member’s Required Hardware and Software” shall have the meaning set forth in Section 12.3.

2.16. “Health Care Operations” shall have the meaning ascribed to it in 45 CFR 164.501.


2.18. “Intellectual Property Rights” means any now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

2.19. “MHiE” shall have the meaning set forth in first paragraph of the Order.

2.20. “MHiE Services” shall have the meaning set forth in Section 1.2 and are detailed in Schedule 1.2.

2.21. “MHiE System” shall have the meaning set forth in Section 1.2.

2.22. “National Health Information Network” (“NHN”) shall means the National Health Information Network, also known as the National Health Information Infrastructure.

2.23. “Order” is the document that is executed by MHiE and an Exchange Member indicating the Exchange Member’s Type(s) and the Product(s) and/or Service(s) selected by the Exchange Member.

2.24. “Payment” shall have the meaning ascribed to it in 45 CFR 164.501.

2.25. “Policies and Procedures” shall mean the policies and procedures created and maintained by MHiEs described in Section 3 of these Terms and Conditions.


2.27. “Protected Health Information” (“PHI”) shall have the meaning ascribed to it by 45 CFR 160.103, and shall include but not be limited to written or electronic information relating to the diagnosis, treatment, tests, prognosis, admission, discharge, transfer, prescription, and/or other data or information implicitly or explicitly identifying a patient to whom items or services are provided by an Exchange Member, which information is provided, stored, or accessed by an Exchange Member in connection with the MHiE System.

2.28. “Terms and Conditions” shall mean the provisions of this document, created and maintained by the MHiE.

2.29. “Treatment” shall have the meaning ascribed to it by 45 CFR 164.501.

3. POLICIES AND PROCEDURES

3.1. Generally. The Policies and Procedures shall apply to the operation of the MHiE System, the provision of MHiE Services, and the relationships among MHiE and the Exchange Members with respect to the MHiE System. Exchange Member agrees to comply with all Policies and Procedures applicable to it.

3.2. Development and Dissemination; Amendments. MHiE is solely responsible for the development of the Policies and Procedures, and may amend, or repeal and replace, the Policies and Procedures at any time. MHiE shall provide notice to all Exchange Members of any changes to the Policies and Procedures, consistent with the notice provisions provided in this Agreement, at least thirty (30) days prior to the effective date of the change. However, if the change is required in order for MHiE and/or Exchange Members to comply with applicable laws or regulations, MHiE may implement the change within a shorter period of time as MHiE determines appropriate under the circumstances. MHiE shall promptly notify Exchange Members in the event of a change required to comply with applicable laws and regulations.

4. REGISTRATION REQUIREMENTS

4.1. Registration Required. Only organizations registered with MHiE as Exchange Members shall be permitted to access the MHiE System and use MHiE Services. An Exchange Member may be registered to use some or all of the MHiE Services, as approved by MHiE pursuant to that Exchange Member’s Order.

4.2. Termination With and Without Cause. Exchange Member may terminate this Agreement, at any time without cause, by giving thirty (30) days advance written notice of that termination to MHiE. Exchange Member’s ability to terminate this Agreement for cause shall be governed by this Agreement, including the Policies and Procedures.

4.3. MHiE’s Right to Terminate Agreement. MHiE may immediately terminate this Agreement in accordance with Section 11.1 of these Terms and Conditions without reason or cause, upon thirty (30) days advance written notice to Exchange Member.

4.4. Effect of Termination. Upon any termination of this Agreement, Exchange Member shall cease to be a Data Provider and/or Data Recipient and shall immediately lose any and all rights to use the MHiE System and/or MHiE Services. Upon termination of this Agreement: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; (b) within 10 days after
termination, Exchange Member shall comply with the obligations set forth in the section titled Confidentiality; (c) within 10 days after termination, MHiE shall discontinue all use of Exchange Member Content and, (d) within 10 days after termination, Exchange Member shall allow MHiE reasonable access to Exchange Member’s premises so that MHiE may take possession of the Data Control Devices, or, if requested by MHiE, Exchange Member shall return the Data Collection Devices to MHiE. Provisions of these Terms and Conditions identified in Section 4.5 (Survival Provisions) and provisions of the Policies and Procedures, which survive termination under the terms thereof shall continue to apply to Exchange Member and its Authorized Users following termination. Following termination of this Agreement for a Data Provider, all information stored by such Exchange Member on the MHiE System shall be maintained in accordance with HIPAA and other applicable laws.

4.5. Survival Provisions. The following provisions of these Terms and Conditions shall survive any termination of this Agreement: Section 4.4 (Effect of Termination), Section 4.5 (Survival Provisions), Section 5.4 (Responsibility for Conduct of Exchange Member and Authorized Users), Section 7.2 (Limitations), Section 8.3 (Responsibility for MHiE), Section 9.6 (Limitations of Use of PHI), Sections 10.3 and 10.4 (Coying and Modifications; Derivative Work), Section 11 (Confidentiality and PHI), Section 15 (Proprietary Information), Section 16.2 (No Warranties), Section 16.7 (Limitation on Liability), Section 18 (Dispute Resolution), and Section 19 (General Provisions). In addition, the obligations contained in Section 17 for retention of insurance for a certain period of time following termination of this Agreement shall survive as well.

