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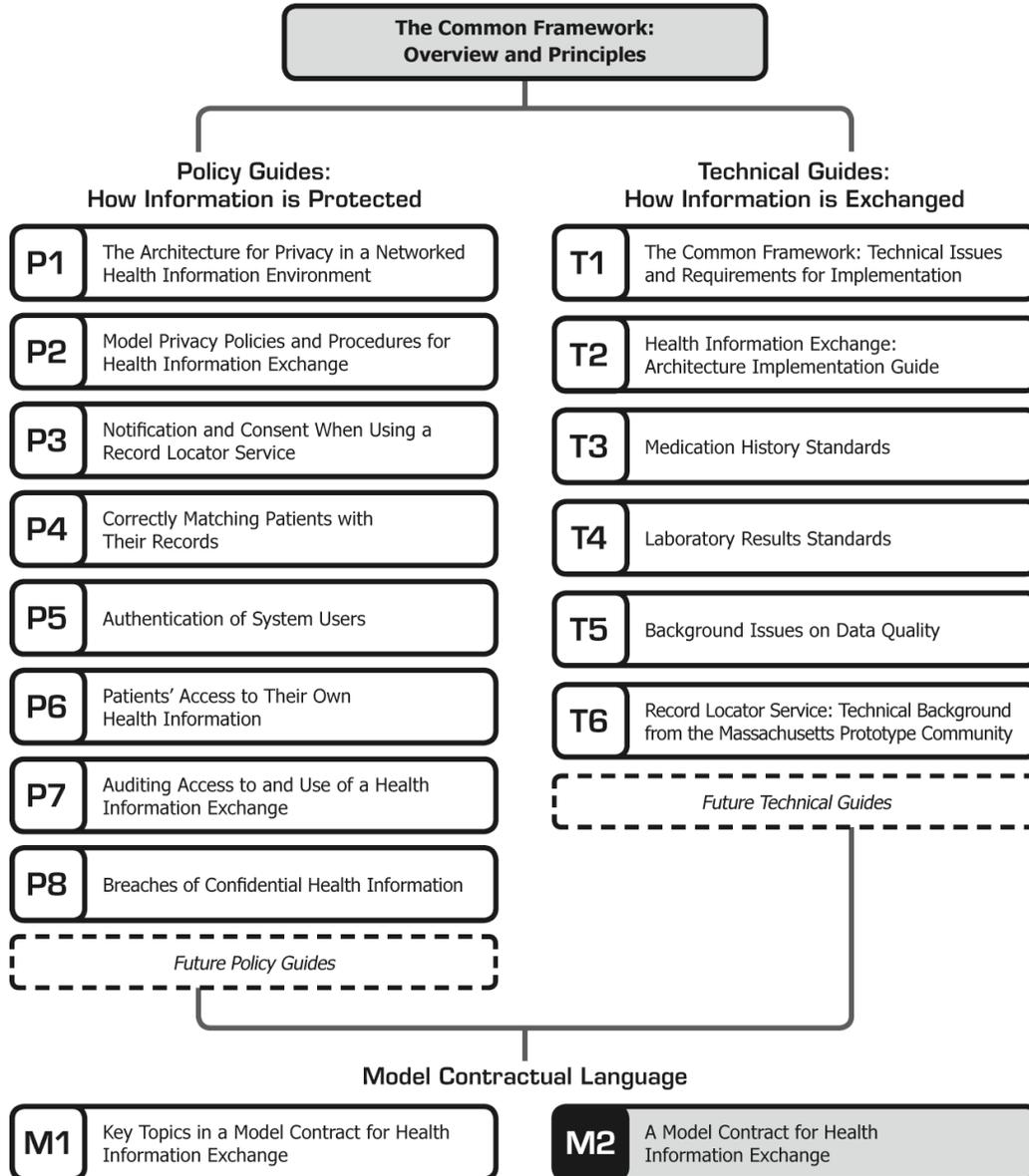
A Model Contract for Health Information Exchange

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Overview and Principles

Policy Guides:
How Information is Protected

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P3	Notification and Consent When Using a Record Locator Service
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A Model Contract for Health Information Exchange*

Introduction. This document ("Model") is a model for the organization and content of the Terms and Conditions of a sub-network organization ("SNO").

Background. A SNO is to operate as a health information data exchange organization (both regional and affinity-based) that operates as a part of the National Health Information Network ("NHIN"), a nationwide environment for the electronic exchange of health information made up of a "network of networks."

Use of Model. The Model is based on a number of assumptions, which are described in the following discussion. The Model is not the "answer" for all SNOs. Instead, it is intended to assist in the organization of a SNO by providing a basis upon which to begin drafting that SNO's Terms and Conditions. All language provided in the Model is intended for informational and educational purposes only. It is not intended, nor should it be used, as a substitute for legal advice. In preparing its own Terms and Conditions, or other legal documents used in connection with its participation in the NHIN, an organization should consult with legal counsel. Each SNO will have to draft its Terms and Conditions based upon its own organization, operations, system and services, regulatory environment, and so on. Some of the Model's terms will be inapplicable to some SNOs. The Model shows where some of the variations might be expected to occur.

Overview of Structure

Common Framework Policies and Procedures. The Model assumes that the NHIN will be implemented in accordance with a compilation of documents to be known as the "Common Framework Policies and Procedures." The Common Framework Policies and Procedures will describe how the NHIN works and will include certain terms that should apply to all SNOs. The Model makes a number of assumptions about the future structure and content of the Common Framework Policies and Procedures, which are identified throughout the document. The Model should be revisited and revised as necessary to work with the Common Framework Policies and Procedures as they develop.

SNO Terms and Conditions. The Model assumes that each SNO will adopt its own "Terms and Conditions" which will be comprised of terms that apply to that SNO only, and will also incorporate the provisions of the Common Framework Policies and Procedures that apply to all SNOs.

Registration and Registration Agreements. The Model assumes that Participants will receive access to the SNO's Services and/or access to the SNO's System by registering with a SNO and entering into a "Registration Agreement." The Registration Agreement will incorporate the SNO Terms and Conditions by reference and will require the Participant to comply with those parts of the Terms and Conditions that apply to the Participant, based on how the Participant uses the SNO's Services and/or System.

SNO Organization and Operations. The Model assumes that the SNO is a nonprofit or for-profit legal entity that is organized and operated for a single purpose, *i.e.*, to operate as a SNO. The SNO is assumed to operate with a record locator service-based, peer-to-peer network, and to provide, or provide access

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* **Connecting for Health** thanks Gerry Hinkley and Allen Briskin of Davis Wright Tremaine LLP for drafting this document.

to, the software Participants require to use the SNO's Services. SNOs may provide a different system or services, such as by acting as an application service provider ("ASP"), and the Model identifies some of the variations that are likely if the SNO is organized differently from what the Model assumes.

Defined Terms. The Model assumes that a variety of different types of entities will participate in the SNO, and that these Participants will have a variety of roles. Section 2 (Definitions) of the Model provides a framework for naming these different Participants and their respective roles.

For each section of the Model, this document provides a brief description of the contents of the section and the critical legal and policy issues raised by each. For some sections, alternative provisions are offered.

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Model Terms and Conditions	Notes
1. Introduction. *A description of the sub-network organization or ("SNO") and how it is organized and operated, in order to provide information that may be helpful for putting the remainder of the Terms and Conditions into context. The SNO may choose to omit some or all of this section if it is found to be unnecessary.*	
1.1 Nature of Organization. *The legal structure within which the SNO is organized, and the SNO's essential relationships to sponsors, founders, and others.* [Name of SNO] ("[SNO Name]") is *[insert type of organization and state in which organized, e.g., a California public benefit corporation]*, organized by [insert description of founders, sponsors, etc.]. [SNO Name] is a participant in the National Health Information Network ("NHIN").	The Model provides that the SNO may make changes to its Terms and Conditions at any time (Section 3.2 (Development and Dissemination; Amendments)). Changes that would affect a Participant's rights and obligations would require the Participant's consent or acquiescence, and Participants are not required to be bound by such changes if they object to them (Section 4.5 (Changes to Terms and Conditions)). The SNO would be free to change other parts of the SNO Terms and Conditions at will. Therefore, the SNO could change these sections at any time if organizational changes were desired.
1.2 Purposes. *The purposes for which the SNO is organized.* [SNO Name] is organized to facilitate health information sharing and aggregation for treatment, payment, operations, public health and research-related purposes through the NHIN and in a manner that complies with all applicable laws and regulations, including without limitation those protecting the privacy and security of health information.	This section would be consistent with the SNO's mission statement, if applicable.
1.3 Description of Services. *The facilities and services of the SNO that are subject to the SNO Terms and Conditions, and that are available to Participants.* [SNO Name] owns and operates an Internet-based authenticated peer-to-peer computer system and search engine for patient health, demographic, and related information that assists its users in locating, and facilitates the sharing and aggregation of, patient data held by multiple health care organizations with disparate health information computer applications ("System"). The System makes the following services available to Participants: *[detailed description of Services and Service levels, which—if lengthy—may be described in an exhibit]*.	The Model assumes that the SNO's System will facilitate the sharing and aggregation of health information maintained separately by various health care organizations, and not maintained by the SNO itself, *i.e.*, the SNO will not provide a centralized repository for health information. The SNO will revise this section as necessary to reflect the system and services actually provided by the SNO. It should describe the SNO's System and Services in detail sufficient for the purposes of Participants' multilateral participation agreements. The Model provides that a Participant will be permitted to share and aggregate health information only for specific "permitted uses" and not for "prohibited uses" (see Section 6.2 (Permitted Uses) and Section 6.3 (Prohibited Uses)).

Model Terms and Conditions	Notes
1.4 Change or Termination of Services. *The SNO's right to change its services or to cease providing services.* **Alternative One: SNO may change or terminate in sole discretion.** [SNO Name] may cease to participate in the NHIN, or may change the System and/or the Services, or may cease providing the Services, at any time in its sole discretion upon notice to Participants. **OR** **Alternative Two: SNO may change or terminate upon minimum period of prior notice.** [SNO Name] may cease to participate in the NHIN, or may change the System and/or the Services, or may cease providing the Services, at any time in its sole discretion upon not less than ninety (90) days prior notice to Participants. **OR** **Alternative Three: SNO may change or terminate upon approval of Management Committee, i.e., body through which Participants and others influence SNO management and governance (see Section 11.6 (Management Committee)).** [SNO Name] may cease to participate in the NHIN, or may change the System and/or the Services, or may cease providing the Services, at any time upon the approval of the Management Committee and upon not less than ninety (90) days prior notice to Participants.	Some SNOs may find that certain Participants (*e.g.,* major hospital systems that the SNO determines are essential to the SNO), or their communities generally, will require that the SNO agree to provide its services for at least a specified term and/or continue to participate in the NHIN. This provision preserves the SNO's rights to change or terminate its services, except as it agrees otherwise in written Registration Agreements with such Participants, as contemplated by Section 4.2 (<u>Registration by Agreement</u>).

