

**INFORMATION TECHNOLOGY SERVICES AGREEMENT
between SelectHealth and HCO**

Date of Agreement: _____ Agreement No.: _____

SelectHealth, Inc. (SELECTHEALTH):

Health Care Organization (HCO):

5381 Green Street
Murray, UT 84123
(801) 442-3692
(801) 442-0776 (fax)
providerwebservices@selecthealth.org

Contact: _____
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PURPOSE AND INTRODUCTION

In this Agreement, the Health Care Organization (HCO) has a working relationship with SelectHealth, Inc. (SELECTHEALTH). The purpose of this Agreement is to create the framework under which providers may access protected health information and use certain information technology (“IT”) services through SELECTHEALTH for the benefit of patient care. SELECTHEALTH and HCO believe that the information technology services provided by SELECTHEALTH to HCO will improve the quality, efficiency and delivery of health care to patients.

Given the highly personal nature of protected health information and the privacy and security requirements of the Health Insurance Portability and Accountability Act (“HIPAA”), special care must be taken to comply with the terms of this Agreement.

The Parties agree to the attached “Terms and Conditions” and Exhibits A through C.

SECTION 1. SERVICES

1.1 Services. SELECTHEALTH will provide “Services” to HCO in accordance with this Agreement. “Services” shall mean the information technology services, support, training, and other services described in Exhibit A, plus any other services that SELECTHEALTH provides to HCO in connection with this Agreement. Services will include providing HCO with access to and use of the Data Repository (see Section 2.2) and Licensed Software (see Section 2.3) as described and licensed in this Agreement. Because technology, health care practices, SELECTHEALTH policies, and other factors will change over time, SELECTHEALTH may change the Services from time to time. HCO has no obligation to accept any higher level of services offered by SELECTHEALTH.

1.2 HCO Resources and Responsibilities. In order to utilize the Services, HCO will need the HCO Resources and must perform the HCO Responsibilities identified in Exhibit B. As the Services, Data Repository, and Licensed Software change, the HCO Resources and HCO Responsibilities may change. SELECTHEALTH will inform HCO in advance of known and necessary upgrades and other changes to HCO Resources from time to time. HCO is responsible for acquiring, operating, and maintaining HCO Resources as needed. HCO Resources are the property of HCO. SELECTHEALTH will have no obligation or liability with respect to HCO Resources.

1.3 Users. “Users” shall mean the employees and independent contractors of HCO who access or use any of the Services. Users must be individuals, i.e., natural persons, not corporations, limited liability companies, partnerships, associations, or other entities. All utilization of the Services by HCO shall only be through its Users acting within the scope of their employment or engagement with HCO and only as set forth in this Agreement. See also Section 3. The terms “third party” and “third parties” do not include Users.

1.4 Scope of Use. The Services are provided for individual patient care relating to treatment, payment, and health care operations as permitted by HIPAA (the Health Insurance Portability and Accountability Act – Privacy Rule, 45 C.F.R. Parts 160 and 164, as may be amended from time to time).

- (a) HCO may only use the Services and may only access and use the Data Repository and Licensed Software:
 - (i) For treatment, payment, or health care operations in connection with patients (and their data) treated directly by HCO and Permitted Consultations, and for no other patients, data, or purposes. “Permitted Consultations” are consultations requested by and with licensed health care providers outside of HCO concerning patients treated by those providers; and
 - (ii) To comply with an obligation “required by law” as provided by HIPAA.
- (b) HCO and Users may not:
 - (i) Make any of the Services available to third parties, or allow third parties to access or use the Data Repository or Licensed Software; or
 - (ii) Use any of the Services, Data Repository, or Licensed Software to support service bureau activities or to process data for others; or
 - (iii) Use the Services, Data Repository or Licensed Software for research or population studies regulated by HIPAA or federal research regulations (such uses require additional agreements, authorization, and oversight); or
 - (iv) Use the Services, Data Repository or Licensed Software for the purpose of marketing health care services, or to identify and acquire individual patients with whom the HCO has no existing patient-provider relationship; or

(v) Use the Services, Data Repository or Licensed Software for any patients or uses not expressly permitted by this Agreement.