5. AUTHORIZED USERS

5.1. Identification of Authorized Users. Exchange Member shall provide MHiE with a list, in the medium and format approved by MHiE, identifying all of Exchange Member’s “Authorized Users,” together with the information and any items required regarding Authorized Users pursuant to the Policies and Procedures. This list shall enable MHiE to establish a unique identifier for each Authorized User. Exchange Member shall immediately notify MHiE of termination of employment or affiliation of an Authorized User of Exchange Member and take such other actions as are required by the Policies and Procedures with respect to such former Authorized User and take steps within its systems and control to ensure that the former Authorized User is informed of the change when and if his or her access is terminated. MHiE will periodically audit Exchange Member’s Authorized Users to ensure compliance with this Section and Sections 6.1 and 11.3. If MHiE Discovers that Persons other than Authorized Users (e.g., Terminated Employees) Have Access to the MHiE System, then MHiE May, Notwithstanding Any Other Provision of the Agreement, Immediately Terminate Exchange Member’s Access to the MHiE System.

5.2. Access Protocols. Based on the information provided by Exchange Member for its Authorized Users, MHiE shall issue Access Protocols to each Authorized User. Upon issuance by MHiE of the Access Protocols to the Exchange Member, the Authorized User shall be authorized to access the MHiE System and use the MHiE Services consistent with the rights of his or her Exchange Member under this Agreement. If the MHiE provides the Access Protocols to the Exchange Member for implementation with Exchange Member’s Authorized Users, the Exchange Member shall be responsible for and oversee the implementation and use of the Access Protocols appropriate to the Authorized User. Any violation by an Authorized User of this Agreement shall be cause for suspension or termination of the Authorized User’s access to the MHiE System and use of MHiE Services. Exchange Member shall notify MHiE of removal of an Authorized User from its list of Authorized Users as required under the Policies and Procedures. Exchange Member shall take such actions as are required by the Policies and Procedures and within its systems and control with respect to such formerly authorized user to terminate the individual’s access to the MHiE System and MHiE Services. Following receipt of notice from the Exchange Member, MHiE shall take actions required by the Policies and Procedures and within its systems and control to terminate the individual’s access to the MHiE System and MHiE Services.

5.3. No Use by Other than Authorized Users. Exchange Member agrees to restrict access to the MHiE System and, if applicable, use of MHiE Services, to only those Authorized Users identified by Exchange Member to MHiE in accordance with Section 5.1.

5.4. Responsibility for Conduct of Exchange Member and Authorized Users. Exchange Member shall be solely responsible for all acts and omissions of the Exchange Member and jointly and severally liable for all acts and omissions of the Exchange Member’s Authorized Users and all other individuals who access the MHiE System and/or use MHiE Services either through the Exchange Member or by use of any password, identifier, mechanism, or log-on received or obtained from the Exchange Member or any of the Exchange Member’s Authorized Users.

6. PROVISION OF MHIE SERVICES

6.1. Access. Subject to Exchange Member complying with this Agreement, MHiE will provide the MHiE Services via an online user interface. On the Effective Date, MHiE shall provide to Exchange Member the Access Protocols to allow Exchange Member and its Authorized Users to access the MHiE Services in accordance with the Access Protocols. Exchange Member may permit any Authorized Users to access and use the MHiE Services as contemplated by this Agreement. User IDs cannot be shared or used by more than one Authorized User at a time. Exchange Member shall prevent unauthorized access to, or use of, the MHiE Services, and notify MHiE promptly of any such unauthorized use known to Exchange Member.

6.2. Data Collection Devices. In connection with MHiE providing the MHiE Services to Exchange Member, MHiE may provide one or more Data Collection Devices to Exchange Member, and, in such case, MHiE shall work with Exchange Member to schedule the delivery, installation, and implementation of such Data Collection Devices. If MHiE does not provide such Data Collection Devices to Exchange Member, then, subject to the terms of this Agreement, MHiE grants Exchange Member the right to use such Data Collection Devices solely for the purposes of this Agreement. Exchange Member shall ensure that any Data Collection Devices are not damaged while being used by Exchange Member.

7. PRODUCT INTELLECTUAL PROPERTY

7.1. License Grant. Subject to the terms and conditions of this Agreement, MHiE grants to Exchange Member a non-exclusive, non-transferable license during the term, solely for Exchange Member’s internal business purposes: (a) to access and use the Associated Software as required to use the MHiE Services in accordance with the Documentation; and (b) to use and reproduce a reasonable
number of copies of the Documentation solely to support Exchange Member’s use of the MHIE Services.

7.2. Limitations. The Products and all other materials provided by MHIE hereunder, including but not limited to all manuals, reports, records, programs, data and other materials, and all Intellectual Property Rights in each of the foregoing, are the exclusive property of MHIE or its suppliers. Exchange Member agrees that it will not, and will not permit any Authorized User or other third party to: (a) access the Products or use the MHIE Services, other than the Authorized Users; (b) modify, adapt, or translate the Products; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Products to any third party; or (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Software. Notwithstanding the foregoing, decompiling the Associated Software is permitted to the extent the laws of Exchange Member’s jurisdiction require MHIE to give Exchange Member the right to do so to obtain information necessary to render the Associated Software interoperable with other software; provided, however, that Exchange Member must first request such information from MHIE and MHIE may, in its discretion, either provide such information to Exchange Member or impose reasonable conditions, including, a reasonable fee, on such use of the source code for the Associated Software to ensure that MHIE’s and its suppliers’ proprietary rights in the source code for the Associated Software are protected.

