

“Fee” shall have the meaning set forth in Section 5.1 herein.

“Guides” shall mean common practices and/or interpretations of the use of Standards.

“Managers” shall mean the Board of Managers of MA-SHARE.

“Participants” shall mean persons, including XXXX, and others, who engage in transactions using CDI in a manner consistent with the standards adopted by MA-SHARE and using the Guides and who are under contract, directly or indirectly, with MA-SHARE.

“Permitted Users” shall mean persons who are members of a Participant’s workforce or medical staff, as applicable, and to whom Participant has granted privileges to access an information system provided to a Participant by MA-SHARE.

“Permitted Purpose” shall mean a lawful reason for requesting PHI from a Participant that is set forth in a Project Addendum.

“Privacy Rule” shall mean the HIPAA medical privacy regulation, 45 C.F.R. Part 164.

“Protected Health Information” or “PHI” shall have the meaning set forth in the HIPAA medical privacy regulation, 45 CFR Part 160, et seq.

“Project” shall mean a specific CDI service offered by MA-SHARE and described in a Project Addendum.

“Project Addendum” shall mean an exhibit to this Agreement, either attached hereto or subsequently adopted by agreement of the parties, which defines a Project, its Permitted Purpose, the types of entities that will be Participants, Software, applicable Standards, applicable Safeguards and such other matters as the Parties may agree from time to time. Each Project Addendum shall be incorporated into this Agreement by reference.

“Safeguards” shall mean administrative, physical and technical measures used to protect the confidentiality, availability and integrity of PHI and other information.

“Security Rule” shall mean the HIPAA Information Security regulation, 45 C.F.R. Part 164.

“Signature” shall have the meaning set forth in Section 2.6 herein.

“Signed Documents” shall have the meaning set forth in Section 8.1 herein.

“Standards” means legally mandated electronic data interchange standards, including without limitation those mandated by the administrative simplification provisions of HIPAA and the e-prescribing standards established pursuant to the Medicare Modernization Act.

“Software” shall mean that software described in a Project Addendum.

“Technical Vendor” shall mean a person or entity engaged by MA-SHARE to provide services in connection with a Project.

2.0 PREREQUISITES

2.1 Scope. This Agreement governs the terms, conditions and standards of CDI by and between **XXXX** and other Participants for the transactions and services described in a Project Addendum. The parties intend that transactions among Participants via CDI will have the same effect as transactions that are completed by exchanging paper documents. Nothing in this Agreement shall preclude any Participant from completing transactions by exchanging paper documents, use of fax, electronic file transfer, or other means.

2.2 Project Addenda. For each Project, the types of data to be exchanged by the Participants and the Permitted Purpose shall be set forth in a Project Addendum. There shall be a separate Project Addendum for each Project. The Permitted Purpose set forth in a Project Addendum may be amended only by the written agreement of **XXXX** and MA-SHARE, and may be contingent upon the agreement of third parties who are participating in the Project.

2.3 Designated Record Set. It is understood that PHI received by a Participant pursuant to this Agreement may become part of such Participant’s “Designated Record Set” as the Privacy Rule defines that term. Applicable law shall govern subsequent uses and disclosures of PHI contained in a Designated Record Set.

2.4 Technical Operation. MA-SHARE shall from time to time determine the Standards and technical operations necessary to implement each Project, and MA-SHARE shall give written notice of such Standards and technical operations as to each Participant. The parties anticipate that such Standards and technical operations, including without limitation the selection of third party networks, may be changed by MA-SHARE from time to time, taking into account the needs of the Participants and Certification Requirements applicable to each Project.

2.5 System Operations. Each Participant, including **XXXX**, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably engage in transactions. **XXXX** shall be responsible for all equipment necessary to engage in CDI and contemplated by this Agreement and not supplied by MA-SHARE or a Technical Vendor, including hardware, software and telecommunications lines.

2.6 Signatures. MA-SHARE shall cause each Participant to adopt as its signature an electronic identification consisting of symbol(s) or code(s) that are to be affixed to or contained in each Document transmitted by such party (“Signatures”). **XXXX** agrees that any Signature of such party affixed to or contained in any transmitted Document shall be sufficient to verify such party originated such Document.