(c) Any use not expressly permitted by this Agreement requires an additional written agreement with SELECTHEALTH.

1.5 Rights and Restrictions. Exhibit A further describes HCO's rights and restrictions with respect to the Licensed Software and the Data Repository and its data.

1.6 Cooperation. The Parties shall assist and cooperate with each other in the performance of the Services and this Agreement.

1.7 Non-exclusive Agreement. All licenses and rights that SELECTHEALTH grants to HCO under this Agreement are non-exclusive.

SECTION 2. LICENSE: DATE REPOSITORY AND LICENSED SOFTWARE

2.1 License. Subject to the terms and conditions of this Agreement and HCO's compliance with this Agreement, SELECTHEALTH grants to HCO a license to access and use the Data Repository, Licensed Software, and Documentation (the "License"). Rights not expressly granted by this Agreement are reserved by SELECTHEALTH.

2.2 Data Repository. The "Data Repository" shall mean the data repository(ies) and databases (not including the Licensed Software) that HCO will have access to as part of the Services.

2.3 Licensed Software. "Licensed Software" shall mean the applications, computer programs, digital content, interfaces, and other intangible information technology assets identified in Exhibit A or that SELECTHEALTH elects to make available to HCO as part of the Services. Licensed Software may consist of "Server Software" and "SELECTHEALTH-Provided Client Software."

- (a) "Server Software" means the Licensed Software made available by SELECTHEALTH for remote access and use by HCO via the Internet or such other network or telecommunications means as SELECTHEALTH may designate. The Server Software resides on, is processed by, or is accessible through SELECTHEALTH Computers. HCO is not entitled to receive any copy of any Server Software or to store or process any Server Software on HCO Computers.
- (b) "SELECTHEALTH-Provided Client Software" means the Licensed Software (e.g., Java applets or other code), if any, made available by SELECTHEALTH to HCO for installation and use on HCO Computers. The License granted by this Agreement includes a license to install and run the SELECTHEALTH-Provided Client Software on HCO Computers and SELECTHEALTH-Provided Client Software may only be used by HCO to enable or facilitate the Services.

Any particular item of Licensed Software may be discontinued or replaced by SELECTHEALTH upon notice to HCO. Maintenance Releases and Updates do not require notice. The Licensed Software is either owned by SELECTHEALTH or licensed to SELECTHEALTH by applicable licensors. SELECTHEALTH, not HCO, owns and holds the licenses granted by these licensors.

SELECTHEALTH-Provided Client Software does not include any software otherwise owned or possessed by HCO.

2.4 SELECTHEALTH Computers. "SELECTHEALTH Computers" shall mean the server(s) and any other computer(s), storage media, hardware, and system(s) of SELECTHEALTH or its licensors or designees that are used or designated by SELECTHEALTH for storing or processing the Server Software accessed and used by HCO under the License.

2.5 HCO Computers. “HCO Computers” shall mean computing devices that are in the possession and control of HCO or its Users.

2.6 Limited Delivery of Licensed Software. HCO may receive SELECTHEALTH-Provided Client Software in its object code or executable form. HCO does not have any right to receive any copy of any Server Software in any form. HCO does not have any right to receive any source code of any Licensed Software.

2.7 Copies. HCO may make copies of SELECTHEALTH-Provided Client Software provided that any such copy: (a) is created as an essential step in the utilization of SELECTHEALTH-Provided Client Software or Services in accordance with the License and this Agreement, or (b) is only for archival purposes to back-up the licensed use of SELECTHEALTH-Provided Client Software. HCO may also make copies of SELECTHEALTH-Provided Client Software to the extent reasonably needed to exercise rights under the License or this Agreement. The Documentation may be copied by HCO, but only as reasonably needed to facilitate utilization of the Services or Licensed Software. All trademark, copyright, and intellectual property notices must be faithfully reproduced and included on copies of SELECTHEALTH-Provided Client Software and Documentation made by HCO. HCO may not make any other copies of Licensed Software or Documentation.

2.8 Documentation. “Documentation” means any printed, online, or electronic documentation or instructions provided by SELECTHEALTH to HCO in connection with the Services or Licensed Software. The License includes a license for HCO to use the Documentation, but only to enable or facilitate the Services.