Model Terms and Conditions	Notes
2. Definitions. *The definitions of certain important terms used in the Terms and Conditions. Some of these definitions may not correspond to their use in certain other contexts, and are likely to vary if the SNO's organization, operations, system, services, and/or relationships with others are different than those assumed by the Model.*	
"Authorized User" means an individual Participant or an individual designated to use the Services on behalf of the Participant, including without limitation, an employee of the Participant and/or a credentialed member of the Participant's medical staff.	The term "Authorized User" is used to identify the individual users of the SNO's Services. Authorized Users would receive their rights to use the SNO's Services either by registering as Participants themselves or through another organization that registers as a Participant and designates individuals who will be authorized to use the SNO's Services on the Participant's behalf. For example, an Authorized User may be an individual physician who registers as a Participant. In addition, an Authorized User may be a member of that physician's office staff designated by the physician, or any one of a number of a hospital's employees and/or medical staff members authorized by the hospital to act as Authorized Users under the hospital's registration as a Participant.
"Data Provider" means a Participant that is registered to provide information to [SNO Name] for use through the Services.	The Model distinguishes between those Participants who provide data to the Network ("Data Providers") and those who use that data ("Data Recipients"). A Participant may be a Data Provider, a Data Recipient, or both. Participants are identified as Data Providers and/or Data Recipients during the registration process (Section 4.1 (Registration Required)). Because the SNO is assumed to operate as a record-locator service-based, peer-to-peer network, and not as a maintainer of health information, the Model does not contemplate that individuals will register as Data Providers who would add their own health information to the Network. However, an entity providing such a service to individuals could register as a Data Provider under the Model.
"Data Recipient" means a Participant that uses the Services to obtain health information.	The Model distinguishes between those Participants who provide data to the Network ("Data Providers") and those who use that data ("Data Recipients"). A Participant may be a Data Provider, a Data Recipient, or both. Participants are identified as Data Providers and/or Data Recipients during the registration process (Section 4.1 (Registration Required)).
"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 CFR Parts 160 and 164.	
"Participant" means a party that registered with [SNO Name] to act as a Data Provider and/or as a Data Recipient.	The term "Participant" is used to refer to both Data Providers and Data Recipients.

Model Terms and Conditions	Notes
"Participant Type" means the category of Participants to which a particular Participant is assigned based upon that Participant's role in the health care system, as more specifically described in Section 4.3.2 (Participant Type).	
"Patient Data" means information provided by a Data Provider pursuant to Section 7.2 (Provision of Data).	
"Registration Agreement" means a legally binding agreement between [SNO Name] and a Participant pursuant to which [SNO Name] registers the Participant in accordance with, and the Participant agrees to comply with, the Terms and Conditions.	If the SNO does not wish to obtain Registration Agreements from Participants, this section should be omitted.
"Services" means the information-sharing and aggregation services and/or software described in Section 1.3 (Description of Services) for which the Participant registers as described in Section 4.1 (Registration Required).	In some situations, particularly where definitions of terms are long and complex, or are better understood in context, the Definitions section may simply provide cross-references to core provisions of the SNO Terms and Conditions.
"System" means [SNO Name]'s Internet-based authenticated peer-to-peer computer system and search engine for patient health, demographic, and related information that assists its users in locating, and facilitates the sharing and aggregation of, patient data held by multiple health care organizations with disparate health information computer applications, and which allows Authorized Users to authenticate and communicate securely over an untrusted network to provide access to and to maintain the integrity of Patient Data.	
"Terms and Conditions" means the terms and conditions set forth in this document, as amended, repealed, and/or replaced from time to time as described herein.	

Model Terms and Conditions	Notes
3. Terms and Conditions. *The role of the SNO Terms and Conditions, and how they are developed and administered. These terms are intended to be helpful in putting the other provisions of the SNO Terms and Conditions into context.*	
3.1 Generally. The Terms and Conditions apply to the operation of the System, the provision of the Services, and the relationships among [SNO Name] and Participants with respect thereto.	
3.2 Development and Dissemination; Amendments. *How the SNO adopts the SNO Terms and Conditions, makes changes to the Terms and Conditions, and informs Participants of those changes.* [SNO Name] is solely responsible for the development of the Terms and Conditions, and may amend, or repeal and replace, the Terms and Conditions at any time as [SNO Name] determines is appropriate. [SNO Name] generally shall notify all Participants of any changes to the Terms and Conditions at least thirty (30) days prior to the implementation of the change. However, if the change is required in order for [SNO Name] and/or Participants to comply with applicable laws or regulations, [SNO Name] may implement the change within a shorter period of time as [SNO Name] determines is appropriate under the circumstances.	Because the SNO Terms and Conditions are to be incorporated into each Participant's Registration Agreement, the SNO may find it necessary to limit its ability to change certain provisions of the SNO Terms and Conditions. These limits may be described in this part of the SNO Terms and Conditions. The Model assumes that the SNO may make changes at will, but that Participants must either consent or acquiesce to changes that affect their rights or obligations (see Section 4.2 (Registration by Agreement) and Section 4.5 (Changes to Terms and Conditions)). The SNO may find that Participants or other members of the SNO's community wish to participate in the development of the Terms and Conditions, as well as participate in the decision to make changes. For this reason, the Model's discussion of the Management Committee allows for the possibility that Participants and/or others will be involved in deciding upon changes to the Terms and Conditions (see Section 11.6 (Management Committee)).
3.3 Relationship to Common Framework Policies and Procedures. *The relationship of the SNO Terms and Conditions to the Common Framework Policies and Procedures.* [SNO Name] has agreed to participate in the NHIN and to comply with the Common Framework Policies and Procedures (the "Common Framework Policies and Procedures"). The Terms and Conditions are intended to, and shall be construed to, comply with the Common Framework Policies and Procedures. The Terms and Conditions incorporate the Common Framework Policies and Procedures, as described herein. Any change to the Common Framework Policies and Procedures that [SNO Name] determines applies to [SNO Name] shall also be incorporated into the Terms and Conditions as of the time [SNO Name] determines is appropriate.	The Model makes a number of assumptions about the future structure and content of the Common Framework Policies and Procedures. The Model should be revisited and revised as necessary to work with the Common Framework Policies and Procedures as they develop. The Model incorporates by reference into the SNO Terms and Conditions the relevant provisions of the Common Framework Policies and Procedures. Alternatively, the SNO may wish to have the SNO Terms and Conditions repeat the applicable terms of the Common Framework Policies and Procedures.

Model Terms and Conditions	Notes
4. Registration Agreements. *Who may be a Participant, and how the SNO will register each Participant. The Model uses the concept of "registering" Participants as the device by which the SNO will monitor and control who uses the SNO's System and Services, and assumes that the SNO will require Participants to enter into "Registration Agreements" in order to assure that all parties with access to the SNO's System and Services will be covered by an agreement to comply with the SNO Terms and Conditions.*	
4.1 Registration Required. *Participants are to be registered with the SNO.* Only persons who are registered with [SNO Name] as Participants shall be permitted to access the System and use the Services. A Participant may be registered as a Data Provider or as a Data Recipient or as both, as described in this Section 4 (Registration Agreements). A Participant may be registered to use some or all of the Services, as specified in that Participant's Registration Agreement.	The Model uses the legal term "person" to describe both individuals and legal entities (*e.g.,* corporations, limited liability companies, partnerships, etc.). The Model provides that each Participant's registration will record whether the Participant is a Data Provider, a Data Recipient or both and, if the Participant is a Data Recipient, whether the Participant will be permitted to use some or all of the SNO's Services.
4.2 Registration by Agreement. *How Participants may enter into a written Registration Agreement with the SNO.* A person may register with [SNO Name] as a Participant by entering into a written Registration Agreement with [SNO Name]. Such a Registration Agreement shall describe: a) the Participant's Participant Type, as described in Section 4.3.2 (Participant Type); b) whether the Participant is a Data Provider or a Data Recipient, or both; c) if the Participant is registered as a Data Recipient, which of the Services the Participant may use; and d) (d) such other terms and conditions as [SNO Name] and the Participant shall agree.	The Model assumes that the SNO may wish to enter into written agreements with certain classes of Participants, such as those with whom the SNO wishes either to make special agreements not to be made with all Participants (*e.g.,* a major provider) or those from whom the SNO wishes to obtain special terms (*e.g.,* a major Data Provider). Written Registration Agreements may be comprehensive documents or, to simplify drafting, may incorporate the SNO Terms and Conditions by reference or include the SNO Terms and Conditions as an exhibit.
4.3 Online Registration. *How Participants may register online.*	The Model includes an online registration mechanism to provide a simple way for the SNO to obtain Registration Agreements from those Participants with whom the SNO will not negotiate individual written agreements. If the SNO does not wish to implement or require online registration, this section may be omitted.

Model Terms and Conditions	Notes
4.3.1 Registration Form. *How the SNO administers online registration.* Each person wishing to register online to access the System and use the Services as a Participant shall complete the Registration Form provided by [SNO Name] at [insert web address]. [SNO Name] may change its Registration Form at any time. A person's Registration Form shall be that person's application to become a Participant.	A sample online Registration Form is attached as Exhibit 1 (Registration Application and Agreement). Online registration offers a mechanism for collecting Participant information and effecting Registration Agreements efficiently, but it is recognized that the SNO should review and approve and/or authenticate each registration (see Section 4.3.3 (Approval and Disapproval of Registration Forms) and Section 4.3.4 (Acceptance of Registration)) and assure that Participants are appropriately trained in not only the use of the System and the Services but also in the Participant's legal obligation to comply with the terms of its Registration Agreement (see Section 10.5 (Training)).
4.3.2 Participant Type. *How the SNO will categorize Participants by their respective roles in the health care system.* Each registrant shall register to participate in one of the following Participant Types: a) Physician or medical group; b) Laboratory; c) Hospital; d) Public health agency; e) Pharmacy; f) Pharmacy benefit manager; g) Health plan, insurer or other payor; h) Researcher; and i) *[additional or different provider types selected by the SNO, subject to any limits imposed by the Common Framework Policies and Procedures].*	The Model assumes that the SNO will wish to have each Participant assigned to a particular category or "Participant Type," based on the role that Participant plays in the health care system. The list of Participant Types provided is illustrative only, and each SNO will need to modify the list of categories to conform to the SNO's System.
4.3.3 Approval and Disapproval of Registration Forms. *The SNO will be entitled to review all registration forms and decide not to accept any given party's registration.* [SNO Name] shall review each Registration Form and shall approve or disapprove each in accordance with the Terms and Conditions and as [SNO Name] determines in its sole discretion is appropriate. [SNO Name] shall not be required to approve any Registration Form or other application to be a Participant.	The Model is drafted to provide the SNO maximum flexibility in controlling who may become a Participant. The SNO may wish to reserve the right not to register a particular Participant if, for example, the SNO determines that the person is not eligible to participate or is not expected to comply with the SNO Terms and Conditions. In addition, the SNO may wish to adopt specific credentialing criteria for Participants, which may, if desired by the SNO, be set forth in the SNO Terms and Conditions. The SNO may wish to consider whether it wishes to disclose to an unsuccessful applicant the bases upon which its application for registration was not approved.