3.0 OBLIGATIONS OF MA-SHARE

3.1 Services and Items to be Provided by MA-SHARE. MA-SHARE shall enter into contracts with one or more Technical Vendors, Data Sources, Data Switches, and others selected by MA-SHARE to implement each Project. MA-SHARE shall use reasonable efforts cause the Technical Vendors, Data Sources, Data Switches, and others to provide services and items to Participants as set forth in each Project Addendum, but does not guarantee their performance under such agreements.

3.2 Compliance with Privacy Requirements. MA-SHARE shall enter into a Business Associate Agreement with XXXX. MA-SHARE will not access PHI except as necessary for testing, performance verification and investigation of alleged security incidents or privacy violations.

3.3 Security Procedures. MA-SHARE shall require the Technical Vendors to implement security procedures that are reasonable and appropriate to ensure that all transmissions of PHI made in connection with the Project are authorized, and to protect records and data containing PHI from improper access, tampering or unauthorized disclosure. Such security procedures shall include administrative procedures, physical security measures and technical security services that are reasonably necessary to secure such data. MA-SHARE shall enter into agreements with each of the Participants and the Technical Vendors requiring them to comply with the security requirements set forth on Schedule A, as applicable.

3.4 Investigations and Remediation. MA-SHARE shall adopt policies and procedures for the investigation and resolution of patient complaints and security incidents and shall make such policies and procedures available to Participants on request. MA-SHARE promptly shall inform XXXX in writing of any security incident or privacy breach related to the operation of a CDI service, of which MA-SHARE becomes aware, and shall cooperate with XXXX in the investigation of any security incident or privacy breach relating to XXXX's patients as requested by XXXX. To the greatest extent possible, the appropriate Covered Entity shall carry out such verification and investigation, as applicable, with the assistance of MA-SHARE and its subcontractors. XXXX shall cooperate with any such investigation as reasonably requested by MA-SHARE or any other Participant.

4.0 OBLIGATIONS OF XXXX

4.1 Use. XXXX shall use the software, facilities and services provided by MA-SHARE in connection with a particular Project only for the Permitted Purpose applicable to each Project. XXXX shall restrict access to such software, facilities and services to Permitted Users. XXXX shall obtain PHI only for the Permitted Purpose and shall comply with all applicable laws and regulations governing the privacy and security of PHI sent or received in connection with the Project. XXXX shall use the information obtained from other Participants, and any technical or other information received from MA-SHARE, its Technical Vendors, Data Sources, Data Switches and others only for the purpose of engaging in the Project for the Permitted Purpose, or for related quality assurance, security auditing, investigation and verification purposes.

4.2 Standards and Certification Requirements. For each Project, XXXX shall engage in transactions only in accordance with applicable Standards, and shall comply with all Certification Requirements in a commercially reasonable manner.

4.3 Security. XXXX shall comply with the security and privacy rules imposed by HIPAA and other laws as they become applicable. XXXX shall observe any reasonable security procedures adopted by MA-SHARE for the operation of the Project from time to time, including without limitation the safeguards listed on Schedule A and requirements for user authentication and role based access.

5.0 FEES AND PAYMENT

5.1 Fees. XXXX shall pay a program fee (“Fee”) to MA-SHARE in the amount of _____ (\$ _____) per calendar quarter. If this Agreement is in effect for part of a quarter, the Fee shall be prorated on a daily basis. MA-SHARE may modify the Fee from time to time, but such modification shall not become effective until XXXX has received at least sixty (60) days advance written notice of such modification. Such notice shall specify the effective date of the modified Fee.

5.2 Payment. The Fee shall be payable in advance on or before the fifth day of the each month. After fifteen (15) days, such payments shall accrue interest at the lesser of one percent (1%) per month or the highest rate allowed by applicable law.