2.9 Maintenance Releases and Updates. “Maintenance Releases” shall mean maintenance fixes, patches, and work-around solutions for Licensed Software that SELECTHEALTH elects to install or otherwise implement for the Licensed Software and this Agreement. “Updates” shall mean updates and upgrades to and new versions and releases of Licensed Software that SELECTHEALTH elects to install or otherwise implement for the Licensed Software and this Agreement. HCO may be asked to install Maintenance Releases and Updates for SELECTHEALTH-Provided Client Software on HCO Computers.

2.10 Additional Terms. HCO will comply with any additional terms, conditions, restrictions, or limitations applicable to certain third party Licensed Software as set forth in Exhibit C. By providing prior notice to HCO, SELECTHEALTH may change Exhibit C from time to time for Updates or as required by third party licensors or vendors in new or amended license agreements.

2.11 Service Level Commitment. Availability of the Services (including uptime of the Data Repository and Licensed Software) provided to HCO will be substantially similar to the availability provided to clinics owned or managed by Intermountain Healthcare, subject to the availability and proper functioning of HCO Resources and access to the Internet (or other network or telecommunications means). **Both scheduled and unscheduled downtime should be expected.** Advance notice of scheduled downtime will be provided to HCO. In the event of unscheduled downtime, the restoration priority for HCO will be substantially similar to the restoration priority given to clinics owned or managed by Intermountain Healthcare. Intermountain Healthcare's critical care facilities may receive higher priority. HCO agrees to pay SELECTHEALTH (on a time and materials basis at SELECTHEALTH's then-current standard fees) for correcting problems that are caused by HCO Resources. **Because all computer systems occasionally fail or malfunction, HCO is responsible for maintaining the ability to continue HCO's normal business operations in the event of downtime.**

SECTION 3. USERS AND ACCESS

3.1 Access Processes and Methodologies. Each User's access to and use of the Services, Data Repository, and Licensed Software must be in accordance with SELECTHEALTH's then-current processes and methodologies.

3.2 Data Security. HCO is responsible for managing all HCO Users' access to the Services, Data Repository, and Licensed Software. HCO is responsible for safeguarding Protected Health Information ("PHI") as defined in Section 5.1, and to ensure compliance of all Users with this Agreement and the SELECTHEALTH Access and Confidentiality Agreement ("ACA", a copy of which will be available to the HCO and its Users electronically). HCO is responsible for the decisions, actions, and inactions of all HCO Users. HCO shall adopt in-office standards for supervising the activities of HCO Users which, at a minimum, shall include the review and approval by HCO before a new User may be given access to the Services, Data Repository, and Licensed Software.

3.3 SELECTHEALTH Access and Confidentiality Agreement (ACA). When a User first logs on to use the Services, the User will be presented with an electronic copy of SELECTHEALTH's ACA. Each User must agree to the ACA before using the Services. (SELECTHEALTH will provide a copy of the ACA to HCO upon request.) SELECTHEALTH may change the ACA as it considers necessary. Each year, existing Users must agree to the then-current ACA as a condition to continue using the Services. HCO is responsible for ensuring that each of HCO's Users complies with the ACA.

3.4 Right of User to Utilize Services. Users have no right or license to utilize any Services except: (a) as employees or independent contractors of HCO acting within the scope of their employment or engagement, and (b) only pursuant to HCO's rights and licenses under this Agreement. All Users must comply with this Agreement.

3.5 Restriction, Suspension, or Termination of User's Access Rights. In the event that a User violates this Agreement or the ACA, HCO agrees to take prompt and appropriate disciplinary action (commensurate with the violation) including but not limited to the following: (a) additional restrictions or limitations on access and use of Services, (b) suspension of access and use of Services for a specified or indefinite period of time, (c) termination of access and use of Services, or (d) other prompt and appropriate action. HCO will inform SELECTHEALTH of every violation of this Agreement or applicable law that in any way implicates privacy, security, or the interests of a patient, SELECTHEALTH, or any other third party and of the disciplinary action taken. Independently and without prejudice to its other remedies, SELECTHEALTH may suspend or terminate such User's access to and use of the Services or may impose restrictions or limitations on the User. HCO agrees to enforce these suspensions, terminations, restrictions, limitations, and disciplinary actions imposed on a User and will put procedures in place to prevent a repeat violation. HCO may appeal a decision by SELECTHEALTH under this Section 3.5 to SELECTHEALTH. See Section 11.4. Action against or termination or suspension of one HCO User shall not affect other HCO Users under this Section 3.5.