7.3. Ownership. The Products and all worldwide Intellectual Property Rights in each, are the exclusive property of MHIE or its suppliers, all rights not expressly granted are reserved; and any implied licenses or other rights are expressly disclaimed.

7.4. Open Source Software. Certain items of software may be provided to Exchange Member with the Associated Software and are subject to “open source” or “free software” licenses (“Open Source Software”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of the section titled Indemnification or the subsection titled License Grant. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. If required by the Open Source Software license, any modifications by MHIE to such software are available by written request at the notice address specified in the Agreement.

7.5. Government Data Rights Notice if Government Personnel Have Access. The Products contain commercial technical data and/or computer databases and/or commercial computer software and/or commercial computer software documentation, as applicable, which were developed exclusively at private expense by MHIE. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation are subject to the United States Department of Defense procurement and the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements. Any computer software included in the Products is "commercial computer software" and the associated documentation is "commercial computer software documentation" as those terms are used in 48 C.F.R. 12.212 (Oct. 98) of the Federal Acquisition Regulations and 48 C.F.R. 227.7202 (Oct 97) of the DoD supplement to the Federal Acquisition Regulations that apply to all Exchange Members or Data Recipients and specifically to the Exchange Member Type under which the Data Recipient is registered pursuant to Section4.1 (Registration Required).

8. DATA RECIPIENTS’ RIGHTS AND OBLIGATIONS

8.1. Grant of Rights. MHIE grants to each Data Recipient, and each Data Recipient by entering into this Agreement accepts, a non-exclusive, personal, nontransferable, limited right to access and use, and allows its Authorized Users to access and use, the MHIE System and MHIE Services consistent with the Data Recipient’s registration and approval, subject to the Data Recipient’s full compliance with this Agreement. MHIE retains all other rights to the MHIE System and all components thereof. No Data Recipient shall obtain any rights to the MHIE System except for the limited rights to use the MHIE System expressly granted by this Agreement.

8.2. Permitted Uses. A Data Recipient may use the MHIE System and the MHIE Services only for the permitted uses described in this Agreement, that apply to all Exchange Members or Data Recipients and specifically to the Exchange Member Type under which the Data Recipient is registered pursuant to Section4.1 (Registration Required).

8.3. Prohibited Uses. Without limiting the prohibition against any use not permitted under Section 8.2 above, a Data Recipient shall specifically not use or permit the use of the MHIE System or MHIE Services for any prohibited use in the Policies and Procedures, or described below.

8.3.1. No Services to Third Parties. Data Recipient agrees to limit its use of the MHIE System and MHIE Services only for the Data Recipient’s own account, and shall not allow access to any third parties or use any part of the MHIE System or MHIE Services to provide separate services or sublicenses to any third party, including without limitation providing any service bureau services, data processing services, or equivalent services to any third party.

8.3.2. No Use for Comparative Studies. Data Recipient shall not use the MHIE System or any MHIE Services (i) to aggregate data to compare or analyze the performance of other Exchange Members, or (ii) otherwise utilizing data of other Exchange Members for purposes not expressly approved under this Agreement.

8.3.3. Marketing. Data Recipient shall not use the MHIE System or any MHIE Services for purposes of marketing health services or products.

9. DATA PROVIDERS’ RIGHTS AND OBLIGATIONS

9.1. Grant of Rights by MHIE. MHIE grants to each Data Provider, and each Data Provider by entering into this Agreement accepts, a non-exclusive, personal, nontransferable, limited right to have access to and to use, for and its Authorized Users to have access to and to use, the MHIE System for the purpose of complying with the obligations described in this Section 9 (Data Provider’s Rights and Obligations), subject to the Data Provider’s full compliance with this Agreement. MHIE retains all other rights to the MHIE System and all the components thereof. No Data Provider shall
obtain any rights to the MHIE System except for the limited right to use the MHIE System expressly granted by this Agreement.

9.2. Grant of Rights by Data Provider. Ownership. Exchange Member grants MHIE a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Exchange Member Content as necessary for purposes of providing the MHIE Services and (b) to use the Exchange Member trademarks, service marks, and logos as required to provide the MHIE Services.

9.3. Provision of Data. Each Data Provider shall provide the data described in its Agreement. Each Data Provider represents and warrants that, to the best of its knowledge, storing data, including without limitation PHI, on the MHIE System does not violate any rights, including without limitation copyrights, of any third parties. Each Exchange Member agrees to document Patient Consent, as set forth in the Policies and Procedures, for all PHI uploaded to MHIE by Exchange Member on behalf of patients under Exchange Member’s care. Except as otherwise provided for in the Policies and Procedures, patients must opt-in to MHIE through Patient Consent obtained by Exchange Member.

9.4. Measures to Assure Accuracy of Data. Each Data Provider shall use reasonable efforts to ensure that all data, including without limitation PHI, it provides to the MHIE System is accurate, free from serious error, reasonably complete, and provided in a timely manner.