Model Terms and Conditions	Notes
4.3.4 Acceptance of Registration. *How registration agreements will be created for online registrants.* Upon [SNO Name]'s acceptance of a Registration Form, that Registration Form will be the Participant's Registration Agreement and shall be legally binding upon [SNO Name] and the Participant as of the effective date [SNO Name] shall provide to the Participant.	
4.4 Effect of Terms and Conditions Upon Registration Agreements. *How Participants will agree to comply with the Terms and Conditions.* Each Registration Agreement shall incorporate by reference, and require that the Participant agree to comply with, the Terms and Conditions. [SNO Name] may make exceptions to this Section 4.4 (<u>Effect of Terms and Conditions Upon Registration Agreements</u>), in [SNO Name]'s sole discretion, pursuant to any written Registration Agreement entered into as described in Section 4.2 (<u>Registration by Agreement</u>).	The Model assumes that the SNO Terms and Conditions will contain virtually all of the material terms and conditions that apply to a Participant's use of the SNO's System and Services, and therefore will contain most of the terms of each Participant's multilateral participation agreement. Under this approach, both written and online Registration Agreements will incorporate the SNO Terms and Conditions by reference and contain only those additional terms that apply to the Participant alone, *e.g.,* the Participant's name, whether the Participant is a Data Provider or Data Recipient or both, the Participant's Participant Type, etc. The Model gives the SNO broad discretion to create exceptions to the Terms and Conditions, as the SNO determines necessary for particular Participants that enter into written Registration Agreements. The SNO should exercise care in making such exceptions, lest it undermine the effectiveness of the Terms and Conditions with respect to other Participants.
4.5 Changes to Terms and Conditions. *How Participants will be aware of changes to the SNO Terms and Conditions, and will be legally obligated to comply therewith.* [SNO Name] may amend, repeal and replace the Terms and Conditions at any time, and shall give Participants notice of those changes, as described in Section 3.2 (<u>Development and Dissemination; Amendments</u>). Subject to Section 4.6 (<u>Termination Based on Objection to Change</u>), any such change to the Terms and Conditions shall automatically be incorporated by reference into each Registration Agreement, and be legally binding upon [SNO Name] and the Participant, as of the effective date of the change.	The SNO may make changes to the SNO Terms and Conditions at any time. The Model suggests a mechanism by which those changes are automatically incorporated into Registration Agreements, unless a Participant objects to the change.

Model Terms and Conditions	Notes
4.6 Termination Based on Objection to Change. *How a Participant may avoid being bound to a Registration Agreement if the Participant objects to a change to the SNO Terms and Conditions.* If a change to the Terms and Conditions described in Section 4.5 (Changes to Terms and Conditions) affects a material right or obligation of a Participant under that Participant's Registration Agreement, and the Participant objects to that change, that Participant may terminate its Registration Agreement by giving [SNO Name] written notice thereof not more than thirty (30) days following [SNO Name]'s notice of the change. Such termination of the Participant's Registration Agreement shall be effective as of the effective date of the change to which the Participant objects; provided, however, that any change to the Terms and Conditions that [SNO Name] determines is required to comply with any federal, state, or local law or regulation shall take effect as of the effective date [SNO Name] determines is required, and the termination of any Participant's Registration Agreement based on the Participant's objection to the change shall be effective as of [SNO Name]'s receipt of the Participant's notice of termination.	The Model allows the SNO to change the SNO Terms and Conditions at will and allows Participants to opt out if they object to the change. Alternatively, the SNO may decide to limit its ability to make changes to the SNO Terms and Conditions and its Registration Agreements.

Model Terms and Conditions	Notes
4.7 Participant's Other Rights to Terminate Registration Agreement. *How a Participant may cease to be a Participant, generally.* **Alternative One: Participant may terminate at any time without cause.** A Participant may terminate its Registration Agreement at any time without cause by giving notice of that termination to [SNO Name]. **OR** **Alternative Two: Participant may terminate without cause with prior written notice.** A Participant may terminate its Registration Agreement at any time without cause by giving not less than _____ days prior notice to [SNO Name]. **OR** **Alternative Three: Participant may terminate as of the next anniversary of having entered into the Registration Agreement.** A Participant may terminate its Registration Agreement at any time without cause effective as of the next anniversary of the effective date of the Participant's Registration Agreement, by giving not less than _____ days prior notice to [SNO Name]. **OR** **Alternative Four: Participant may terminate for cause (may be combined with Alternatives Two or Three and/or Five).** A Participant may terminate its Registration Agreement upon [SNO Name]'s failure to perform a material responsibility arising out of the Participant's Registration Agreement, and that failure continues uncured for a period of sixty (60) days after the Participant has given [SNO Name] notice of that failure and requested that [SNO Name] cure that failure. **OR** **Alternative Five: Participant may terminate for specified cause (may be combined with Alternatives Two or Three and/or Four).** A Participant may terminate its Registration Agreement upon a Serious Breach of Confidentiality or Security, as described in Section 9.3 (Reporting of Serious Breaches), when such Serious Breach of Confidentiality or Security continues uncured for a period of sixty (60) days after the Participant has given [SNO Name] notice of that failure and requested that [SNO Name] cure that breach.	The SNO may wish to allow Participants to terminate their participation freely at any time, or to require that termination be preceded by a substantial period of advance notice, or to require that Participants maintain their participation for a year (or longer) at a time. If the SNO wishes to limit further certain Participants' (*e.g.,* certain data providers) rights to terminate their participation, the SNO may provide for such special terms in written Registration Agreements described in Section 4.2 (Registration by Agreement). If the SNO places limits upon the Participant's right to terminate, the SNO may wish to provide for the Participant's right to terminate based on the SNO's failure to perform. The Model provides a simple "termination for cause" provision. The SNO may wish to qualify a Participant's right to terminate, *e.g.,* by providing in addition that if the SNO's failure to perform is one that the SNO cannot reasonably cure within the specified period, then the termination will not take effect so long as the SNO commences and diligently pursues work to cure the failure.

Model Terms and Conditions	Notes
4.8 Participant's Right to Terminate for Breach of Business Associate Agreement. *A Participant's right to terminate its Registration Agreement based on the SNO's failure to perform its obligations.* Notwithstanding any other provision of this Section 4 (Registration Agreements) to the contrary, if Section 9.4 (Business Associate Agreement) applies to a Participant's Registration Agreement, the Participant may terminate its Registration Agreement as set forth in Section 9.4.10 (Special Termination).	

Model Terms and Conditions	Notes
4.9 [SNO Name]'s Right to Terminate Registration Agreements. *How the SNO may terminate a Participant's Registration Agreement.* **Alternative One: SNO may terminate at any time without cause.** Except as provided otherwise in a written Registration Agreement entered into pursuant to Section 4.2 (Registration by Agreement), [SNO Name] may terminate any Participant's Registration Agreement without cause by giving notice of that termination to the Participant. **OR** **Alternative Two: SNO may terminate without cause with prior written notice.** Except as provided otherwise in a written Registration Agreement entered into pursuant to Section 4.2 (Registration by Agreement), [SNO Name] may terminate any Participant's Registration Agreement at any time without cause by giving not less than _____ days prior notice to the Participant. **OR** **Alternative Three: SNO may terminate as of the next anniversary of having entered into the Registration Agreement.** Except as provided otherwise in a written Registration Agreement entered into pursuant to Section 4.2 (Registration by Agreement), [SNO Name] may terminate any Participant's Registration Agreement at any time without cause effective as of the next anniversary of the effective date of the Participant's Registration Agreement, by giving not less than _____ days prior notice to the Participant. **OR** **Alternative Four: SNO may terminate for cause (may be combined with Alternatives Two or Three).** [SNO Name] may terminate any Participant's Registration Agreement upon the Participant's failure to perform a material responsibility arising out of the Participant's Registration Agreement, and that failure continues uncured for a period of sixty (60) days after [SNO Name] has given the Participant notice of that failure and requested that the Participant cure that failure.	It is anticipated that certain Participants, including without limitation those who make substantial investments in order to act as Data Providers, will object to the SNO having the freedom to terminate Registration Agreements without cause. Three alternative approaches are provided here. In addition, some Participants entering into written Registration Agreements as described in Section 4.2 (Registration by Agreement), may wish to have their agreements further restrict the SNO's ability to terminate without cause.

Model Terms and Conditions	Notes
4.10 Effect of Termination. *The consequences of terminating a Registration Agreement.* Upon any termination of a Participant's Registration Agreement, that party shall cease to be a Participant and thereupon and thereafter neither that party nor its Authorized Users shall have any rights to use the System or the Services. Certain provisions of the Terms and Conditions shall continue to apply to the former Participant and its Authorized Users following that termination, as described in Section 4.11 (<u>Survival Provisions</u>).	
4.11 Survival of Provisions. *The provisions of the Registration Agreement that shall continue to bind the Participant following termination.* The following provisions of the Terms and Conditions shall survive any termination of a Participant's Registration Agreement: Section 5.5 (<u>Responsibility for Conduct of Participant and Authorized Users</u>), Section 9 (Protected Health Information), Section 13 (<u>Proprietary Information</u>), Section 14.8 (<u>Limitation on Liability</u>) and Section 15.2.1 (<u>Indemnification</u>).	

Model Terms and Conditions	Notes
5. Authorized Users. *Terms that govern use of the services by the Participant's Authorized Users. The Model assumes that user agreements will not be required of every individual who uses the SNO's System or Services. Instead, Participants will be responsible for designating the individuals within their organizations who would be authorized to use the SNO's System and Services ("Authorized Users").*	
5.1 Identification of Authorized Users. *How the Participant will designate individuals who will access the SNO's System and/or use the SNO's Services.* Each Participant shall provide [SNO Name] with a list in a medium and format approved by [SNO Name] identifying all the Participant's Authorized Users, together with the information described in Schedule 5 (<u>Required Information for Authorized Users</u>), to enable [SNO Name] to establish a unique identifier for each Authorized User. The Participant shall update such list whenever an Authorized User is added or removed by reason of termination of employment or otherwise.	The Model assumes that the Participant will be permitted to select its Authorized Users without review or approval by the SNO. The SNO may, however, wish to adopt specific credentialing criteria for Authorized Users that would be administered by the SNO, and which may, if desired, be set forth in the SNO Terms and Conditions. The Model assumes that Participants will be required to inform the SNO of changes to their lists of Authorized Users on an ongoing basis. This provision is likely to vary from one SNO to another, depending upon how each SNO decides to allocate responsibilities between the SNO and Participants regarding the administration of Authorized Users.
5.2 Certification of Authorized Users. *How the Participant will provide assurances that its Authorized Users have been trained appropriately.* At the time that Participant identifies an Authorized User to [SNO Name] pursuant to Section 5.1 (Identification of Authorized Users), Participant shall certify to [SNO Name] that the Authorized User: a) Has completed a training program conducted by Participant in accordance with Section 10.5 (<u>Training</u>); b) Will be permitted by Participant to use the Services and the System only as reasonably necessary for the performance of Participant's activities as the Participant Type under which Participant is registered with [SNO Name] pursuant to Section 4.3.2 (<u>Participant Type</u>); c) Has agreed not to disclose to any other person any passwords [and/or other security measures] issued to the Authorized User pursuant to Section 5.3 (<u>Passwords and Other Security Mechanisms</u>); d) Has acknowledged [in writing] that his or her failure to comply with the Terms and Conditions may result in the withdrawal of privileges to use the Services and the System and may constitute cause for disciplinary action by Participant; and e) *[Others, if desired]*.	