3.6 Management of User Access. HCO shall maintain and provide to SELECTHEALTH a list of all Users who will utilize the Services. HCO will validate the list whenever requested by SELECTHEALTH. The list will include such identifying information as SELECTHEALTH may reasonably request. HCO will promptly inform SELECTHEALTH of individuals who cease to be Users and any changes or additions to the list. If a User ceases to be employed or engaged by HCO, then HCO must immediately notify SelectHealth so that SelectHealth may terminate such User's access to and use of the Services, Data Repository, and Licensed Software. HCO is responsible for Users.

3.7 Roles and Access Rights. HCO shall determine the roles and access rights for Users by applicable category or position, e.g., M.D., P.A., A.P.N., clinician, support staff, etc., in accordance with SELECTHEALTH's then-current guidelines. To be assigned the role of "Physician," the User must satisfy any credentialing requirements described in SELECTHEALTH's guidelines. HCO shall be responsible for completing and submitting SELECTHEALTH's forms and applications for this purpose.

3.8 Access Outside the U.S. HCO and Users will not (and will not permit anyone else to) access, store, process, or transmit any information or data from the Data Repository outside the United States without SELECTHEALTH's prior written approval.

SECTION 4. POLICIES AND INSPECTION

4.1 Policies, Procedures, and Guidelines. HCO (including its Users) must comply with SELECTHEALTH's then-current policies, procedures, and guidelines for (a) security, (b) protection of PHI, and (c) access to or use of the Services, Data Repository, Licensed Software, or any of SELECTHEALTH's computer systems, networks, or communication systems. SELECTHEALTH will make the applicable policies and procedures as easy to access as reasonably practicable.

4.2 Inspection. SELECTHEALTH may inspect and audit HCO for compliance with this Agreement and the ACA and, in doing so, will try to minimize any disruption to HCO operations. Unless otherwise provided by law or court order, SELECTHEALTH will keep confidential any confidential information it learns from such inspections and audits and will only use such confidential information for the purposes of this Agreement and its enforcement.

4.3 Retained Right. Notwithstanding anything in this Agreement to the contrary, SELECTHEALTH retains the right to take reasonable and necessary steps to protect its interest if this Agreement is violated, the Services are misused, or other steps are required by law.

SECTION 5. PHI and HIPAA

5.1 Protected Health Information ("PHI"). In this Agreement, the definition of PHI is that definition set forth in the then-current HIPAA Privacy Rule, which presently defines PHI as information that:

- (a) Identifies an individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and
- (b) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (c) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

5.2 Compliance with Laws and Regulations. Each Party will comply with applicable laws, regulations, and recognized professional standards relating to this Agreement and its subject matter.

5.3 Business Associates Agreement for Non-employed Users. As required by HIPAA, HCO will enter into a Business Associate Agreement (BAA) that complies with HIPAA, with each Business Associate, as that term is defined by HIPAA (including Users who are not employed by HCO) receiving PHI from HCO.

SECTION 6. SUPPORT AND TRAINING

6.1 Support. HCO shall be entitled to SELECTHEALTH's then-current standard support for the Services as described in Exhibit A. Such standard support is subject to change by SELECTHEALTH from time-to-time.

6.2 Training. HCO will receive the training described in Exhibit A.

SECTION 7. PAYMENTS

7.1 Payments. If any fees or other payments are specified in Exhibit A, then HCO shall make payment to SELECTHEALTH in accordance with Exhibit A. Fees and other payments are subject to reasonable increases by

SELECTHEALTH upon 30 days advance written notice (including an explanation of the increase) to HCO. Such increases may be based on circumstances such as, but not limited to, SELECTHEALTH's increased costs associated with the provision of Services. In addition, HCO shall be responsible for any taxes relating to its use of the Services.