9.5. License. Subject to Section 9.6 (Limitations on Use of PHI), the Data Provider grants to the MHIE a perpetual, fully-paid, worldwide, non-exclusive, royalty free right and license (a) to sub-license and/or otherwise permit others to access through the MHIE System and use all PHI provided by the Data Provider pursuant to this Agreement, and (b) to use such PHI to carry out the MHIE’s duties under this Agreement, including without limitation system administration, testing, problem identification and resolution, management of the MHIE System, and otherwise as MHIE determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state and local laws and regulations and grant agreements. MHIE shall also have such right and license with respect to data other than PHI submitted by Exchange Member, subject to any express limitations pertaining to such data contained in the Exchange Member’s Agreement.

9.6. Limitations on Use of PHI. Data, including without limitation PHI, provided by a Data Provider hereunder shall not be used for any purpose other than one permitted under Section 9.5. Without limiting the foregoing, Data Provider shall make no uses of data prohibited by this Agreement, or by applicable law.

10. SOFTWARE PROVIDED BY MHIE

10.1. Description. MHIE shall provide Exchange Member access to software set forth on the Schedules attached to the Order (the “Associated Software”) required to access the MHIE System (i.e., beyond a web browser) and, if necessary, use the MHIE Services, which the Exchange Member has registered to receive, as more particularly described in the Exhibits attached to and hereby incorporated within this Agreement.

10.2. Grant of License. MHIE grants to each Exchange Member a non-exclusive, personal, nontransferable, limited license to use the Associated Software for access to or use of the MHIE System and, if the Exchange Member is a Data Recipient, for the purpose of obtaining the MHIE Services. To the extent MHIE’s license or rights in any Associated Software are subject to an agreement with or grant from any third party, the license and rights received by the Exchange Member are expressly subordinate to and limited to the extent of such license and rights of MHIE received from the third party. If, for any reason, the license or rights of MHIE provided by a third party is limited or terminated, the rights of the Exchange Member shall also be so limited or terminated.

10.3. Copying. Exchange Member shall not, without MHIE’s prior written consent, copy any of the Associated Software, except to the reasonable extent necessary in order to use the Associated Software.

10.4. Modifications; Derivative Work. Exchange Member shall not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create the Associated Software or the MHIE System, or to create any derivative works from the Associated Software or the MHIE System. Exchange Member shall not modify the Associated Software or combine the Associated Software with any other software or services not provided or approved by MHIE.

10.5. Third-Party Software and/or Services. The Associated Software may include third-party software and services, which may require that Exchange Member enter into separate subscription, licensing or other agreements with third-party vendors, or which may be open-source. Each Exchange Member shall enter into such agreements as may be required for the use of such software or services, and to comply with the terms of any license or other agreement held by MHIE from third parties, and any open-source or similar licenses, relating to third-party products included in Associated Software. Exchange Member will pay any fees or charges that may be assessed or charged to the Exchange Member for integrating or using its electronic medical record system with the MHIE System and MHIE will have no obligation to pay or offset such costs to Exchange Member.

10.6. Open-Source Software. Nothing in this Agreement, including the Policies and Procedures, shall be construed to limit any use of open-source software in accordance with the applicable open-source software license (if any).

11. CONFIDENTIALITY AND PROTECTED HEALTH INFORMATION

11.1. Compliance with HIPAA and Policies and Procedures. MHIE and Exchange Member shall comply with all applicable standards for the confidentiality, security, and use of PHI under HIPAA, the Policies and Procedures, any related requirements under other applicable federal, state, and local law or under Exchange Member’s own rules and regulations. Exchange Member agrees to report promptly, but in any event within 20 business days, to MHIE any serious breach of the confidentiality of the PHI (e.g., a breach which is not an incidental disclosure permitted under 45 CFR 164.502(a)(1)(iii)) of which it becomes aware. The parties acknowledge and agree that any breach of this Section 11.1 by Exchange Member will cause irreparable injury and damages to MHIE for which there is no adequate remedy at law, and as to which money damages cannot be readily ascertained. Accordingly, Exchange Member hereby consents, in such event to, the immediate termination of this Agreement with respect to the Exchange Member and to the granting of immediate injunctive relief against any continuing breach, without the necessity of posting bond,
together with attorneys’ fees and costs reasonably incurred in enforcing this provision.

11.2. Confidential Information. The Products are the Confidential Information of MHE. Exchange Member agrees that it will not disclose to any third party any Confidential Information of MHE. Exchange Member will limit access to the Confidential Information to Authorized Users who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, Exchange Member will protect MHE’s Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At MHE’s request or upon termination of this Agreement, Exchange Member will return to MHE or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that Exchange Member has in its possession at the time of such request or as of the effective date of termination, and, if requested by MHE, Exchange Member shall certify to MHE in writing its compliance with this sentence.

11.3. Additional Requirements. Each Exchange Member agrees to enforce the confidentiality provisions of this Agreement by appropriately disciplining individuals within each Exchange Member’s organization who violate the confidentiality of PHI pursuant to each Exchange Member’s respective confidentiality and disciplinary policies. Such discipline may include, but shall not be limited to: warnings; suspensions; termination; or modification, suspension, or revocation of Authorized User or other privileges.