6.0 USE AND OWNERSHIP RIGHTS

6.1 Grant of Software License. MA-SHARE hereby grants to XXXX and its wholly owned and controlled subsidiaries a royalty-free, perpetual, world-wide, non-exclusive, nontransferable, non-assignable, non-sub-licensable and limited right, for the sole purpose of participating in CDI and engaging in transactions with other Participants, to use the Software listed each Project Addendum (the Software). The Software shall not be used for any other purpose whatsoever, and shall not otherwise be copied or incorporated into any other computer program, hardware, firmware or product. THE SOFTWARE IS LICENSED “AS IS” AND MA-SHARE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE. During the term hereof, MA-SHARE may elect to make available the services of its Program Manager or other consultants to assist XXXX in the installation, implementation and maintenance of the software, but all such services shall be subject to the MA-SHARE budget for such services as approved by its Managers from time to time. XXXX acknowledges that the Software has been licensed to MA-SHARE by third parties, and that the license granted under this agreement is subject in every respect to MA-SHARE’s grant of license from such third parties. As additional software is developed by or for MA-SHARE, it shall become subject to this Agreement upon written notice to XXXX, and such notice shall constitute an amendment to applicable Project Addendum. This paragraph 6.1 applies only to Software that is installed on hardware owned or leased by XXXX and not to any other software used in connection with a Project.

6.2 Grant of License. MA-SHARE hereby grants to **XXXX** and its wholly owned and controlled subsidiaries a non-exclusive, royalty-free, perpetual, nontransferable, non-assignable, non-sub-licensable and limited right, for the sole purpose of participating in CDI and undertaking the rights and responsibilities in connection with transactions, and any underlying agreements in connection therewith, with the other party or the Participants, to use the Guides. The Guides shall not be used for any other purpose whatsoever, and shall not be copied or incorporated into any computer program, hardware, firmware or product. THE GUIDES ARE LICENSED “AS IS” AND MA-SHARE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE. During the term hereof, MA-SHARE may elect to make available the services of its Program Manager or other consultants to assist **XXXX** in the implementation of the Guides, but all such services shall be subject to the MA-SHARE budget for such services as approved by its Managers from time to time. **XXXX** acknowledges that if the Guides have been licensed to MA-SHARE by third parties, then the license granted under this agreement is subject in every respect to MA-SHARE’s grant of license from such third parties.

6.3 Retention of Ownership Rights. Each party shall retain all rights not expressly granted herein, including each party’s rights to and ownership of their content, data, Confidential Information, and any other information or materials owned by such party or Participant and exchanged via CDI. No party shall obtain rights or ownership in any other party’s materials or information, even if such materials or information are used in the execution of obligations under this Agreement, unless such right or ownership is expressly granted in writing.

7.0 CONFIDENTIALITY

7.1 Confidential Information. During the course of this Agreement, each party or Participant may be given access to information about the other party or about a Participant that (a) relates to past, present or future business activities, practices, protocols, products, services, data, content, and technical knowledge and (b) has been identified as confidential (“Confidential Information”) by such party.

7.2 Non-disclosure. The parties shall (a) hold the Confidential Information of the other party in strict confidence, (b) not make the Confidential Information available for any purpose other than as specified in this Agreement, or as required by law, and (c) take reasonable steps to ensure that the Confidential Information is not disclosed or distributed by employees, agents or consultants (who shall have access to the same only on a “need-to-know” basis) to third parties in violation of the provisions of this Agreement.

7.3 Exclusions. Notwithstanding the provisions of Section 7.1, Confidential Information shall not include information which (a) is, at the time disclosed, known or thereafter becomes known or available to the general public through no act or omission of the receiving party which is in violation of such party’s obligations under this Agreement, (b) was in the receiving party’s lawful possession prior to such access to or indirectly from the disclosing party, (c) is disclosed to the receiving party by a third party having the right to make such disclosure, (d) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information, or (e) is required by law.

7.4 Equitable Remedies. The parties agree that a breach of the restrictions and obligations set forth in this Section 7.0 shall cause the disclosing party substantial and continuing damage, the value of which will be difficult or impossible to ascertain, and other irreparable harm for which the payment of damages alone shall be inadequate. Therefore, in addition to any other remedy that the disclosing party may have under this Agreement or at law or in equity, in the event of such a breach or threatened breach by the receiving party of the restrictions and obligations of this Section 7.0, the disclosing party shall be entitled, after notifying the receiving party in writing of the breach or threatened breach, to seek both temporary and permanent injunctive without the need to prove damage or post bond.