SECTION 8. PROTECTION OF INTELLECTUAL PROPERTY

8.1 Ownership of Intellectual Property. Neither Party assigns or conveys ownership of any intellectual property to the other Party. HCO acknowledges that the intellectual property in and to the Services, Data Repository, and Licensed Software is the intellectual property of SELECTHEALTH and SELECTHEALTH's licensors, and that HCO has no rights with respect thereto except for the non-exclusive license and rights expressly granted to HCO in this Agreement. HCO has no license or right to create any product, service, or derivative work based on, derived from, or that utilizes anything disclosed or provided by SELECTHEALTH.

8.2 HCO Recommended Improvements. If HCO or any User submits or discloses to SELECTHEALTH any recommendations, ideas, contributions, corrections, enhancements, improvements, etc. relating to the Services, Data Repository, or Licensed Software, then SELECTHEALTH shall be free to make, sell, copy, practice, implement, disclose, modify, improve, and otherwise use the same, and to authorize others to do so, without restriction and without any obligation to HCO or the User, unless SELECTHEALTH specifically agrees otherwise in writing.

8.3 Protection of Confidential Information. Through the Services, and by being allowed to access and use the Data Repository, Licensed Software, and Documentation, HCO shall observe and learn information, designs, screen displays, interfaces, "look and feel," forms, compilations, arrangements, processes, procedures, ideas, concepts, clinical guidelines, rules, and methods of use that are confidential or are trade secrets or are proprietary to SELECTHEALTH and/or its licensors ("Confidential Information"). Confidential Information does not include and this Section 8.3 does not apply to: (a) any information that is in the public domain; or (b) PHI, which is governed by Section 5. HCO shall not disclose any Confidential Information to any third party or use any Confidential Information to create any other product, service, or derivative work. Nothing in this paragraph is intended to restrict or interfere with any User's treatment of any patient by any lawful means.

8.4 Protection of Licensed Software and Documentation. HCO shall not modify or create derivative works based on any Licensed Software or Documentation or distribute or provide any Licensed Software or Documentation to any third party or allow any third party to access or use any of them, or to decompile, disassemble, or otherwise reverse engineer any Licensed Software. HCO may not use any Licensed Software or Documentation or information learned therefrom to create any other product, service, or derivative work. This section does not prohibit HCO or its Users from accessing or using any Licensed Software and Documentation as expressly permitted by this Agreement.

SECTION 9. SUSPENSION OF SERVICES AND TERMINATION OF AGREEMENT

9.1 Term of Agreement. The initial term of this Agreement shall be one year beginning on the date of this Agreement. After the initial term, the Agreement shall automatically renew for additional one-year terms, unless and until either party gives notice of non-renewal or termination to the other Party within 60 days of the end of the current term. In the event that SELECTHEALTH gives such notice, then HCO shall have the option of continuing the Agreement for six months from the date of notification (but this shall not apply to SELECTHEALTH's right to suspend Services or terminate this Agreement under Section 9.3). Expiration or non-renewal shall be deemed a termination of this Agreement.

9.2 Termination of Agreement. Either party may terminate this Agreement at any time, with or without cause, by giving at least 30 days advance written notice to the other party.

9.3 Suspension of Services or Termination of Agreement by SELECTHEALTH with Cause. SELECTHEALTH may suspend the Services or terminate this Agreement with cause by giving written notice to HCO. Cause for suspension of Services or termination of this Agreement includes:

- (a) A breach of this Agreement by HCO or any misconduct by HCO's Users that is significant, repeated, or indicates an unacceptable disregard for this Agreement or is a significant violation of applicable laws; or
- (b) Any other breach of this Agreement by HCO that is not cured by HCO within ten days of receipt of written notice of the breach.

9.4 Effect of Termination of Agreement. When this Agreement terminates, the following shall apply:

- (a) HCO shall not access or use the Services, Data Repository, or any Licensed Software;
- (b) HCO will return, erase, or destroy all copies of SELECTHEALTH-Provided Client Software and Documentation within HCO's or its Users' possession or control and confirm such in writing to SELECTHEALTH;
- (c) HCO will return any hardware provided by SELECTHEALTH or its contractors;
- (d) all support, training and other obligations of SELECTHEALTH under this Agreement shall terminate (except for surviving provisions under Section 9.6); and
- (e) the Parties shall perform their exit obligations and be entitled to their exit rights under Section 9.6.

