

**AVAILITY ESSENTIALS**  
**ORGANIZATION ACCESS AGREEMENT**

This Organization Access Agreement (including all Exhibits hereto) (this “Agreement”) governs the use of and access to Availity Essentials, a real-time platform that facilitates electronic communication and information exchange between healthcare providers and payers via Availity’s secure websites (“Site”). This Agreement is entered into by and between Availity, L.L.C. (“We”, “Us”, or “Our”) and the organization or company entering into this Agreement with Us (“You” or “Your”). We and You are sometimes hereinafter referred to individually as the “Party” or collectively as the “Parties”.

THIS AGREEMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT APPLY TO YOUR ORGANIZATION’S USE OF AND ACCESS TO AVAILITY ESSENTIALS. PLEASE READ IT CAREFULLY. BY USING AND ACCESSING THE SERVICES VIA THIS SITE, YOU AFFIRM THAT YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS, AND ACKNOWLEDGE AND UNDERSTAND THAT THESE TERMS MAY BE UPDATED OR MODIFIED AT ANY TIME, IN OUR SOLE DISCRETION. YOU, AS THE ADMINISTRATOR, FURTHER AFFIRM THAT YOU HAVE THE LEGAL AUTHORITY TO ACT ON BEHALF OF THE ORGANIZATION OR COMPANY YOU REPRESENT, INCLUDING BINDING SUCH ORGANIZATION OR COMPANY TO THESE TERMS.

**TERMS AND CONDITIONS**

**1. Definitions.**

- (a) “Administrator” is the person who has legal authority to sign agreements on Your organization’s behalf and who is responsible for granting access to Users, validating users, and maintaining Users. The Administrator may, from time to time and in the manner prescribed by Us, designate another person to setup and maintain Users, but the Administrator will retain overall responsibility for setting up and maintaining Users and signing future updates to this Agreement.
- (b) “Content” means all data, features, functionality, self-service functions, materials, text, graphics, images, displays, files, software, sound recordings, audiovisual works, images, user guides, operating manuals, policies, trainings, blogs, news, reports, and other materials provided by Us or made available or displayed via the Site, and the design, arrangement, and compilation of the Site, in each case, as may be modified from time to time by Us. Content excludes any content provided by payers through Payer Spaces or other sites or applications linked from or to the Site.
- (c) “Login Credentials” means the unique User identification and password combination required to gain access to the Services, including any and all security measures required prior to gaining access to the Services.
- (d) “Services” means Availity Essentials, and includes any and all features or functionality thereof and all updates, upgrades, enhancements, improvements, or modifications to Availity Essentials.
- (e) “User” means a person You have authorized and validated to access or use the Services on Your behalf, and who has entered into a User Agreement. For the avoidance of doubt, a User may include individuals who are employed by You or Your affiliates and/or Business Associates.

- (f) “User Agreement” means the terms and conditions that govern Users' use of and access to the Services.

**2. Use of the Services.** We hereby grant You a limited, revocable, non-exclusive, non-transferable license to access and use the Services and Content for the permitted uses described in this Agreement. You agree to use the Services and Content in compliance with the terms of this Agreement, all policies and terms specified by Us from time to time and made available to You, and all applicable laws, rules, and regulations. You may access and use the Services and Content for Your internal legitimate business purposes related to the exchange of healthcare information by and between Covered Entities and Business Associates, as defined in 45 C.F.R. Part 160.103. Any access or use of the Services and Content for other purposes is strictly prohibited. To the extent that tools are used to obfuscate (e.g., virtual private network (VPN)), or make it difficult to determine, You or a User's origin and identification, We have the right to make inquiry and You must provide a valid reason for such use. If You refuse to timely cooperate, or We disapprove in Our sole discretion, Your access to the Services may be suspended or terminated.

**3. Restrictions.** You will not, and will not permit any User or any third party to:

- (a) provide any person who is not a User access to the Services or Content;
- (b) sell, resell, rent, license, sublicense, distribute lease, copy, frame, or mirror any part of the Services or Content;
- (c) use the Services to store or transmit false, fraudulent, infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
- (d) use the Services to store or transmit viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs;
- (e) interfere with or disrupt Availability's servers or networks (including, but not limited to, by means of the transmission of any virus, worm, Trojan horse, or other items of a destructive or harmful nature), or otherwise interfere with the integrity or performance of the Services or third-party data contained therein;
- (f) use the Service or Content in a manner contrary to how the Service or Content are intended or designed, or attempt to gain access to the Services or the related systems or networks through unauthorized methods, or otherwise violate, tamper with or circumvent the security of any computer network, software, passwords, encryption codes, technological protection measures, including but not limited to accessing the Services in any manner not contemplated or permitted under this Agreement, or to enable others to do so;
- (g) create derivative works based on the Services or Content and/or reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Services or any part thereof;
- (h) access the Services or Content in order to build a competitive product or service;
- (i) use the Services or Content in a manner which may violate the laws and regulations of the United States or any other nation, or the laws and regulations of any state, city, province, or other jurisdiction;
- (j) transmit any information using the Services without proper consent, authorization, or permission where required;
- (k) copy any features, functions, or graphics of the Services or Content;