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5.3 Passwords and Other Security Mechanisms. *How security mechanisms will be administered, including without limitation how log-on passwords will be provided to Authorized Users.* Based on the information provided by the Participant pursuant to Section 5.1 (Identification of Authorized Users), [SNO Name] shall issue a user name and password [and/or other security measure] to each Authorized User that shall permit the Authorized User to access the System and use the Services. [SNO Name] shall provide each such user name and password [and/or other security measure] to the Participant and the Participant shall be responsible to communicate that information to the appropriate Authorized User. When the Participant removes an individual from its list of Authorized Users, and informs [SNO Name] of the change, pursuant to Section 5.1 (Identification of Authorized Users), [SNO Name] shall cancel the user name and password [and/or other security measure] of such individual with respect to the Participant, and cancel and de-activate the user name and password [and/or other security measure] of such individual if that individual is as a result of the change no longer an Authorized User of any Participant.	The Model assumes that the SNO will issue and manage passwords for Authorized Users. This provision is likely to vary from one SNO to another, depending upon how each SNO decides to allocate responsibilities between the SNO and Participants regarding the administration of Authorized Users. It is also likely that the Common Framework Policies and Procedures will impose minimum requirements for passwords and/or other security measures, with which the SNO will be required to comply.
5.4 No Use by Other than Authorized Users. *A requirement that the SNO's System and Services be accessed and used only by Authorized Users.* The Participant shall restrict access to the System and, if applicable, use of the Services, only to the Authorized Users the Participant has identified to [SNO Name] in accordance with Section 5.1 (Identification of Authorized Users).	
5.5 Responsibility for Conduct of Participant and Authorized Users. *The Participant's responsibility for the conduct of its Authorized Users.* The Participant shall be solely responsible for all acts and omissions of the Participant and/or the Participant's Authorized Users, and all other individuals who access the System and/or use the Services either through the Participant or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from the Participant or any of the Participant's Authorized Users, with respect to the System, the Services and/or any confidential and/or other information accessed in connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of the Participant.	It is likely that the Common Framework Policies and Procedures will include terms that address the liability of SNOs and their Participants for losses their acts or omissions cause to other SNOs and their Participants and/or whether insurance to cover that liability will be required and/or provided (*e.g.,* through an excess insurance pool in which SNOs may or will be required to participate).

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5.6 Termination of Authorized Users. *How the SNO will assure that Participants perform their responsibilities to control the acts of Authorized Users.* Participant shall require that all of its Authorized Users use the System and the Services only in accordance with the Terms and Conditions, including without limitation those governing the confidentiality, privacy and security of protected health information. Participant shall discipline appropriately any of its Authorized Users who fail to act in accordance with the Terms and Conditions in accordance with Participant's disciplinary policies and procedures.	

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6. Data Recipient's Right to Use Services. *Provisions that apply specifically to "Data Recipients" (i.e., Participants registered to use the SNO's Services).* *Provisions that apply specifically to "Data Providers" (i.e., Participants registered to provide data to the SNO) appear in Section 7 (Data Provider's Obligations).* If the Participant is registered with [SNO Name] as a Data Recipient, the terms of this Section 6 (Data Recipient's Right to Use Services) shall apply to that Participant.	
6.1 Grant of Rights. *The nature of the Data Recipient's right to use the SNO's System and Services.*	
6.1.1 Grant by [SNO Name]. *The SNO's grant of a license to use the SNO Services* [SNO Name] grants to each Data Recipient, and each Data Recipient shall be deemed to have accepted, a non-exclusive, personal, nontransferable, limited right to have access to and to use the System and the Services for which that Data Recipient has registered, subject to the Data Recipient's full compliance with the Terms and Conditions and the Data Recipient's Registration Agreement. [SNO Name] retains all other rights to the System and all the components thereof. No Data Recipient shall obtain any rights to the System except for the limited rights to use the System expressly granted by the Terms and Conditions.	The Model uses the legal term "license" to describe the specific rights to be granted to each Data Recipient.
6.1.2 Applicable Common Framework Policies and Procedures. *The terms of the Common Framework Policies and Procedures that apply to a Data Recipient's right to use the SNO Services and ownership of the network and information obtained through the network.* All issues concerning the ownership and rights in the NHIN and data and information obtained therefrom shall be as set forth in the Common Framework Policies and Procedures, which is incorporated herein by reference.	As is described in connection with Section 3.3 (Relationship to Common Framework Policies and Procedures), the Model assumes that the SNO Terms and Conditions will incorporate the Common Framework Policies and Procedures by reference.

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6.2 Permitted Uses. *The permitted uses of the SNO System and Services.* **Alternative One: The SNO Terms and Conditions permit Participants to use the System and the Services for any use permitted by the Common Framework Policies and Procedures.** A Data Recipient may use the System and the Services for which the Participant has registered only for the permitted purposes described in the Common Framework Policies and Procedures, which is incorporated herein by reference. **OR** **Alternative Two: The SNO Terms and Conditions would permit a narrower range of use than permitted by the Policies and Procedures, such as limiting use to the location and retrieval of specified data sets.** A Data Recipient may use the System and the Services only to locate and retrieve the following data sets described for each Service as described on Schedule 6.2 (Permitted Uses). **OR** **Alternative Three: The SNO Terms and Conditions would permit specific uses for different types of Data Recipients, based on the Participant Type under which the Data Recipient is registered pursuant to Section 4.3.2 (Participant Type).** A Data Recipient may use the System and the Services only for the permitted uses described on Schedule 6.2 (Permitted Uses) that apply to the Participant Type under which the Data Recipient is registered pursuant to Section 4.3.2 (Participant Type).	The Model assumes that the Common Framework Policies and Procedures will describe generally the scope of permitted uses of the Network and information Data Recipients will be able to access through the Network. The Model provides that Data Recipients may use only those services for which the Data Recipient has registered pursuant to Section 4.1 (Registration Required). The SNO Terms and Conditions may also permit a variety of additional uses, so long as they are not prohibited by the Common Framework Policies and Procedures, *e.g.,* aggregating data for research and chronic disease management studies, public health functions, and measuring provider compliance with standards and protocols such as pay-for-performance standards.
6.3 Prohibited Uses. *The prohibited uses of the SNO System and the SNO Services applicable under the Common Framework Policies and Procedures, and additional prohibitions imposed by the SNO, if any.* A Data Recipient shall not use or permit the use of the System or the Services for any prohibited use described in the Common Framework Policies and Procedures, which is incorporated herein by reference. *[Optional: Without limiting the generality of the foregoing, a Data Recipient shall not use or permit the use of the Services for any use or purpose described below:]*	The Model assumes that the Common Framework Policies and Procedures will describe prohibited uses of the system and information access through the system that apply to the entire network, *e.g.,* prohibitions necessary for compliance with HIPAA. The SNO may add to the list of prohibited uses in order to comply with state and local laws and/or other specific concerns of the SNO. The SNO may add prohibited uses, so long as those prohibitions are not inconsistent with the Common Framework Policies and Procedures.
Examples of additional prohibited uses follow:	

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6.3.1. No Services to Third Parties. The Data Recipient shall use the System and the Services for which the Data Recipient has registered only for the Data Recipient's own account, and shall not use any part of the System or the Services to provide separate services or sublicenses to any third party, including without limitation providing any service bureau services or equivalent services to a third party.	
6.3.2. No Services Prohibited by Local Laws. The Data Recipient shall not use the System or the Services for which the Data Recipient has registered for any purpose or in any manner that is prohibited by the laws of the State of _____. Without limiting the generality of the foregoing, the Data Recipient shall comply with the following: *[list of state or local legal requirements, if desired]*.	
6.3.3. No Use for Comparative Studies. A Data Recipient shall not use the Services to aggregate data to compare the performance of other Participants and/or Authorized Users, without the express written consent of [SNO Name] and each of the Participants and Authorized Users being compared.	

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7. Data Provider's Obligations. *Provisions that apply specifically to "Data Providers" (i.e., Participants registered to provide data). Provisions that apply specifically to "Data Recipients" (i.e., Participants registered to use the SNO's Services) appear at Section 6 (Data Recipient's Right to Use Services)).* If the Participant is registered with [SNO Name] as a Data Provider, the terms of this Section 7 (Data Provider's Obligations) shall apply to that Participant.	
7.1 Grant of Rights. *The nature of the Data Provider's right to use the System.*	
7.1.1 Grant by [SNO Name]. *The SNO's grant of a license to use the SNO System.* [SNO Name] grants to each Data Provider, and each Data Provider shall be deemed to have accepted, a non-exclusive, personal, nontransferable, limited right to have access to and to use the System for the purposes of complying with the obligations described in this Section 7 (Data Provider's Obligations), subject to the Data Provider's full compliance with the Terms and Conditions and the Data Provider's Registration Agreement. [SNO Name] retains all other rights to the System and all the components thereof. No Data Provider shall obtain any rights to the System except for the limited rights to use the System expressly granted by the Terms and Conditions.	The Model uses the legal term "license" to describe the specific rights to be granted to each Data Provider. The Model generally restricts the Data Provider's rights to access the SNO's System to those necessary to provide data in accordance with Section 7.2 (Provision of Data).
7.1.2 Applicable Common Framework Policies and Procedures. *The terms of the Common Framework Policies and Procedures that apply to a Data Provider's right to provide data through the SNO System, and ownership of the network and information obtained through the network.* All issues concerning the ownership and rights in the NHIN shall be as set forth in the Common Framework Policies and Procedures, which is incorporated herein by reference.	As is described in connection with Section 3.3 (Relationship to Common Framework Policies and Procedures), the Model assumes that the SNO Terms and Conditions will incorporate by reference certain specific provisions of the Common Framework Policies and Procedures.
7.2 Provision of Data. *Terms that apply to the Data Provider's delivery of data to the Network, e.g., format(s), standards, etc.*	