The fact that this Agreement is terminated may not be grounds for terminating, suspending or otherwise negatively altering any other agreement between HCO or its Users and SELECTHEALTH, unless the other agreement requires this Agreement. The HCO or its Users' status as a contracted SELECTHEALTH Health Plans provider will be governed in accordance with applicable provider agreement.

9.5 Termination Permitted. The Parties agree that it will not be a violation of the implied covenants of good faith or fair dealing for either Party to suspend or terminate the Services or this Agreement with or without cause as provided in this Agreement.

9.6 Surviving Provisions. In the event of termination of Services or this Agreement, the following provisions shall survive and remain in effect: (a) obligations to make payment for Services prior to termination; (b) obligations to indemnify; (c) Sections 4.2, 5.2, 8, 9.4, 9.5, 9.6, 10, and 11; and (d) any provisions that by their nature should survive termination. Termination of this Agreement shall not affect the ACA, the OCHA, the Business Associate Agreements, and Additional Terms, as applicable.

SECTION 10. DISCLAIMERS AND LIMITATIONS ON LIABILITY

10.1 SELECTHEALTH Responsibilities. SELECTHEALTH will exercise reasonable efforts to ensure that data entered by SELECTHEALTH into the Data Repository is accurate. However, SELECTHEALTH is not responsible for data entered by HCO or other parties.

10.2 Disclaimer of Warranties. SELECTHEALTH MAKES NO WARRANTY, REPRESENTATION, OR PROMISE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. SELECTHEALTH DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. SELECTHEALTH DOES NOT WARRANT THAT ANY SERVICES, DATA REPOSITORY, LICENSED SOFTWARE, DOCUMENTATION, OR DATA WILL SATISFY HCO'S REQUIREMENTS OR THAT THEY ARE WITHOUT DEFECT OR ERROR OR THAT THE ACCESS THERETO OR USE THEREOF WILL BE UNINTERRUPTED OR ERROR FREE. HCO ACCEPTS THE SERVICES, LICENSED SOFTWARE, DOCUMENTATION, AND DATA REPOSITORY ON AN "AS IS" BASIS.

10.3 Limitation on Liability. SELECTHEALTH'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT AND ANY SERVICES, DATA REPOSITORY, LICENSED SOFTWARE, AND DOCUMENTATION (REGARDLESS OF THE FORM OF ACTION OR CLAIM - E.G. CONTRACT, WARRANTY, TORT, MALPRACTICE, AND/OR OTHERWISE) SHALL NOT IN ANY EVENT EXCEED AN AMOUNT EQUAL TO \$1,000 OR THE TOTAL OF ALL PAYMENTS RECEIVED BY SELECTHEALTH FROM HCO UNDER THIS AGREEMENT DURING THE THEN MOST RECENT FIVE YEARS, WHICHEVER IS GREATER. SELECTHEALTH SHALL NOT IN ANY EVENT BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES, LOSS OF PROFITS OR REVENUE, OR CLAIMS BY ANY PERSON OTHER THAN HCO, EVEN IF SELECTHEALTH HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING.

10.4 Professional Judgment and Responsibility. The Services are not a substitute for HCO's professional judgment and responsibilities. Among other things, this means that:

- (a) The Services, Licensed Software, and Data Repository are not intended to be, nor shall they be construed to constitute, any independent medical judgment, advice, or recommendation, either to HCO, Users, or any patient of HCO or Users, and HCO and Users remain solely responsible for their professional, business, and other decisions, including decisions based on the Services, Licensed Software, or Data Repository;
- (b) Any and all use of and reliance on the Services, Licensed Software, and Data Repository shall be at the sole risk of HCO, and HCO (including its Users) is the sole determiner as to if, when, and how the Services, Licensed Software, and Data Repository should be used and relied upon; and
- (c) It is the duty of HCO to ensure that the Services are used properly by trained Users.

HCO and its Users agree not to make any representation to any patient or other person or entity that is contrary to or inconsistent with the provisions of this section.