- (l) submit any data that is subject to the European Union Data Protection Regulation 2016/679;
- (m) submit eligibility and benefits transactions or otherwise use or access the Services or Content for the purpose of insurance discovery practices;
- (n) use bots, technology, or methods that are intended to obtain information from the Services in a manner that is not intended by the Services and not for Your legitimate business purposes, commonly referred to as “screen scraping,” “data scraping,” “web scraping,” “web emulation,” or “web bots” (collectively, “Scraping Methods”) when accessing or using the Services, including but not limited to, when You submit medical transactions or other information or data through the Services. In the event that You use any of the Scraping Methods, We may utilize technical measures to prevent such usage and may, in Our sole and absolute discretion, suspend or terminate the connection. In addition, We may take direct legal action against You or Your User to the fullest extent permitted by law for use of any such Scraping Methods; and
- (o) submit transactions in a manner that We, in Our sole and absolute discretion, deem to be excessive or abusive. We will monitor Your usage and notify You if We determine your use to be excessive or abusive. To the extent the parties do not reach a resolution of the issue within thirty (30) days of Our notice to You, We may utilize technical measures to prevent such usage and/or suspend or terminate Your use of and access to the Services.

#### **4. Registration, Access, and Security.**

- (a) You must validate your identity through a registration process or other process established by Us (“Identity Validation”). The Identity Validation process may change from time to time in Our sole and absolute discretion but may require You to adhere to an Identity Assurance Level that includes a standard of IAL2 as defined in the National Institute of Standards (NIST) Digital Identity Guidelines, NIST 800-63-3, or succeeding guideline (“NIST Guidelines”). All data and information required for Identity Validation, including, but not limited to, images of Your likeness, biometrics, and copies of government issued documents may be stored with Us and an authorized third-party used for Identity Validation. You hereby consent to Identity Validation in accordance with this Section 4(a) and agree that Identity Validation is essential to using the Services.
- (b) You must register each User through the online registration process or other process established by Us, which process may change from time to time in Our sole and absolute discretion. Each User is required to acknowledge and agree to the terms and conditions of the User Agreement upon initial login prior to accessing and using the Services. No User will receive access to the Services without valid Login Credentials and accepting the User Agreement. You acknowledge and agree that We will require Users to comply with all terms and conditions set forth in the User Agreement. You are responsible for breaches by Users of the User Agreement.
- (c) As the Administrator, You must verify and enforce that each User requesting access to the Service provides evidence that the User is the owner of the identity the User is claiming to use (“User Authentication Requirement”). The verification method used to satisfy the User Authentication Requirement must adhere to an Identity Assurance Level no less than IAL2 as defined in the NIST Guidelines. You are solely responsible for validating each User in accordance with the User Authentication Requirement.
- (d) You are responsible to appoint and maintain a current Administrator and You shall be responsible for all acts and omissions of the Administrator. You will use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such actual

or suspected unauthorized access or use of the Services by email to [privacyoffice@availity.com](mailto:privacyoffice@availity.com).

- (e) The Administrator is solely and exclusively responsible to ensure that each User has unique Login Credentials, and to maintain an accurate and up to date list of all Users. Administrator may, from time to time and in the manner prescribed by Us, designate another person to setup and maintain Users, but the Administrator shall retain overall responsibility for Users, including setting up and maintaining Users. You are solely responsible for maintaining the strict confidentiality of, and monitoring the security and maintenance of, Login Credentials. Each User is permitted to access the Services only using the unique Login Credentials assigned to such User. You will not, and will ensure that Your Users do not, allow any other person to use a User's Login Credentials to access the Services. You agree that You will be fully liable for any and all charges, damages, or losses that may be incurred or suffered as a result of the acts and omissions of any third party that accesses the Services through use of Your or Your Users' Login Credentials, as if such acts and omissions were Your own. We are not and will not be liable for any harm arising from or relating to the theft of Login Credentials, Your disclosure of Login Credentials or the use of Login Credentials by another person or entity.
- (f) The Administrator may disable any User's access to the Services at any time by revoking the User's access online or by a written request to Us. You must immediately notify Us in writing by email to [privacyoffice@availity.com](mailto:privacyoffice@availity.com), and Administrator must immediately disable access to the Services by a User, when You have any security concern, including but not limited to any security breach, lost or stolen Login Credentials, disclosure of confidential information, use of the Services in violation of the terms of this Agreement, any applicable User Agreement, or fraudulent activity. In addition, Administrator must disable access to the Services by any terminated employee immediately upon such employees' termination. We are not and will not be liable for any harm arising from or relating to the theft of Your Login Credentials, Your disclosure of Your User ID or password or the use of Your User ID or password by another person or entity. Any attempt to obtain unauthorized access, or to exceed authorized access, to the Services and Content will be considered a trespass and computer fraud and abuse, punishable under state and federal laws.
- (g) Internet connectivity is required for You to access the Services. You are solely responsible, at Your own expense, to ensure that You have Internet access, and compatible hardware, and software necessary to access the Services.