12. OTHER OBLIGATIONS OF EXCHANGE MEMBERS

12.1. Compliance with Laws and Regulations. Without limiting any other provision of these Terms and Conditions or the provisions of the Policies and Procedures relating to parties’ compliance with applicable laws and regulations, Exchange Member agrees to comply with applicable federal, state, and local laws, ordinances, and regulations relating to its use of the MHE System and MHE Services.

12.2. System Security. Exchange Member shall implement reasonable security measures with respect to the MHE System and MHE Services. Exchange Member shall also adopt and implement at least the minimum security measures provided in the Policies and Procedures.

12.3. Software and/or Hardware Provided by Exchange Member. Exchange Member shall be responsible for procuring and maintaining all equipment and software (other than the Associated Software) necessary for it to access the MHE System, use of the MHE Services (including the Associated Software) and provide to MHE all information required to be provided by Exchange Member (“Exchange Member’s Required Hardware and Software”). Exchange Member’s Required Hardware and Software shall conform to the MHE’s then-current specifications contained in the Policies and Procedures. MHE may propose changes to the specifications from time to time. If MHE decides to implement the change, it shall provide reasonable prior notice to Exchange Members affected by the change. As part of Exchange Member’s obligation to provide Exchange Member’s Required Hardware and Software, Exchange Member shall be responsible for ensuring that all of Exchange Member’s computers to be used to interface with the MHE System are properly configured and maintained, including but not limited to the operating system, web browser(s), and Internet connectivity.

12.4. Viruses and Other Threats. In providing any data to the MHE System, Exchange Member shall use reasonable efforts to ensure that the medium containing such data does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data which will disrupt the proper operation of the MHE System or any part thereof or any hardware or software used by MHE in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the MHE System or any part thereof or any hardware, software, or data used by MHE or any other Exchange Member in connection therewith, to be destroyed, damaged, or rendered inoperable. Exchange Member shall further use reasonable efforts to prevent unauthorized access to its computers used to access the MHE System, which efforts shall include, without limitation, the use of access appropriate identification and security measures and the prompt installation of all software vendor-recommended security updates (subject to Exchange Member’s standard acceptance testing).

12.5. Training. Exchange Member shall provide appropriate and adequate introductory training to all of the Authorized Users to familiarize them with their obligations pursuant to their use of the MHE System and MHE Services. In addition, Exchange Member represents that it has trained its workforce in the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of health information, including without limitation requirements imposed under HIPAA.

12.6. Copyright Policy. MHE reserves the right to terminate its agreement with any Exchange Member who infringes third-party copyright upon prompt notice to MHE by the copyright owner or the copyright owner’s legal agent.

12.7. Export. Exchange Member agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from MHE, or any products utilizing such data, in violation of the United States export laws or regulations.

12.8. Indemnification. Exchange Member will defend, indemnify, and hold harmless MHE, and its officers, directors, employees, agents, and customers (each, a “MHE Indemnitee”) from and against any claim, suit, demand, or other legal action (each, a “Claim”) brought by a third party against any MHE Indemnitee(s), to the extent such Claim arises from or relates to any breach of this Agreement by Exchange Member, and Exchange Member shall pay all liabilities, costs, damages, and expenses (including, without limitation, attorneys’ fees) incurred or suffered by MHE Indemnitees in connection with such Claim.

13. MHE’S OPERATIONS AND RESPONSIBILITIES

13.1. Compliance with Policies and Procedures. MHE shall require that all Exchange Members enter into an Exchange Member Agreement or other legally binding agreement agreeing, among other things, to comply with the Policies and Procedures in such form as the MHE determines is appropriate.

13.2. Use of Contractors. MHE shall administer the MHE System and MHE Services and may delegate responsibilities related to such to one or more subcontractors. Consistent with its obligations under Section 11, the MHE shall obtain assurances from its subcontractors that only specifically
authorized representatives of the subcontractor shall be granted access to the MHiE System in connection with the subcontractor’s responsibilities. Exchange Member acknowledges and agrees that access to data (including aggregate data) shall be granted to MHiE and its subcontractors for purposes of MHiE’s functions and obligations under this Agreement.

13.3. Training. MHiE shall provide initial training to Authorized Users identified by the Exchange Member to serve as internal trainers for the Exchange Member and thereafter as MHiE determines appropriate. Training will include instruction on access and use of the MHiE System and MHiE Services. MHiE shall also provide such user manuals and other resources MHiE determines appropriate to support the MHiE System and MHiE Services.

13.4. Telephone and/or E-Mail Support. MHiE shall provide, by telephone, e-mail, and/or other means, support and assistance in resolving difficulties in accessing and using the MHiE System and MHiE Services during hours and on days as provided in the Policies and Procedures.

13.5. Audits and Reports Access Reporting to Exchange Members. Upon request, MHiE shall provide to Exchange Member statistical summaries indicating the number of accesses to the requesting Exchange Member’s own PHI by accessing site and including a list of all queries to the MHiE System by patient names and date of birth. The foregoing summaries shall be provided at no cost. Additional detail about an Exchange Member’s own PHI may be obtained by an Exchange Member as made available by MHiE under the Policies and Procedures. Other usage and audit trail reports will be delivered as defined in the Policies and Procedures.