7.5 Third Party Agreements; Further Assurances. In connection with the development of various CDI services, MA-SHARE may have executed non-disclosure agreements with one or more third parties, including Technical Vendors, Data Switches, Data Sources and others. Any information disclosed by MA-SHARE to XXXX, which information is subject to such a third party non-disclosure agreement shall be subject treated as Confidential Information of MA-SHARE. At MA-SHARE's request, XXXX shall enter into a non-disclosure agreement with such third parties as needed for the development or implementation of a CDI service.

8.0 TRANSACTIONS

8.1 Validity and Enforceability.

(a) This Agreement has been executed by the parties to evidence their mutual intent to enable certain activities, such as treatment of patients, pursuant to the electronic transmission and receipt of transactions.

(b) Any transaction properly transmitted pursuant to this Agreement shall be considered to be a "writing" or "in writing," and any such transaction when containing, or to which there is affixed, a Signature ("Signed Documents") shall be deemed for all purposes (i) to have been "signed" and (ii) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

(c) The conduct of the parties pursuant to this Agreement, including the use of Signed Documents properly transmitted pursuant to this Agreement, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the parties in furtherance of this Agreement.

(d) XXXX shall not contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in paper form.

9.0 TERM AND TERMINATION

9.1 Term and Termination. The term of this Agreement shall commence upon the Effective Date and shall continue until terminated as set forth in this Section 9.1. This Agreement shall terminate as to any Project, or this entire Agreement, under any of the following circumstances:

- a) If either party determines that its continued participation in a Project or this Agreement would cause it to violate any law or regulation applicable to it, would place it at material risk of suffering any sanction, penalty or liability, or would impair its reputation, that party may terminate its participation in that Project, or this Agreement on written notice to the other party.
- b) If a party determines that the other party or any of its agents or contractors are not conducting a Project in accordance with the terms of this Agreement, then that party may terminate its participation in that Project or this Agreement on fifteen (15) days written notice to the other party, provided that such notice shall identify such area of non-compliance, and such non-compliance has not been cured within such fifteen (15) day period; or
- c) If either party gives notice of termination as to a particular Project or this entire Agreement without cause, which notice shall be effective thirty (30) days from the date of such notice.

9.2 Termination Process. Upon termination of a Project or this Agreement, MA-SHARE shall cause the technical vendors to cease electronic data interchange with respect to the Project. If a particular Data Source terminates MA-SHARE's rights to access PHI controlled by such Data Source in connection with one or more Projects, such information shall no longer be part of the Project, and MA-SHARE may elect to continue the Project with respect to the other Data Sources that continue to participate. MA-SHARE shall give **XXXX** notice of the termination of any Data Source's participation in a Project promptly after MA-SHARE learns of such event. Sections 6.1 and 6.2 shall govern any licenses granted by this Agreement.

9.3 Effect. Any termination will not alter the rights or duties of the parties with respect to Signed Documents transmitted before the effective date of the termination or with respect to fees outstanding and payable under this Agreement. Upon termination of this Agreement, Sections 3.4, 6.1, 6.2, 7.1, 7.2, 7.3, 7.4, 7.5, 8.1(d), 10.5, 10.6, and 10.7 shall survive termination of this Agreement, each in accordance with its terms. All other rights, privileges and responsibilities of the each party with respect to the other party shall terminate, other than the licenses granted hereunder, which are perpetual. All Confidential Information shall be returned to the respective party promptly upon termination. If **XXXX** has prepaid any Fees or Expenses (e.g. a Fee has been paid in full and this Agreement terminates before the end of a quarter) **XXXX** shall be entitled to a pro rata refund of such advance payment.

10.0 GENERAL PROVISIONS

10.1 Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

10.2 Entire Agreement. This Agreement constitutes the complete agreement of the parties relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. No obligation to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

10.3 Governing Laws. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions, and the Commonwealth of Massachusetts shall be the sole forum for resolution of disputes regarding this Agreement or the subject matter thereof.