## **5. Organization Representations.**

- (a) You represent that You are either a "Covered Entity" or "Business Associate" as defined in 45 CFR §160.103, that is providing services to, for or on behalf of a Covered Entity either directly or through other Business Associates of the Covered Entity. If You are a Business Associate of a Covered Entity, You represent and warrant that: (1) you have entered into a Business Associate Agreement with such Covered Entity, (2) you have written authorization to submit transactions (including claims) to Us on behalf of the Covered Entity, and (3) you have permission and/or written authorization from the Covered Entity as is necessary for Us to provide the Services.
- (b) You represent that none of You, Administrator, nor any of Your Users, employees or contractors have previously been convicted of a criminal offense related to healthcare or been listed as debarred excluded or otherwise ineligible for participation in a federal health care program or public government contract. You will immediately notify us if You become aware that You, Administrator, or any of Your Users, employees or contractors have been excluded or are otherwise ineligible to participate in a federal health care program or public government contract

and will immediately discontinue access to the Services for any affected entities or individuals.

(c) You represent that You have validated all Users in accordance with this Agreement.

(d) You represent that Administrator and all Users are at least 18 years of age.

**6. HIPAA, Privacy, and Business Associate Provisions.** The Parties agree as follows: (a) the Business Associate Provisions (attached hereto as Exhibit A), which are hereby incorporated by reference into this Agreement, and which may be updated from time to time as described therein, will govern the rights and responsibilities of You and Us with respect to the communication and treatment of Protected Health Information (“PHI”), as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (“HIPAA”); (b) each Party will use or disclose PHI only in a manner consistent with all applicable laws and regulations, including HIPAA; (c) You represent and warrant to Us that You have provided or will provide to patients all notices, and that You have obtained or will obtain from patients all consents, authorizations, permissions, and any other rights required by HIPAA and other applicable laws in connection with Your use of the Services; Both Parties agree that in the event any legislation or rules promulgated under HIPAA or any other federal or state governing statutes or regulatory action after the effective date of this Agreement, which modifies in any way the use, disclosure, or exchange of PHI, will be deemed accepted upon the effective date and this Agreement will be automatically updated to include such changes as of their effective date without requiring further amendment to this Agreement.

**7. Confidentiality.** Each Party (as “Receiving Party”) acknowledges and understands that in connection with this Agreement, the other party (as “Disclosing Party”) may share confidential or proprietary information, including without limitation terms and conditions of this Agreement, trade secrets, technology, software, information pertaining to business operations and strategies, pricing, and marketing, whether in oral, electronic, or written form, which the Receiving Party knows or should know by the nature of the information or its disclosure, is proprietary or confidential to the Disclosing Party (“Confidential Information”). Confidential Information will not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information. The Receiving Party will use the Confidential Information of the Disclosing Party only for the purpose of performing its obligations under this Agreement. The Receiving Party agrees not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants and advisors who have a “need to know” and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Agreement, to and including security and fraud investigations. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party will use commercially reasonable efforts to provide prompt written notice of such requirement, if legally permissible, so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy.

**8. Medicaid Eligibility Transactions.** You will comply with all applicable laws and regulations. To the extent applicable, You agree to comply with the Medicare Medicaid terms and conditions available at [Medicaid Terms](#). You agree that, with respect to Medicaid eligibility transactions: (a) access to eligibility

information is restricted to the sole purpose of verification of Medicaid eligibility where the recipient has requested Medicaid payment for medical services; (b) verification of eligibility under the system is not a guarantee of payment and the records as to the recipient's eligibility status will be the final authority; and (c) You agree to abide by applicable federal and state laws regarding confidentiality of information.

**9. Intellectual Property.** You acknowledge and agree that the Services and Content are protected by copyrights, trademarks, trade secrets, patents, or other proprietary rights, and that these rights are valid and protected in all forms, media, and technologies existing now and hereafter developed. You acknowledge and agree that We (or third parties providing content for the Services) exclusively own all rights, titles and interests in and to the Services, Content, and all intellectual property rights therein, and that the Services and Content will remain the property of Us and our licensors. You agree to comply with all applicable intellectual property laws and you will not encumber any interest in, or assert any rights to the Services or Content. You may print copies of the Content for Your legitimate internal business purposes only, but You may not modify, distribute, license, sublicense, transmit, create derivative works based on, link to, reproduce, or participate in the sale, transfer, or distribution of the Services or Content, in whole or in part, without prior written permission of Us. All rights not expressly granted in this Agreement are reserved to Us. No other rights or licenses are conveyed or intended by this Agreement.