13.6. Addition of New Exchange Members. Exchange Member acknowledges that additional Exchange Members may be granted access to the MHiE System and MHiE Services by entering into an agreement with MHiE on substantially identical terms and conditions as those in this Agreement.

14. FEES AND CHARGES

14.1. Agreed-Upon Fees. The terms of this Agreement shall apply with respect to the charging and payment of fees. The Agreed-Upon Fees are listed in Schedule 1.2.

14.2. Service Fees. Exchange Member shall pay to MHiE service fees (“Service Fees”) for those MHiE Services for which the Exchange Member has registered in accordance with the Policies and Procedures.

14.3. Changes to Fee Schedule. MHiE may change its Service Fees at any time upon forty-five (45) days prior written notice to Exchange Members consistent with the provisions of Section 3.2.

14.4. Miscellaneous Charges. Exchange Member also shall pay MHiE’s charges for all goods or services that MHiE provides at the Exchange Member’s request that are not specified in the Policy and Procedures (“Miscellaneous Charges”).

14.5. Payment. Exchange Member shall pay all Service Fees and any Miscellaneous Charges within thirty (30) days following the documented date of mailing of invoice by MHiE sent to the Exchange Member’s physical or email address as shown in MHiE’s records.

14.6. Late Charges. Service Fees and Miscellaneous Charges not paid to MHiE within thirty (30) days following the due date are subject to a late charge of five percent (5%) of the amount owed and interest 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 lower.

14.7. Suspension of Service. Failure to pay Service Fees and Miscellaneous Charges within thirty (30) days following the due date may result in suspension or termination of the Exchange Member’s access to the MHiE System and/or use of the MHiE Services, including revoking Exchange Member’s Access Protocols. A reconnection fee as contained in the Policies and Procedures or otherwise set by MHiE from time to time shall be assessed to re-establish connection after suspension or termination due to non-payment.

14.8. Taxes. All Service Fees and Miscellaneous Charges shall be exclusive of federal, state, municipal, or other government excise, sales, use, occupational, or similar taxes existing as of the date of this Agreement or enacted in the future. Exchange Member shall pay any tax (excluding taxes on MHiE’s net income) that MHiE may be required to collect or pay, now or at any time in the future, and that are imposed upon the sale or delivery of items or services provided pursuant to the Policies and Procedures.

14.9. Other Charges and Expenses. Exchange Member shall be solely responsible for any other charges or expenses Exchange Member incurs in connection with the MHiE System or MHiE Services, including without limitation, telephone and equipment charges, and fees charged by third-party vendors of products and services.

15. PROPRIETARY INFORMATION

MHiE and Exchange Member shall comply with the Policies and Procedures and the prohibitions contained in this Agreement with respect to prohibited uses and requirements for non-disclosure of confidential and proprietary information of MHiE and Exchange Members. MHiE agrees that no aggregate data concerning Exchange Member’s operations (e.g., data on patient volume, charges to patients or third-party payers and similar reimbursement data, or Exchange Members’ practice patterns) will be provided to other Exchange Members or published in an identifiable form without the written permission of Exchange Member.

16. DISCLAIMERS, EXCLUSIONS OF WARRANTIES, AND LIMITATIONS OF LIABILITY.

16.1. Carrier lines. Exchange Member acknowledges that in connection with use the MHiE System and receipt of MHiE Services access to the MHiE System is to be provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, “carrier lines”) owned, maintained, and serviced by third-party carriers, utilities, and internet service providers, all of which are beyond the MHiE’s control. MHiE assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of
any data or other information attributable to transmission on the
carrier lines. Notwithstanding that MHiE takes commercially
reasonable measures, such as encryption, to protect data while
in transit, use of the carrier lines is solely at Exchange
Member’s risk and is subject to all applicable local, state,
national, and international laws.

16.2. No Warranties. ACCESS TO THE
MHIESYSTEM, USE OF MHIESERVICES AND THE INFORMATION
OBTAINED BY A DATA RECIPIENT PURSUANT TO THE USE OF
SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT
ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING
BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF
MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND
NON-INFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT
SHALL MHIE BE LIABLE FOR ANY SPECIAL, INDIRECT,
CONSEQUENTIAL, 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 MHIE HAS BEEN APPRISED
OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES
OCcurring. MHIE DISCLAIMS ANY AND ALL LIABILITY FOR
ERRORNEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING
FROM FAILURES OF THE CARRIER LINES.

16.3. Exchange Member’s Actions. Exchange
Member shall be solely responsible for any damage to a
computer system, loss of data, and any damage to the MHiE
System caused by Exchange Member, an Authorized User of
Exchange Member, or any person using a user ID assigned to
Exchange Member or a member of Exchange Member’s
workforce.

16.4. Unauthorized Access; Validation of Data,
Lost or Corrupt Data. MHiE is not responsible for unauthorized
access to Exchange Member’s transmission facilities or
equipment by individuals or entities using the MHiE System or
for unauthorized access to, or alteration, theft, or destruction of
Exchange Member’s data files, programs, procedures, or
information through the MHiE System, whether by accident,
fraudulent means or devices, or any other method, except to the
extent such resulted from negligent or willfully wrongful acts or
omissions of MHiE. Exchange Member is solely responsible for
validating the accuracy of all output and reports and protecting
Exchange Member’s data and programs from loss by
implementing appropriate security measures, including routine
backup procedures. Exchange Member waives any damages
incurred by loss or corrupt data, incorrect reports, or incorrect
data files, except to the extent such resulted from negligent or
willfully wrongful acts or omissions of MHiE.