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7.2.1. Data Providers with Written Registration Agreements. *How a written Registration Agreement will describe the Data Provider's obligations to provide data.* If the Data Provider has entered into a written Registration Agreement with [SNO Name] pursuant to Section 4.2 (<u>Registration by Agreement</u>), the Data Provider shall provide the data described in that agreement.	Section 7.2.2 (<u>Data Providers Registering Online</u>) is intended to facilitate administration of a variety of different types of Data Providers. For limited numbers of certain Data Providers, the SNO may find it preferable to enter into specific written agreements that will describe their obligations.
7.2.2. Data Providers Registering Online. *The terms regarding the Data Provider's obligations to provide data that apply to all other Data Providers.* **Alternative One: Data Providers are required to provide specific data sets in specific format(s) based on their type of provider.** If the Data Provider has registered with [SNO Name] online pursuant to Section 4.3 (<u>Online Registration</u>), the Data Provider shall participate in and maintain its connection to the System's record locator service-based, peer-to-peer network and provide through the System the information described in Schedule 7.2 (<u>Provision of Data</u>) as required for the Participant Type under which the Data Provider has registered under Section 4.3.2 (<u>Participant Type</u>) ("Patient Data"). **OR** **Alternative Two: At the time of registration, Data Providers register to provide specific data sets in specific format(s).** If the Data Provider has registered with [SNO Name] online pursuant to Section 4.3 (<u>Online Registration</u>), the Data Provider shall participate in and maintain its connection to the System's record locator, service-based peer-to-peer network and provide through the System the information the Data Provider registered to provide pursuant to the registration process ("Patient Data").	Data Providers who did not enter into specific agreements with the SNO would be required to provide the information identified by the SNO as appropriate for providers of their respective type (*e.g.*, laboratories would be required to provide certain types of data and emergency departments would be required to provide different types of data). In the alternative, the SNO could decide that the Data Provider would register to provide certain types of data from a list of choices provided online at the time of registration.
7.3. Measures to Assure Accuracy of Data. *The Data Provider's obligations to provide accurate, complete and timely information.*	The Model assumes that the Common Framework Policies and Procedures will establish minimum standards for Data Providers' obligations to provide accurate, complete, and timely information.

Model Terms and Conditions	Notes
7.3.1. Applicable Common Framework Policies and Procedures. *The Data Provider's obligations to comply with the applicable provisions of the Common Framework Policies and Procedures.* Each Data Provider shall, in accordance with the Common Framework Policies and Procedures, use reasonable and appropriate efforts to assure that all data it provides to the System is accurate, free from serious error, reasonably complete, and provided in a timely manner.	
7.3.2 [SNO Name] Requirements. *The SNO may adopt additional requirements regarding the accuracy of data.* Without limiting Section 7.3.1 (<u>Applicable Common Framework Policies and Procedures</u>), each Data Provider shall comply with the following requirements respecting the accuracy, completeness and timeliness of the data it provides: *[insert specific description]*.	The SNO's own measures may include, for example, requiring Data Providers to adopt benchmark practices for increasing and maintaining data quality and/or requiring Participants to conduct a data quality assessment and improvement project either before or after becoming a Participant.
7.4 License. *The Data Provider's agreement that the data it provides will be available for use through the Network.* Subject to Section 7.5 (<u>Limitations on Use of Patient Data</u>), the Data Provider grants to [SNO Name] a perpetual, fully-paid, worldwide, non-exclusive, royalty-free right and license (i) to license and/or otherwise permit others to access through the System and/or the NHIN and use all Patient Data provided by the Data Provider in accordance with the Common Framework Policies and Procedures and the Terms and Conditions, and (ii) to use such Patient Data to carry out [SNO Name]'s duties under the Common Framework Policies and Procedures and the Terms and Conditions, including without limitation system administration, testing, problem identification and resolution, management of the System, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as [SNO Name] determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations.	The Model uses the legal term "license" to describe the specific rights to be granted with respect to the use of Patient Data provided by the Data Provider. The Data Provider grants the SNO a license permitting the SNO to grant others access to the Provider's Patient Data through either the SNO or the NHIN in accordance with their respective requirements. If the SNO wishes to place restrictions on the use of data provided by Data Providers, it would add an additional section describing those additional restrictions (see Section 7.5 (<u>Limitations on Use of Patient Data</u>)).

Model Terms and Conditions	Notes
7.5 Limitations on Use of Patient Data. *Limitations the SNO may impose upon the uses of information provided by Data Providers.* Notwithstanding Section 7.4 (<u>License</u>), Patient Data provided by a Data Provider shall not be used for any of the following purposes:	
7.5.1. Uses Prohibited by Policies and Procedures. *The provisions of the Common Framework Policies and Procedures that apply to the use of information provided by Data Providers.* Any use that is prohibited by the Common Framework Policies and Procedures.	
7.5.2. Uses Prohibited by Law. *Restrictions imposed by laws that are specific to the SNO, e.g., state and/or local laws.* Any use that is prohibited by the laws of the State of _____. Without limiting the generality of the foregoing, the Data Provider shall comply with the following: *[list of state or local legal requirements, if desired]*.	
Additional prohibitions, if desired, such as: **7.5.3. Comparative Studies.** *The performance of comparisons of the performance of other Participants and/or Authorized Users without the express written consent of [SNO Name] and each of the Participants and Authorized Users being compared.*	See Section 6.3.3 (<u>No Use for Comparative Studies</u>).

Model Terms and Conditions	Notes
8. Software and/or Hardware Provided by [SNO Name]. *The Model assumes that the SNO will provide some of the software and/or hardware Participants would use to access the System. If the SNO does not provide software and/or hardware to Participants, this section would be omitted. The specific language shown in this section is for illustration only. The SNO will need to tailor the language of this section to the limitations imposed by the SNO's software and hardware vendor(s).*	
8.1 Description. *A description of any software and/or hardware that the SNO will provide to Participants.* [SNO Name] shall provide to each Participant the software and/or hardware required to access the System and use the Services the Participant has registered to receive, as more particularly described on Schedules 8.1(a) (Software) and 8.1(b) (Hardware) (the "Associated Software" and "Associated Hardware," respectively).	The Model assumes that the SNO will provide some of the software and hardware that Participants will require to use the System, as described in Section 8 (Software and Hardware Provided by [SNO Name]), and that the Participant will be required to provide the remainder (*e.g.*, a personal computer with an operating system and web browser meeting certain specifications), as described in Section 10.3 (Software and Hardware Provided by Participant). The terms of Section 8 (Software and/or Hardware Provided by [SNO Name]) and Section 10.3 (Software and Hardware Provided by Participant) should be revised as necessary to conform to each other. The Model assumes that Stark and Anti-Kickback law issues that, depending upon the relationship of the SNO to its Participant, may arise from the SNO's provision of software, hardware and services, will have been resolved.
8.2. Grant of License. *A description of the Participant's right to use the Associated Software and Hardware.* [SNO Name] grants to each Participant a non-exclusive, personal, nontransferable, limited license to use the Associated Software and the Associated Hardware for access to or use of the System and, if the Participant is a Data Recipient, for the purpose of obtaining the Services (the "Associated Software").	The Model uses the legal term "license" to describe the specific rights to be granted to each Participant.
8.3 Copying. *Restrictions upon the Participant's right to copy software provided by the SNO.* **Alternative One: Participant may not make copies.** The Participant shall not, without [SNO Name]'s prior written consent, copy any of the Associated Software. **OR** **Alternative Two: Participant may make limited copies.** The Participant may make one (1) copy of the whole or any part of the Associated Software in executable form for back-up or archival purposes; provided, that such copy must reproduce and include the copyright notice of [SNO Name].	

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8.4 Modifications; Derivative Works. *Restrictions upon the Participant's right to modify the System or the Services.* The Participant shall not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create the Associated Software or the System otherwise, or to create any derivative works from the Associated Software or the System. The Participant shall not modify the Associated Software or combine the Associated Software with any other software or services not provided or approved by [SNO Name].	
8.5 Third-Party Software, Hardware, and/or Services. *How the SNO and Participants will address requirements imposed by third-party software, hardware, and/or service vendors.* The Associated Software includes certain third-party software, hardware, and services, which may be subject to separate licenses or subscription or other agreements or may require that a Participant enter into such agreements with third-party vendors. Each Participant shall execute such agreements as may be required for the use of such software, hardware or services, and to comply with the terms of any applicable license or other agreement relating to third-party products included in Associated Software.	

Model Terms and Conditions	Notes
9. Protected Health Information. *Provisions addressing compliance with applicable laws addressing the confidentiality, security, and use of patient health information.*	
9.1 Compliance with Policies and Procedures. *Provisions requiring compliance with the Common Framework Policies and Procedures.* [SNO Name] and each Participant shall comply with the standards for the confidentiality, security, and use of patient health information, including without limitation protected health information described in HIPAA, as provided in the Common Framework Policies and Procedures, which is incorporated herein by reference. Each Participant shall comply with such standards regardless of whether or not that Participant is a "covered entity" under HIPAA.	The Model assumes that the Common Framework Policies and Procedures will establish minimum standards regarding the privacy and security of protected health information, and compliance with related requirements, *e.g.*, the maintenance of information required for accounting of disclosures under HIPAA (45 CFR § 164.528), that will apply to all Participants (including Participants that are not "covered entities" under HIPAA, *e.g.,* law enforcement agencies, business associates of covered entities, etc.). The Common Framework Policies and Procedures are anticipated to comply with HIPAA, and may impose higher standards. The SNO Terms and Conditions would incorporate those provisions of the Common Framework Policies and Procedures by reference.
9.2 Additional Requirements. *Provisions requiring compliance with patient information privacy, security, and use laws imposed at the state and/or local level.* [SNO Name] and each Participant shall comply with the requirements for the privacy, security, and use of patient health information imposed under the laws of the State of _____. Without limiting the generality of the foregoing, [SNO Name] and each Participant shall comply with the following: *[list of state or local legal requirements, if desired].*	This language is provided for illustration only. The SNO would revise this section to correspond to the terminology and requirements of applicable state and/or local laws.
9.3 Reporting of Serious Breaches. *Provisions requiring the SNO and Participant to report to each other concerning serious breaches of confidentiality of patient health information.* Without limiting Section 9.4.7(Reports), if applicable to [SNO Name], [SNO Name] and Participant shall report to the other any serious use or disclosure of Protected Health Information not provided for by the Terms and Conditions of which [SNO Name] or Participant becomes aware, and any security incident concerning electronic Protected Health Information (a "Serious Breach of Confidentiality or Security"). A "Serious Breach of Confidentiality or Security" is one that adversely affects (a) the viability of the NHIN; (b) the trust among Participants or (c) the SNO's legal liability.	The SNO may wish to make other or more specific provisions for the parties' obligations to report privacy and security breaches, and to define which of those breaches are sufficiently serious as to merit reporting. For example, the SNO could seek the input of the Management Committee 11.6 (Management Committee) or another body.