10.4 Force Majeure. No party or Participant shall be liable for any failure to perform its obligations in connection with any transaction or any Signed Document, where such failure results from any act of God or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such party from transmitting or receiving any Signed Documents.

10.5 Indemnification. XXXX indemnifies and holds harmless MA-SHARE, its managers, members, officers, and agents from any claim asserted by a third party, and any associated liability, cost or expense, including without limitation reasonable attorney's fees, which claim arises from XXXX's unauthorized or improper use of a CDI service provided by MA-SHARE or XXXX's use or disclosure of PHI for any purpose other than a Permitted Purpose.

10.6 No Warranty as to Data or Reports. None of the Data Sources, MA-SHARE, its members, consultants, and agents, nor any of their officers or directors (together, the "MA-SHARE Parties"), make any representation or warranty that the PHI or other information delivered to XXXX will be correct or complete. MA-SHARE makes no warranty or representation regarding the accuracy or reliability of any information technology system or the other technology utilized by a technical vendor or other person. **MA-SHARE DISCLAIMS ALL WARRANTIES REGARDING ANY PRODUCT, SERVICE OR ITEM DELIVERED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** XXXX hereby releases all of the MA-SHARE Parties and the other Participants from any claim that XXXX might otherwise have against any of them arising out of any inaccuracy or incompleteness of the PHI or any delay in the delivery of PHI or failure to deliver a transaction when requested.

10.7 Limitation of Damages. MA-SHARE disclaims all liability whatsoever arising out of any infringement claim or threatened claim. No party shall be liable to the other for any

special, incidental, exemplary or consequential damages arising from or as a result of any delay, omission or error in the information transmitted or received pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

10.8 Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing. A notice, request, demand or other communication shall be deemed to have been duly given, made and received (a) when personally delivered, or (b) on the day specified for delivery when deposited with a courier service such as Federal Express for delivery to the intended addressee, or (c) three (3) business days following the day when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

If to MA-SHARE:

MA-SHARE, LLC
460 Totten Pond Road, Suite 385
Waltham, Massachusetts 02451
Attn: John Halamka, MD

If to **XXXX**:

Attn: _____

Nothing in this section shall prevent the parties from communicating via electronic mail, telephone, facsimile, or other forms of communication for the routine administration of the Project.

IN WITNESS WHEREOF, the parties or their authorized representatives have caused this Agreement to be properly executed as of the Effective Date.

MA-SHARE, LLC

By its Chief Executive Officer, duly authorized

By: _____

Name: John Halamka, M.D.

Title: Chief Executive Officer



By: _____

Name: _____

Title: _____

SCHEDULE A

MA-SHARE **INFORMATION SECURITY REQUIREMENTS**

In addition to any obligations set forth in the Agreement and the MA-SHARE security policies, XXXX shall observe the following requirements. MA-SHARE may amend or supplement these requirements on written notice to XXXX.

1. Each of XXXX's servers connecting to the MA-SHARE gateway shall comply with MA-SHARE authentication requirements, including certificate policies.
2. XXXX shall implement authentication of each user at the point of access and shall implement password policies based on prevailing industry standards. XXXX may elect to implement stronger authentication (e.g. token) at its discretion.
3. XXXX shall authorize each user based on the permitted use of the MA-SHARE system that applies to each MA-SHARE project. XXXX shall impose appropriate sanctions for members of its workforce that violate security policies or make improper use of the system, including revocation of a user's authorization to access the system as may be appropriate under the circumstances.
4. XXXX shall maintain access logs that capture end user identification information.
5. SSL encryption and authentication must be implemented by XXXX, using certificates approved by MA-SHARE.
6. XXXX shall implement message-level security using WS-Security or other security technology acceptable to MA-SHARE.
7. XXXX shall implement Role Based Access Controls based on roles approved by MA-SHARE.
8. XXXX shall implement firewalls and intrusion detection per industry standards.
9. XXXX shall implement other safeguards to protect servers based on SANS recommendations.
10. XXXX shall perform periodic automated and random manual review and verification of audit logs for both operational monitoring and system security.