10.5 Indemnification. HCO will indemnify SELECTHEALTH against and hold it harmless from any claim (and liabilities relating to such claim) that relates to the Services, Data Repository, or Licensed Software, and also relates to or arises because of:

- (a) any decision, treatment, procedure, action, inaction, malpractice, negligence, error, conduct, or misconduct of or by HCO or any of its Users; or
- (b) breach of applicable standards of medical care by HCO or any of its Users; or
- (c) any misuse of the Services, Data Repository, or Licensed Software by HCO or its User in connection with the HCO's employment or engagement of the User or is enabled or facilitated by the role or access granted to a User.

In this Section 10.5, "SELECTHEALTH" includes SELECTHEALTH and its affiliates, officers, trustees, directors, employees, agents, representatives, and licensors, and the term "liabilities" includes any damages, liabilities, judgments, awards, settlements, attorney's fees, losses, costs, and expenses.

10.6 Reciprocal Indemnification – PHI. Each Party agrees to defend, indemnify and hold harmless the other Party and its officers, trustees, directors, employees, agents, and representatives, against and from: (a) any claims based on actual or alleged misuse or wrongful disclosure of PHI by the indemnifying Party, and (b) any damages, liabilities, judgments, awards, settlements, attorney's fees, losses, costs, and expenses relating to any such claims.

10.7 Allocation of Risk. This Agreement defines a mutually agreed-upon allocation of risk and the amounts, if any, payable to SELECTHEALTH, and the rights and responsibilities undertaken by the Parties reflect such allocation of risk.

SECTION 11. GENERAL PROVISION

11.1 Notices. Any formal or material notice under or concerning this Agreement or the Services shall be delivered to the other Party's contact at the other Party's address as set forth on page 1 of this Agreement. Either Party may designate for itself, by notice to the other Party, a substitute address or Contact for purposes of notice. Any notice sent by e-mail to the e-mail address set forth on page 1 or otherwise designated by a Party for itself shall be deemed written notice to that Party.

11.2 Injunctive Relief. Each Party acknowledges that any breach by it of any of the covenants or provisions contained in this Agreement will give rise to irreparable injury to the other Party that cannot be compensated by damages alone. Accordingly, the other Party may seek and obtain preliminary and permanent injunctive relief and other equitable relief against the breach or threatened breach of said covenants or provisions. Such relief shall be in addition to any other legal or equitable remedies that may be available to the other Party.

11.3 Amendment of Agreement.

- (a) Except as otherwise provided in this Agreement, this Agreement may not be changed without the written agreement of the Parties. Provisions that may be changed by giving notice, may be changed by notice given according to Section 11.1.
- (b) Any change in this Agreement required by a change in applicable law, government regulation, or court order will be considered automatically made, but only to the minimum extent required by such law, regulation, or order. Each Party agrees to notify the other of any changes it claims have been made by operation of this section.

11.4 Problem Solving and Arbitration. For any dispute arising under this Agreement, the Parties agree to try to work out a solution informally and, if mutually agreed upon by the Parties, through the use of mediation. If the problem is not settled informally, the dispute will then be submitted to SELECTHEALTH's grievance and appeal process. If any dispute exists following the exhaustion of that process, the Parties will submit the dispute to compulsory, binding arbitration according to the Utah Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association (although not necessarily with the assistance of the American Arbitration Association). Such arbitration shall be conducted in Salt Lake City, Utah. Each Party will bear its own attorney's fees, costs, and expenses in connection with any dispute, and the Parties will share equally the expenses of the arbitration process and the arbitrator(s).

11.5 Severability. If any provision in this Agreement is invalid or unenforceable, such provision shall be construed, limited or, if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected. In the event that this results in a material change to this Agreement as written, then either Party shall be free to terminate this Agreement by giving written notice to the other Party and Sections 9.4 to 9.6 shall apply.

11.6 Construction. This Agreement represents the wording selected by the Parties to define their agreement and no rule of strict construction shall apply against or in favor of either Party. Whenever the context reasonably permits, the singular includes the plural, the plural includes the singular, and the whole includes any part thereof.

11.7 Assignment. HCO may assign this Agreement only with the advance written consent of SELECTHEALTH. Without the advance written consent of HCO, SELECTHEALTH may only assign this Agreement to an entity that is a successor to SELECTHEALTH or that acquires substantially all of SELECTHEALTH's intellectual property relating to this Agreement or the Licensed Software.