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9.4 Business Associate Agreement. *Provisions addressing the SNO's potential role as a business associate of the Participant.* If, through any Data Recipient's use of the Services, [SNO Name]'s performance of its responsibilities described in the Terms and Conditions causes [SNO Name] to act as the "business associate" of the Data Recipient (as defined in 45 CFR Part 160.103), the provisions of this Section 9.4 (Business Associate Agreement) shall apply, in order to implement the requirements imposed under HIPAA for agreements between covered entities and their business associates. All capitalized terms not defined herein shall have the meanings given to them pursuant to 45 CFR Part 160.103.	It is possible that the Common Framework Policies and Procedures will include terms regarding each SNO's performance as a business associate of its Participants. If the Common Framework Policies and Procedures do not, the SNO Terms and Conditions should include such provisions.
9.4.1 Use and Disclosure. [SNO Name] shall use and disclose Protected Health Information only for the purposes of [SNO Name]'s performance of its responsibilities described in the Terms and Conditions. Without limiting the foregoing, [SNO Name] may use and disclose Protected Health Information for the proper management and administration of [SNO Name]'s business and to carry out its own legal responsibilities; provided, that any disclosure pursuant to this Section 9.4.1 (Use and Disclosure) shall either be required by law or be made with reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to such person, and that the person will notify [SNO Name] of any instances of which it is aware in which the confidentiality of the information has been breached.	
9.4.2 Appropriate Safeguards. [SNO Name] shall use appropriate safeguards to prevent use or disclosure of Protected Health Information otherwise than as permitted by the Terms and Conditions, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of that Protected Health Information.	

Model Terms and Conditions	Notes
9.4.3. Reports to Participant. [SNO Name] shall report to the Participant any use or disclosure of Protected Health Information of the Participant not provided for by the Terms and Conditions of which [SNO Name] becomes aware, and any security incident concerning electronic Protected Health Information.	
9.4.4. Agents, Subcontractors. [SNO Name] shall ensure that its agents, including any subcontractor, to whom [SNO Name] provides Protected Health Information agree to the restrictions and conditions that apply to [SNO Name] with respect to such information and implement the safeguards required by Section 9.4.2 (Appropriate Safeguards) with respect to electronic Protected Health Information.	
9.4.5. Inspection and Copying. [SNO Name] shall make Protected Health Information available to a Participant or any person authorized by the Participant for inspection and copying within twenty (20) days of a request by the Participant therefor.	This provision is required only if the SNO maintains a designated record set for the Participant.
9.4.6. Amendments. [SNO Name] shall make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information requested by the Participant.	This provision is required only if the SNO maintains a designated record set for the Participant.
9.4.7 Reports. [SNO Name] shall promptly report to the Participant concerning all disclosures of Protected Health Information by [SNO Name] or any subcontractors or agents to whom it discloses Protected Health Information upon request, other than disclosures to carry out treatment, payment, and health care operations on behalf of Participant, or that are incident to such disclosures.	
9.4.8. Availability of Records. [SNO Name] shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Participant's compliance with its legal obligations.	

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9.4.9. Action Upon Termination. Given the role of the System and the NHIN, the destruction or return to the Participant of Protected Health Information following the termination of the Participant's Registration Agreement would be infeasible. Therefore, upon termination of the Participant's Registration Agreement, [SNO Name] shall extend the protections of this Section 9.4 (<u>Business Associate Agreement</u>) to such information, and shall limit further use and disclosure of the information to those purposes that make the return or destruction of the information infeasible.	
9.4.10 Special Termination. Notwithstanding any other provision of the Terms and Conditions to the contrary, the Participant may immediately terminate its Registration Agreement if it determines that [SNO Name] has violated a material term of this Section 9.4 (<u>Business Associate Agreement</u>), and [SNO Name] fails to remedy the violation within thirty (30) days following receipt of written notice thereof.	

Model Terms and Conditions	Notes
10. Other Obligations of Participants. *Additional terms governing the conduct of Participants.*	
10.1 Compliance with Laws and Regulations. *The Participant's obligations to comply with applicable laws and regulations, generally.* Without limiting any other provision of the Terms and Conditions relating to the parties' compliance with applicable laws and regulations, the Participants shall perform in all respects as contemplated by the Terms and Conditions, in compliance with applicable federal, state, and local laws, ordinances and regulations.	
10.2 System Security. *The Participant's obligations to implement reasonable and appropriate measures to maintain the security of the SNO System and to notify the SNO of breaches in security.* The Participant shall implement security measures with respect to the System and the Services in accordance with the Common Framework Policies and Procedures, which is incorporated herein by reference. *[Optional: Without limiting the generality of the foregoing, the Participant shall also adopt and implement the additional security measures described below:]*	The Model assumes that security requirements are to be described in the Common Framework Policies and Procedures. However, the SNO may wish to adopt additional specific measures to be required, provided that it does so in a manner that is not inconsistent with the Common Framework Policies and Procedures.
10.2.1 [Additional Security Measures, if desired].	
10.3 Software and Hardware Provided by Participant. *Provision requiring the Participant to obtain and maintain all hardware and software required to use the System and the Services that is not to be provided by the SNO.* Each Participant shall be responsible for procuring all equipment and software necessary for it to access the System, use the Services (including the Associated Software), and provide to [SNO Name] all information required to be provided by the Participant ("Participant's Required Hardware and Software"). Each Participant's Required Hardware and Software shall conform to [SNO Name]'s then-current specifications. [SNO Name] may change such specifications from time to time in its sole discretion upon not less than sixty (60) days prior notice to each Participant affected by the change. As part of the Participant's obligation to provide Participant's Required Hardware and Software, the Participant shall be responsible for ensuring that all the Participant's computers to be used to interface with the System are properly configured, including but not limited to the operating system, web browser, and Internet connectivity.	The Model assumes that the SNO will provide some of the software and hardware that Participants will require to use the System, as described in Section 8 (Software and Hardware Provided by [SNO Name]), and that the Participant will be required to provide the remainder (*e.g.,* a personal computer with an operating system and web browser meeting certain specifications), as described in Section 10.3 (Software and/or Hardware Provided by Participant). The terms of Section 8 (Software and/or Hardware Provided by [SNO Name]) and Section 10.3 (Software and Hardware Provided by Participant) should be revised as necessary to conform to each other.

Model Terms and Conditions	Notes
10.4 Malicious Software, Viruses, and Other Threats. *Requirements that Participants take appropriate measures to prevent damage to the SNO's System.* The Participant shall use reasonable efforts to ensure that its connection to and use of the System, including without limitation the medium containing any data or other information provided to the System, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or "malware," viruses, worms, and Trojan Horses) which will disrupt the proper operation of the System or any part thereof or any hardware or software used by [SNO Name] 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 System or any part thereof or any hardware, software or data used by [SNO Name] or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.	
10.5 Training. *A description of the training, if any, that the SNO will require the Participant to provide to its personnel.* The Participant shall provide appropriate and adequate training to all of the Participant's personnel, including without limitation Authorized Users, in the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including without limitation requirements imposed under HIPAA.	

Model Terms and Conditions	Notes
11. [SNO Name]'s Operations and Responsibilities. *Provisions describing the role and responsibilities of the SNO.*	The Model assumes that the SNO will provide a variety of services to Participants. Responsibilities may include: • System support • Installation support • Initial and ongoing training • Help desk • Problem resolution • Auditing and reporting access and use • Reporting unauthorized uses and security incidents Some examples are provided for purposes of illustration.
11.1 Compliance with Terms and Conditions. *The SNO's obligations to require that all Participants agree to be bound by the SNO Terms and Conditions.* [SNO Name] shall require that all Participants enter into a Registration Agreement or another legally binding agreement to comply with the Terms and Conditions in such form as [SNO Name] determines is appropriate.	
11.2 Maintenance of System. *The SNO's obligations to maintain the functionality of the System and the Services, and to provide updates.* [SNO Name] shall maintain the functionality of the System and the Services in accordance with the Common Framework Policies and Procedures, and shall provide such service, security, and other updates as [SNO Name] determines are appropriate from time to time.	
11.3 Training. *The SNO's obligations to provide training for Participants and/or its Authorized Users.* [SNO Name] shall provide training to each Participant [and/or Authorized User] regarding the Participant's [and/or the Authorized User's] rights and obligations under its Registration Agreement and the Terms and Conditions, and the access and use of the System and Services, including such user manuals and other resources [SNO Name] determines appropriate to support the System and Services, including without limitation training for new or additional Authorized Users when added by the Participant.	

Model Terms and Conditions	Notes
11.4 Telephone and/or E-Mail Support. *The SNO's obligations to provide support for the Participant's use of the SNO's System and/or Services.* **Alternative One: SNO provides help desk functions.** [SNO Name] shall provide, by telephone and/or e-mail, during normal business hours, support and assistance in resolving difficulties in accessing and using the System and the Services. **OR** **Alternative Two: SNO supports the Participant's help desk.** [SNO Name] shall provide, by telephone and/or e-mail, during normal business hours, support and assistance to the Participant's help desk or other facility that supports use of the System and Services by Authorized Users.	
11.5 Audits and Reports. *Audits the SNO is to perform and reports it is to provide to Participants.* [SNO Name] shall perform the following audits and provide the following reports to each Participant:	The following provisions are examples of the reports the SNO might provide to Participants.
11.5.1 Usage Reports. *[Specified statistical reports regarding the Participant's usage of the Services].*	
11.5.2 Reports to Public Agencies. *[Specified reports that certain Participants may be required to make to public health agencies.]*	
11.5.3 Audit Trail Reports. *[Specified reports that pertain to audit trail tracking.]*	
11.6 Management Committee.	Certain SNOs may wish to include certain terms regarding internal governance and management as a part of the SNO Terms and Conditions, to assure that Participants may be involved in their governance and/or management. The language provided here is for illustration only, and is not intended to limit how the SNO would structure its governance or Participants' involvement in governance and management. SNOs that do not desire such provisions would omit this section entirely.

Model Terms and Conditions	Notes
11.6.1 Composition. [SNO Name] shall create and maintain a Management Committee (the "Management Committee") composed of *[specified personnel/representatives of SNO and specified number of Participant representatives, who shall be selected in a specified manner]*.	
11.6.2 Meetings and Responsibilities of Management Committee. The Management Committee shall meet *[describe intervals, e.g., monthly]* to consider and resolve various issues pertaining to the use of the System and the Services by Participants, including *[list]*.	Issues that a Management Committee could address include, without limitation, technical issues, confidentiality, the scope of information stored and accessed by Participants, the use of the information, changes to the Terms and Conditions, and any other issues related to the network or the parties' participation therein.
11.6.3 Management Committee Bylaws. The Management Committee shall adopt bylaws for the conduct of its meetings and other proceedings.	Bylaws customarily would provide procedures and rules concerning how the Management Committee would hold its meetings and take action.