16.5. Inaccurate Data. All data to which access is
made through the MHiE System and/or MHiE Services
originates from Exchange Members and not from the MHiE. All
such data is subject to change arising from numerous factors,
including without limitation, 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. MHiE neither initiates the transmission of any data nor
monitors the specific content of data being transmitted. Without
limiting any other provision of the Policies and Procedures,
MHiE shall have no responsibility for or liability related to the
accuracy, content, currency, completeness, content or delivery of
any data either provided by a Data Provider, or used by a
Data Recipient, pursuant to this Agreement, except to the
extent negligent or willfully wrongful acts or omissions of MHiE
result in MHiE failing to correctly format or display information to
Data Recipients as it was received by MHiE from Data
Providers.

16.6. Patient Care. Without limiting any other
 provision of the Policies and Procedures, Exchange Member
and Exchange Member’s Authorized Users shall be solely
responsible for all decisions and actions taken or not taken
involving patient care, utilization management, and quality
management for their respective patients and clients resulting
from or in any way related to the use of the MHiE System or
MHiE Services or the data made available thereby. Neither
Exchange Member nor its Authorized Users shall have any
recourse against, and each hereby waives, any claims against
the MHiE for any loss, damage, claim, or cost relating to or
resulting from its own use or misuse of the MHiE System and/or
MHiE Services or the data made available thereby, except to
the extent such resulted from the negligent or willfully wrongful
acts or omissions of MHiE.

16.7. Limitation of Liability. Notwithstanding
anything in the Policies and Procedures to the contrary, to the
maximum extent permitted by applicable laws, the aggregate
liability of MHiE, and MHiE’s officers, directors, employees
and other agents, under this Agreement, regardless of theory of
liability, shall be limited to the greater of $1,000 or the amount
of Service Fees received by MHiE in connection with the MHiE
Service giving rise to the liability during the applicable period up
to a maximum of 12 months.

17. INSURANCE

17.1. Required Coverage.

17.1.1. MHiE. MHiE shall maintain,
throughout the term of this Agreement, at its sole
expense, a policy of technology and information
errors and omissions ("TI&E&O") insurance coverage
as well as such professional and general liability
insurance coverage as it deems reasonable and
necessary to insure itself and its officers, directors,
and employees against any third party claim or cause
of action arising out of the performance of this
Agreement.

17.1.2. Exchange Member shall: (a)
maintain, throughout the term of this Agreement, at its
sole expense, such professional and general liability
insurance coverage as it deems reasonable and
necessary to insure itself and its officers, directors,
and employees against any third party claim or cause
of action arising out of the performance of this
Agreement; and (b) use reasonable efforts to procure
and maintain, throughout the term of this Agreement,
at its sole expense, such TI&E&O insurance coverage,
as it deems reasonable and necessary to insure itself
and its officers, directors, and employees against any
third party claim or cause of action arising out of the
performance of this Agreement.

17.1.3. Survival. In the event of
termination of this Agreement for any reason, MHiE
and each Exchange Member either shall maintain its
insurance coverage called for under this Section 17.1
for a period of not less than three (3) years, or shall
provide an equivalent extended reporting
endorsement ("tail policy").

17.2. Evidence of Coverage. MHiE and
Exchange Member shall provide proof of such required
coverage upon request. In the event of Exchange Member's failure to provide proof of such continuing coverage within thirty (30) days following request for such proof from MHiE, MHiE shall have the right to purchase such coverage and bill Exchange Member for the premium. Exchange Member shall pay the MHiE the billed amount within ten (10) days after Exchange Member's receipt of billing.

18. DISPUTE RESOLUTION

18.1. Scope. Any controversy, dispute, or disagreement arising out of or relating to this Agreement, or the breach of this Agreement, (referred to in this Section as a “dispute”) shall be settled according to the procedure set forth in this Section 18.

18.2. Informal Conference. In the event a dispute arises between or among any of the parties concerning their respective duties and obligations under this Agreement, each party shall be obligated to meet and confer with the other(s) in good faith, on reasonable notice, and at a mutually agreeable location. The parties agree that if any party refuses to participate in such a conference, or if such a conference fails to produce a mutually acceptable resolution of the dispute within fifteen (15) calendar days after the parties’ receipt of notice of the dispute, the other party or parties may submit the matter to mediation or arbitration pursuant to this Section 18.

18.3. Mediation. In the event a dispute arises between or among the parties that cannot be settled by informal conference as set forth above, the parties may, on mutual agreement, submit the matter to mediation to be conducted in Harris County, Texas. The process for selecting the mediator shall be determined by the mutual written consent of the parties. If the parties fail to agree to a process within ten (10) calendar days from a request, the requesting party may proceed to invoke the arbitration process provided for herein. The consent of any party to such mediation may be withdrawn at any time, without cause.