11.8 Successors. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

11.9 Force Majeure. Except for obligations to make payment, neither Party shall be liable to the other for any delay or failure to perform its obligations due to any cause beyond its reasonable control, including, without

limitation, acts of nature, fire, flood, accident, riot, war, terrorism, government intervention, embargoes, strikes, labor difficulties, equipment or software failure, late deliveries by suppliers, downtime, and/or disruptions in or failure of power, communications, networks, or the Internet.

11.10 Governing Law. This Agreement and the rights and obligations of the Parties shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of Utah, without regard to conflict of law principles. In the event of any litigation between the Parties relating to this Agreement or any of its subject matter, such litigation must be conducted in a state or federal court of competent jurisdiction located in Salt Lake City, Utah. The Parties agree, consent, and submit to such exclusive jurisdiction and venue. This section is not intended to supersede Section 11.4.

11.11 Entire Agreement. This Agreement (including its Exhibits): (i) represents the entire agreement between the Parties concerning the subject matter of this Agreement, and (ii) supersedes all prior agreements, understandings, representations, and warranties relating to the subject matter of this Agreement. Any terms or conditions of any purchase order or other document submitted by HCO in connection with any Services or this Agreement that are in addition to, different from, or inconsistent with the terms and conditions of this Agreement are not binding on SELECTHEALTH and are ineffective.

11.12 Independent Contractor Relationship. SELECTHEALTH and HCO, including Users, are independent contracting parties and are not agents, partners, employees, or in any other business relationship with each other as the result of the Agreement. Except as expressly set forth in this Agreement as to matters relating to the implementation of this Agreement, neither Party has any right to participate in the management or operation of the other as the result of this Agreement.

11.13 No Third Party Beneficiaries. This Agreement creates no rights in any third parties, including but not limited to Users.

11.14 Execution. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The persons signing above represent that they are duly authorized to execute this Agreement for and on behalf of the Party for whom they are signing.

SECTION 12. EXHIBITS

Exhibit A – SelectHealth Information Technology Services Agreement Description of Services
Exhibit B – HCO Resources and Responsibilities
Exhibit C – Additional Terms

SECTION 13. SIGNATURES

AGREED TO AND ACCEPTED BY:

“HCO”

By Authorized Representative

(signature):

Name (print):

Title:

Date:

SelectHealth, Inc. (“SELECTHEALTH”)

By (signature):

Name (print):

Title:

Date:

Tom Wahlen

Assistant Vice President, Provider Development

EXHIBIT A

DESCRIPTION OF SERVICES

Access via:

- HCO provided Internet Connection.

Application(s):

- SELECTHEALTH Sponsored Provider-Based Web Applications (SELECTHEALTH APPLICATION)

Payment(s):

- SELECTHEALTH APPLICATION: Rate: \$ 0.00

Training:

- SelectHealth will provide general information on the functionality of the SELECTHEALTH APPLICATIONS.

Support:

The HCO will receive support for the SELECTHEALTH APPLICATION by several SELECTHEALTH departments and Information Systems. The SELECTHEALTH Provider Relations department will provide initial training. Support will be transitioned to the SELECTHEALTH Frontline Support (Frontline Support) team upon successful completion of the initial installation. Frontline Support is staffed 24 hours a day, 7 days a week.

Frontline Support can be contacted by phone (Salt Lake City area at (801) 442-7979 or (800) 442-4566 outside the Salt Lake City area). Frontline Support will attempt to acknowledge a support call within 30 minutes of receipt. Evening and weekend coverage follows the same protocol. In the event Frontline Support cannot resolve the reported problem, the problem ticket will be escalated to the appropriate second level support team based on the nature of the problem. If the problem has been escalated and occurs outside of normal business hours (Monday through Friday, 8 AM through 5 PM, excluding holidays and weekends), the SELECTHEALTH Provider Relations Department will attempt to contact the HCO the following business day.

EXHIBIT B

HCO RESOURCES AND RESPONSIBILITIES

HCO provided internet connection

EXHIBIT C
ADDITIONAL TERMS

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