Model Terms and Condition	Notes
12. Fees and Charges. *Terms regarding amounts that the Participant will be required to pay to the SNO in order to use the Services.*	It is anticipated that SNOs will adopt a variety of approaches to requiring that Participants pay to use the System and the Services. The following compensation terms are for illustration only, and describe an approach intended to give the SNO flexibility in determining its fee policies.
12.1 Agreed-Upon Fees. *Provision for a Participant's written agreement to take precedence over the SNO Terms and Conditions.* If the Participant has entered into a written Registration Agreement with [SNO Name] pursuant to Section 4.2 (Registration by Agreement), the terms and conditions of that Registration Agreement with respect to the payment of fees and charges shall apply.	
12.2 Service Fees. **Alternative One: SNO's fee schedule is not a part of the SNO Terms and Conditions.** Unless the Participant's Registration Agreement provides otherwise, each Participant shall pay to [SNO Name] [SNO Name]'s Service Fees, in accordance with [SNO Name]'s then-current Fee Schedule, for those Services for which the Participant has registered. **OR** **Alternative Two: SNO's fee schedule is a part of the SNO Terms and Conditions.** Unless the Participant's Registration Agreement provides otherwise, each Participant shall pay to [SNO Name] [SNO Name]'s Service Fees, in accordance with the Fee Schedule attached as Schedule 12.2 (Service Fees), for those Services for which the Participant has registered.	A SNO's Fee Schedule may include a variety of fee levels, permitting the SNO to charge greater and lesser amounts to Participants, depending upon the extent to which each elects to receive Services and/or hardware and software. In addition, the Fee Schedule should address the extent, if any, to which Data Providers are to pay.
12.3 Changes to Fee Schedule. *Provision allowing the SNO to change its Fee Schedule.* **Alternative One: SNO may change its fee schedule at will.** [SNO Name] may change its Fee Schedule at any time upon thirty (30) days prior written notice to Participants. **OR** **Alternative Two: SNO may change its fee schedule once per year after a required period of notice.** [SNO Name] may change its Fee Schedule as of January 1 of any calendar year; provided, that [SNO Name] shall give Participants not less than thirty (30) days prior written notice of any such change.	Such changes to the SNO's Fee Schedule would not apply to Participants that have written agreements that address fees (see Section 12.1 (Agreed-Upon Fees).

Model Terms and Condition	Notes
12.4 Miscellaneous Charges. Unless the Participant's Registration Agreement provides otherwise, the Participant also shall pay [SNO Name]'s charges for all goods or services that [SNO Name] provides at the Participant's request that are not specified in [SNO Name]'s then-current Fee Schedule ("Miscellaneous Charges").	A SNO may wish to make provision for situations in which the SNO provides additional services at a Participant's request and wishes to obligate the Participant to pay for those additional services.
12.5 Payment. The Participant shall pay all Service Fees and any Miscellaneous Charges within thirty (30) days following the date of invoice by [SNO Name] sent to the Participant's address as shown in [SNO Name]'s records or e-mailed in accordance with the Participant's Registration Agreement.	
12.6 Late Charges. *Provision calling for late charges on delinquent Service Fees and Miscellaneous Charges.* Service Fees and Miscellaneous Charges not paid to [SNO Name] within _____ (__) business days following the due date therefor are subject to a late charge of five percent (5%) of the amount owing and interest thereafter at the rate of one and one-half percent (1 _%) per month on the outstanding balance, or the highest amount permitted by law, whichever is lower.	The Model assumes that the SNO will wish to have strict terms regarding payment by Participants. A SNO may wish to adopt measures that are either more or less strict than shown here.
12.7 Suspension of Service. *Provision permitting the SNO to suspend services until the Participant pays amounts that are due.* Failure to pay Service Fees and Miscellaneous Charges within _____ (__) days following the due date therefor may result in termination of the Participant's access to the System and/or use of the Services on _____ (__) days prior notice. A reconnection fee equal to _____ shall be assessed to re-establish connection after termination due to non-payment.	The Model assumes that the SNO will wish to have strict terms regarding payment by Participants. A SNO may wish to adopt measures that are either more or less strict than shown here.
12.8 Taxes. All Service Fees and Miscellaneous Charges shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and the Participant shall pay any tax (excluding taxes on [SNO Name]'s net income) that [SNO Name] 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 and services provided pursuant to the Terms and Conditions.	

Model Terms and Condition	Notes
12.9 Other Charges and Expenses. The Participant shall be solely responsible for any other charges or expenses the Participant may incur to access the System and use the Services, including without limitation, telephone and equipment charges, and fees charged by third-party vendors of products and services.	

Model Terms and Conditions	Notes
13. Proprietary Information. *Provisions concerning the parties' respective obligations to preserve the confidentiality of others' proprietary information (i.e., other than health information).*	
13.1 Scope of Proprietary Information. In the performance of their respective responsibilities pursuant to the Terms and Conditions, [SNO Name] and Participants may come into possession of certain Proprietary Information of the other. For the purposes hereof, "Proprietary Information" means all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements of the Shareholder and the Corporation, whether written or verbal, that are confidential in nature; provided, however, that Proprietary Information shall not include any information that: (a) Is in the public domain; (b) Is already known or obtained by any other party other than in the course of the other party's performance pursuant to the Terms and Conditions; (c) Is independently developed by any other party; and/or (d) Becomes known from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of the Terms and Conditions, or any other confidentiality or nondisclosure agreement by such other party.	
13.2 Nondisclosure of Proprietary Information. [SNO Name] and the Participant each (i) shall keep and maintain in strict confidence all Proprietary Information received from the other, or from any of the other's employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under the Terms and Conditions; (ii) shall not use, reproduce, distribute or disclose any such Proprietary Information except as permitted by the Terms and Conditions; and (iii) shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure.	

Model Terms and Conditions	Notes
13.3 Equitable Remedies. All Proprietary Information represents a unique intellectual product of the party disclosing such Proprietary Information (the "Disclosing Party"). The unauthorized disclosure of said Proprietary Information would have a detrimental impact on the Disclosing Party. The damages resulting from said detrimental impact would be difficult to ascertain but would result in irreparable loss. It would require a multiplicity of actions at law and in equity in order to seek redress against the receiving party in the event of such an unauthorized disclosure. The Disclosing Party shall be entitled to equitable relief in preventing a breach of this Section 13 (<u>Proprietary Information</u>) and such equitable relief is in addition to any other rights or remedies available to the Disclosing Party.	
13.4 Notice of Disclosure. Notwithstanding any other provision hereof, nothing in this Section 13 (<u>Proprietary Information</u>) shall prohibit or be deemed to prohibit a party hereto from disclosing any Proprietary Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that such party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction, and such disclosures are expressly permitted hereunder; provided, however, that a party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction shall provide the other party with notice thereof within five (5) calendar days, or, if sooner, at least three (3) business days before such disclosure will be made so that the other party may seek a protective order or other appropriate remedy. In no event shall a party be deemed to be liable hereunder for compliance with any such subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction.	

Model Terms and Conditions	Notes
14. Disclaimers, Exclusions of Warranties, Limitations of Liability, and Indemnifications. *Standard terms directed to avoiding inappropriate legal claims between the parties. The specific language shown in this section is for illustration only. The SNO would need to tailor the language of this section to comply with applicable state laws regarding the content and presentation (e.g., capital letters) of disclaimers and limitations of warranties and similar issues.*	
14.1 Carrier Lines. By using the System and the Services, each Participant shall acknowledge that access to the 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 [SNO name]'s control. [SNO Name] 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. Use of the carrier lines is solely at user's risk and is subject to all applicable local, state, national, and international laws.	
14.2 No Warranties. Access to the System, use of the Services, and the information obtained by a Data Recipient pursuant to the use of those 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. The Participant is solely responsible for any and all acts or omissions taken or made in reliance on the System or the information in the System, including inaccurate or incomplete information. It is expressly agreed that in no event shall [SNO Name] be liable for any special, indirect, consequential, or exemplary damages, including but not limited to, loss of profits or revenues, loss of use, or loss of information or data, whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if [SNO Name] has been apprised of the possibility or likelihood of such damages occurring. [SNO Name] disclaims any and all liability for erroneous transmissions and loss of service resulting from communication failures by telecommunication service providers or the System.	The Model assumes that the SNO will wish to limit its potential liability arising out of the use of data through the System. A SNO may wish to assume a greater degree of potential responsibility.

Model Terms and Conditions	Notes
14.3 Other Participants. By using the System and the Services, each Participant shall acknowledge that other Participants have access to the System and Services, and that other parties have access to the information contained in the System through their participation in the NHIN. Such other Participants have agreed to comply with the Common Framework Policies and Procedures, concerning use of the information made available through the NHIN; however, the actions of such other parties are beyond the control of [SNO Name]. Accordingly, [SNO Name] does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the System resulting from any Participant's actions or failures to act.	The Model assumes that the contracting parties will wish to limit the SNO's potential liability arising out of the use of data through the System. Participants and SNOs may of course choose a system whereby the SNO assumes a greater degree of potential responsibility.
14.4 Participant's Actions. The Participant shall be solely responsible for any damage to a computer system, loss of data, and any damage to the System caused by that Participant or any person using a user ID assigned to the Participant or a member of the Participant's workforce.	
14.5 Unauthorized Access; Lost or Corrupt Data. [SNO Name] is not responsible for unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft, or destruction of the participant's data files, programs, procedures, or information through the System, whether by accident, fraudulent means or devices, or any other method. The Participant is solely responsible for validating the accuracy of all output and reports and protecting the Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. The Participant waives any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, or the use of third-party software. [SNO Name] is not responsible for the content of any information transmitted or received through [SNO name]'s provision of the Services.	

Model Terms and Conditions	Notes
14.6 Inaccurate Data. All data to which access is made through the System and/or the Services originates from Data Providers and other parties making data available through the NHIN, and not from [SNO Name]. 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. [SNO Name] neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of the Terms and Conditions, [SNO Name] 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 the Terms and Conditions.	
14.7 Patient Care. Without limiting any other provision of the Terms and Conditions, the Participant and the Participant'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 System or the Services or the data made available thereby. No Participant or Authorized User shall have any recourse against, and through the Registration Agreements that apply thereto, each shall waive, any claims against [SNO Name] for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the System and/or the Services or the data made available thereby.	
14.8 Limitation of Liability. Notwithstanding anything in the Terms and Conditions to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of [SNO Name], and [SNO Name]'s officers, directors, employees, and other agents, under any Participant's Registration Agreement, regardless of theory of liability, shall be limited to the aggregate fees actually paid by the Participant in accordance with the Terms and Conditions for the six- (6) month period preceding the event first giving rise to the claim.	The SNO may wish to limit its exposure to damage claims that could be brought by Participants.