18.4. Arbitration.

18.4.1. In the event a dispute cannot be settled by informal conference or mediation as set forth above, or in the event either party refuses or withdraws consent to mediation, the matter shall be submitted to arbitration in Harris County, Texas. The process for selecting the arbitrator(s), and the rules for arbitration, shall be determined by the mutual written consent of the parties. If the parties fail to agree to an arbitrator or panel of arbitrators, or the rules for arbitration, shall be determined by the mutual written consent of the parties. If the parties fail to agree to an arbitrator or panel of arbitrators, or the rules for arbitration within ten (10) calendar days after receipt of a demand for arbitration, the arbitration shall be conducted in accordance with the American Arbitration Association’s (“AAA’s”) Commercial Arbitration Rules, except as modified below. Judgment on the award rendered by the arbitrator or panel of arbitrators may be entered in any court of competent jurisdiction.

18.4.2. Immediately after the filing of the submission or the answering statement or the expiration of the time within which the answering statement is to be filed, the AAA shall send simultaneously to each party to the dispute an identical list of ten (10) (unless the AAA decides that a greater number is appropriate) names of persons chosen from AAA’s National Roster of Commercial Arbitrators. The parties will attempt to agree on an arbitrator from the submitted list, and if they are able to do so, they will promptly advise the AAA of their choice. The same person may serve as both mediator and arbitrator only with the consent of all parties.

18.4.3. If the parties are unable to agree on an arbitrator within fifteen (15) calendar days of the date the AAA transmitted the list, each party shall have an additional seven (7) calendar days in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on each party’s list, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of one (1) arbitrator to serve. If the parties fail to agree on any of the persons named within the time specified by AAA, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall appoint a three-person panel of arbitrators from among other members of AAA’s National Roster of Commercial Arbitrators without the submission of additional lists.

18.4.4. Each party shall bear its own costs and expenses, and an equal share of the arbitrators’ and administrative fees of arbitration.

18.5. Special Remedies. MHiE’s rights and remedies under this Agreement are cumulative. Exchange Member acknowledges that the Products contain valuable trade secrets and proprietary information of MHiE, that any actual or threatened breach of the sections titled Intellectual Property or Confidentiality or any other breach by Exchange Member of its obligations with respect to Intellectual Property Rights of MHiE will constitute immediate, irreparable harm to MHiE for which monetary damages would be inadequate. In such case, MHiE will be entitled to immediate injunctive relief without posting bond, including an order that any Products, or any portions thereof, that Exchange Member attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses, in addition to any other relief it may receive.

19. GENERAL PROVISIONS

19.1. Applicable Law. The interpretation of this Agreement, and the resolution of any dispute arising under this Agreement, shall be governed by the laws of the State of Texas. Venue for any action at law or in equity to interpret or enforce the terms and conditions of this Agreement under this Agreement shall lie exclusively in the state or federal courts of Harris County, Texas.

19.2. Non-Assignability. No benefit or obligation of Exchange Member under this Agreement may be assigned or transferred by the Exchange Member, either voluntarily or by operation of law, without the prior written consent of MHiE, which MHiE may withhold in its sole discretion.

19.3. Independent Contractors. It is mutually understood and agreed that in performing their respective duties and obligations hereunder, the parties hereto are at all times acting as independent contractors with respect to each other. Nothing in this Agreement shall constitute or be
construed to create a partnership or joint venture between or among the parties.

19.4. **Third Party Beneficiaries.** There shall be no third party beneficiaries of this Agreement.

19.5. **Supervening Circumstances.** Neither Exchange Member nor MHiE shall be deemed in violation of any provision of this 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 that are not within its reasonable control. This Section 19.5 (Supervening Circumstances) shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.

19.6. **Severability.** Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.

19.7. **Notices.** Any and all notices required or permitted under this Agreement shall be sufficient if given in writing and hand delivered or sent by United States Certified Mail, postage prepaid, return receipt requested or by overnight delivery service with confirmation of delivery to the address provided by MHiE or by the Exchange Member or such different addresses as a party may designate in writing. Notice will be deemed effective on the date indicated on the receipt or other evidence of delivery, or refusal to accept delivery. The parties acknowledge that day-to-day correspondence and communication will take place by telephone, email, posting through the MHiE System, etc., and such communication will be effective for purposes of administering this Agreement; provided, however, any notice of, or that could lead to, an allegation of default or termination of this Agreement must be given in accordance with the first sentence of this Section19.7.

19.8. **Waiver.** No provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be 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.

19.9. **Schedules and Exhibits.** The schedules referenced in this Agreement are numbered to correspond to the Section or subsection number of these Terms and Conditions in which they are first referenced. Such schedules, along with any exhibits thereto, are an essential part of the agreement of the parties, and shall be considered for all purposes a part of this Agreement.

19.10. **Complete Understanding.** This Agreement, including the Order, these Terms and Conditions, and the Policies and Procedures, constitutes 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 this Agreement other than those contained or referenced herein. In the event of any conflict between the provisions of these Terms and Conditions and the provisions of the Policies and Procedures, these Terms and Conditions shall govern. Continued use of the Product(s) and/or Service(s) after notification, which notification may be by posting in the MHiE System and/or MHiEService, will indicate Exchange Members' agreement to be bound by the modified terms.

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