Model Terms and Conditions	Notes
15. Insurance and Indemnification.	
15.1 Insurance. *Requirements that Participants have appropriate insurance coverage.* The Participant shall obtain and maintain insurance coverage in accordance with the Common Framework Policies and Procedures, which is incorporated herein by reference. *[Optional: Without limiting the generality of the foregoing, the Participant shall also comply with the insurance requirements described below:]*	The Model assumes that the Common Framework Policies and Procedures will address insurance requirements for Participants (such as general liability and professional liability insurance). The SNO may adopt additional insurance requirements that are not inconsistent with the Common Framework Policies and Procedures.
15.1.1 [Additional Insurance Requirements, if desired].	
15.2 Indemnification	

Model Terms and Conditions	Notes
15.2.1. Generally. **Alternative One: Provisions requiring the parties to indemnify each other for losses caused by claims by third parties.** [SNO Name] and each Participant (each, an "Indemnifying Party") each shall hold the other (the "Indemnified Party") free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, members, agents, staff, or employees, including the Indemnifying Party's failure to comply with or perform its obligations under the applicable Registration Agreement. **OR** **Alternative Two: Provisions requiring the parties to indemnify each other as well as requiring Participants to indemnify each other:** [SNO Name] and each Participant (each, an "Indemnifying Party") each shall hold the other and, if the Participant is the Indemnifying Party, the other Participants (the "Indemnified Party") free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, members, agents, staff, or employees, including the Indemnifying Party's failure to comply with or perform its obligations under the applicable Registration Agreement. **OR** **Alternative Three: Making no special provision for indemnification, but allowing the parties' existing legal obligations to remain in effect.** Nothing in the Terms and Conditions or any Registration Agreement shall limit [SNO Name]'s or a Participant's respective legal and equitable obligations to each other and to other Participants arising out of the doctrines of equitable indemnity, comparative negligence, contribution or other common law bases of liability.	

Model Terms and Conditions	Notes
15.2.2 Specific Indemnities. *Provisions calling for special indemnification terms.* **Alternative One: SNO and Participant indemnify each other for Serious Breaches of Confidentiality or Security for which they are responsible.** Notwithstanding Section 15.2.1 (<u>Generally</u>), [SNO Name] and each Participant (each, an "Indemnifying Party") each shall hold the other (the "Indemnified Party") free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of any Serious Breach of Confidentiality or Security arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, members, agents, staff, or employees. **AND/OR** **Alternative Two: Data Provider indemnifies SNO for losses caused by the Data Provider's provision of inaccurate data.** Notwithstanding Section 15.2.1 (<u>Generally</u>), a Data Provider shall hold [SNO Name] free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of Data Provider's provision of any Patient Data that is inaccurate, incomplete, or defamatory.	The SNO may choose to adopt special rules governing indemnification for particular situations, such as a breach of confidentiality of protected health information, or a Data Provider's provision of inaccurate data. The provisions shown here are provided as examples.

Model Terms and Conditions	Notes
15.2.3 Rules for Indemnification. *Provisions governing the parties' indemnification obligations.* Any indemnification made pursuant to the Terms and Conditions shall include payment of all costs associated with defending the claim or cause of action involved, whether or not such claims or causes of action are meritorious, including reasonable attorneys' fees and any settlement by or judgment against the party to be indemnified. In the event that a lawsuit is brought against the party to be indemnified, the party responsible to indemnify that party shall, at its sole cost and expense, defend the party to be indemnified, if the party to be indemnified demands indemnification by written notice given to the indemnifying party within a period of time wherein the indemnifying party is not prejudiced by lack of notice. Upon receipt of such notice, the indemnifying party shall have control of such litigation but may not settle such litigation without the express consent of the party to be indemnified, which consent shall not be unreasonably withheld, conditioned or delayed. The indemnification obligations of the parties shall not, as to third parties, be a waiver of any defense or immunity otherwise available, and the indemnifying party, in indemnifying the indemnified party, shall be entitled to assert in any action every defense or immunity that the indemnified party could assert on its own behalf.	Provisions governing indemnification and related matters should be tailored to the specific wishes and requirements of the SNO, and to comply with applicable state laws. The language provided is for illustration only.

Model Terms and Conditions	Notes
16. General Provisions. *Miscellaneous provisions that apply to the SNO Terms and Conditions.*	
16.1 Applicable Law. The interpretation of the Terms and Conditions and the resolution of any disputes arising under the Terms and Conditions and Participants' Registration Agreements shall be governed by the laws of the State of _____. If any action or other proceeding is brought on or in connection with the Terms and Conditions or a Registration Agreement, the venue of such action shall be exclusively in _____ County, in the State of _____.	The Model does not propose a specific alternate dispute resolution mechanism, e.g. arbitration and/or mediation, but individual SNOs may wish to consider including such a mechanism.
16.2 Non-Assignability. No rights of the Participant under its Registration Agreement may be assigned or transferred by the Participant, either voluntarily or by operation of law, without the prior written consent of [SNO Name], which it may withhold in its sole discretion.	
16.3 Third-Party Beneficiaries. There shall be no third-party beneficiaries of any Registration Agreement.	
16.4 Supervening Circumstances. Neither the Participant nor [SNO Name] shall be deemed in violation of any provision of a Registration 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 16.4 (Supervening Circumstances) shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.	
16.5 Severability. Any provision of the Terms and Conditions or any Participant Registration Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of the Terms and Conditions or such Registration Agreement, and such other provisions shall remain in full force and effect.	

Model Terms and Conditions	Notes
16.6 Notices. Any and all notices required or permitted under the Terms and Conditions shall be sent by United States mail, overnight delivery service, or facsimile transmission to the address provided by the Participant in its Registration Form or such different addresses as a party may designate in writing. If the Participant has supplied [SNO Name] with an electronic mail address, [SNO Name] may give notice by email message addressed to such address; provided that if [SNO Name] receives notice that the email message was not delivered, it shall give the notice by United States mail, overnight delivery service, or facsimile.	
16.7 Waiver. No provision of the Terms and Conditions or any Participant Registration 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 a consent to, waiver of, or excuse for any other different or subsequent breach.	
16.8 Complete Understanding. With respect to any Participant Registration Agreement made pursuant to the Terms and Conditions, that Agreement and the Terms and Conditions together contain the entire understanding of the parties, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of any Registration Agreement other than those contained or referenced in that Registration Agreement. All modifications or amendments to any Registration Agreement shall be in writing and signed by all parties.	

A Model Contract for Health Information Exchange

EXHIBIT 1
[Name of SNO]
[PARTICIPANT] REGISTRATION APPLICATION

To apply to participate in [SNO Name] as a Participant, please provide the following information, and then click "Next" below.

Type the Applicant's Name:	Choose a Participant Name (must be at least 10 characters):
[Optional, not to be used if SNO will issue and manage passwords:] Choose a Password (must be at least 8 characters):	**[Optional:]** Confirm Password:
State whether the Applicant is an individual person or a partnership, corporation, or other organization (pick one from [pull down] list): →	Individual Person Partnership Limited Partnership Limited Liability Company Corporation Other Organization (specify):_____
Provide name and telephone number of person to contact:	Provide e-mail address of person to contact:
Provide Applicant's address (Number, Street, and Suite No.):	Provide Applicant's address (City, State, Zip Code):
Provide Applicant's Participant Category (pick one from [pull down] list): →	Health Care Provider System Services Provider Health Plan, Insurer, or Other Payer Public Health Authority Other Government Agency Researcher **[Others]**
[Other information if required]:	

To proceed to [Participant] Registration Agreement, click "Next" →   <u>Next</u>

SCREEN 1

[Name of SNO]
[PARTICIPANT] REGISTRATION AGREEMENT

All [Participants] must agree to the terms and conditions of [SNO Name]'s [Participant] Registration Agreement, which provides as follows:

1. ***[SNO Name] Terms and Conditions.*** All of the terms of the [SNO Name] Terms and Conditions are hereby incorporated by reference into this [Participant] Registration Agreement. Words in this [Participant] Registration Agreement shall have the meanings given to them by the [SNO Name] Terms and Conditions. All Applicants are required to read and agree to the [SNO Name] Terms and Conditions prior to completing this application.

<div style="border:1px solid black; padding:100px; text-align:center;">
Scrollable [SNO Name] Terms and Conditions Appear in this Space
</div>

The Applicant hereby represents and warrants that the Applicant, or an authorized person acting on the Applicant's behalf, has read and agrees to comply with all [SNO Name] Terms and Conditions.

Select One: Yes/No   To proceed, click "Next" →   <u>Next</u>

SCREEN 2

[Name of SNO]
[PARTICIPANT] REGISTRATION AGREEMENT
(continued)

2. Review of Application

[SNO Name] will review this application for registration and may accept or reject this application in accordance with the terms and conditions set forth in Section ___ of the [SNO Name] Terms and Conditions. Upon [SNO Name]'s acceptance of this application, [SNO Name] shall notify the Applicant and shall register the Applicant as a [Participant]. **[Optional, if SNO is to issue passwords:]** [SNO Name] shall issue each Participant a [User I.D. and] password to access and use the [SNO Name] System and the [SNO Name] Services.

3. [Participant]'s Agreement

Upon receipt of [SNO Name]'s notice that it has accepted this application, the Applicant shall be legally bound to comply with all of the terms and conditions of [SNO Name]'s Terms and Conditions that apply to [Participant] and may then commence to access and use the [SNO Name] System and [SNO Name] Services, subject to all of the terms and conditions of this Registration Agreement and the [SNO Name] Terms and Conditions.

4. Changes to Terms and Conditions

The [SNO Name] Terms and Conditions shall be subject to change from time to time, and all such changes shall be incorporated by reference into this [Participant] Registration Agreement upon the effective date selected by [SNO Name]. The [Participant] shall be informed of all such changes prior to their effectiveness. If the [Participant] objects to the changes, the [Participant] may terminate this Agreement and, by doing so, cease to be a [Participant], as described in the [SNO Name] Terms and Conditions.

5. Term and Termination

This [Participant] Registration Agreement shall continue in effect until it is terminated, in accordance with the [SNO Name] Terms and Conditions.

    The Applicant hereby represents and warrants that the Applicant, or a duly authorized person acting on the Applicant's behalf, has read the [SNO Name] Terms and Conditions and this Registration Agreement and, by selecting "Yes" below, hereby applies for registration as a [Participant] and agrees to all the terms and conditions of the [SNO Name] Terms and Conditions and this Registration Agreement.

Yes ____   No ____   To proceed, click "Next" →   Next

SCREEN 3

[Name of SNO]
[PARTICIPANT] REGISTRATION APPLICATION
(continued)

Thank you for your application. [SNO Name] will review your application and send you a response within approximately _____ days.

To return to the [SNO Name] web site, click "Return" →   Return

SCREEN 4

A Model Contract for Health Information Exchange

EXHIBIT 2

Bibliography

In preparing the Model Contract for Health Information Exchange, user agreements made available by the following organizations (in alphabetical order) were particularly helpful:

• Alliance for Rural Community Health, Mendocino SHARE, *User Agreement (Health Care Provider)*, http://www.ruralcommunityhealth.org/projects/msp.html.

• Indiana Network for Patient Care, *Indianapolis Regional Network For Primary and Emergency Care Second Participants' Agreement,* http://www.regenstrief.org/medinformatics/inpc/.

• KC CareLink, *Participant Agreement*, http://www.kccarelink.org/index.asp.

• Massachusetts Health Data Consortium, *MA-Share LLC Health Plan Participation Agreement*, http://www.mahealthdata.org/ma-share/.

• Santa Barbara County (California) Care Data Exchange, *Care Data Exchange User Agreement*, http://ccbh.ehealthinitiative.org/profiles/documents.aspx?Section=123&Category=158&Document=103&Page=122.

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