**10. Data.**

- (a) Third Party Data. We are not responsible for the accuracy, quality, integrity, and legality of the data, including PHI, from third party sources that are made available to You in connection with the Services.
- (b) Transaction Data. You will be solely responsible for the accuracy, quality, integrity, and legality of the data, including PHI, Personally Identifiable Information, and any other information used in connection with the Services ("Transaction Data").
- (c) Your Data. You will be solely responsible for the accuracy, quality, integrity, and legality of information used to validate Your Identity and any User identity, and any other information in connection with the use or registration of the Services ("Your Data"). The collection and use of Your Data are governed according to Our [Privacy Policy](#) which is incorporated in its entirety into this Agreement by reference. We may update this Privacy Policy from time to time and encourage You to review this Privacy Policy frequently to be informed of how we are protecting Your information. You hereby grant to Us a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use Transaction Data and Your Data as necessary to provide the Services and for Our business purposes, including, but not limited to, benchmarking, security and fraud investigations, sharing Your transaction details and user information (e.g., IP address and user name) with a health plan or entity with which You have a relationship, and making improvements and modifications to the Services. You also hereby permit us to use Your Data in de-identified and in aggregated form, which will always be in a manner that does not identify a natural person or You. We are the sole and exclusive owner of any and all proprietary rights in such de-identified data.
- (d) Usage Data. The provision of the Services involves the ongoing operation, support, and improvement of the Services for all users. Availity will securely process information related to how You and Your Users use and interact with the Services, including but not limited to login frequency, first pass rate, region or specialty, and how frequently certain features are used ("collectively, "Usage Data"). Availity may use Usage Data for its internal business purposes, including for the purpose of security and fraud investigations, updating, modifying, enhancing,

and protecting the Services, and using algorithmic analysis and/or machine learning technologies. We further reserve the right to provide You and other similarly situated organizations with general statistical information and benchmark reports based on such Usage Data. In no event will Usage Data include PHI or Your Data that constitutes individually identifiable information, nor will such Usage Data identify You to any other organization.

- (e) Feedback. In the event You or Your Users provide Us with any suggestions, enhancement requests, recommendations, or other feedback relating to the Services (collectively, “Feedback”), You grant Us a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any such Feedback.

**11. User Contributions.** The Services may contain certain interactive features that allow Users to post, submit, publish, display, provide, or transmit (collectively, “Post”) content or materials (collectively, “User Contributions”) on or through the Services. Any User Contribution You Post to the Services will be considered non-confidential and non-proprietary. By Posting any User Contribution, You grant Us, and Our affiliates, vendors, suppliers, licensors and service providers (collectively, “Related Entities”), the right to use, reproduce, modify, perform, display, distribute, and otherwise disclose to third parties any User Contributions for any purpose. You represent and warrant that: (a) all of Your User Contributions comply with the terms of this Agreement and User Agreements; (b) Your User Contributions do not infringe any third party rights; (c) You own or control all rights in and to the User Contributions and have the right to grant the license granted above to Us and Our Related Entities; and (d) User Contributions may not contain any PHI. You understand and acknowledge that We are responsible for any User Contributions You submit or contribute, and You, not Us, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by You or any other User of the Services. If You believe that any User Contributions or other Content violates Your copyright, You may submit a written request (a “Copyright Notice”) to [legalnotice@availity.com](mailto:legalnotice@availity.com) asking to remove or access such materials. In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. § 512), such Copyright Notice must include substantially the following: (a) Your physical or electronic signature, (b) identification of the copyrighted work You believe to have been infringed or, if the claim involves multiple works on the Services, a representative list of such works, (c) identification of the material you believe to be infringing in a sufficiently precise manner to allow Us to locate that material, (d) adequate information by which We can contact You (including your name, postal address, telephone number, and email address), (e) a statement that You have a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent, or the law, (f) a statement that the information in the written notice is accurate, and (g) a statement, under penalty of perjury, that You are authorized to act on behalf of the copyright owner.

**12. General Disclaimers.** THE SERVICES AND SITE ARE PROVIDED TO YOU ON AN “AS IS, WITH ALL FAULTS” BASIS, AND YOUR USE OF THE SERVICES AND SITE IS AT YOUR OWN RISK. THE SITE AND THE CONTENT ARE MADE AVAILABLE TO YOU FOR YOUR CONVENIENCE. WE MAKE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICES, CONTENT, OR ANY UPDATES OR UPGRADES THERETO, OR THE ACCURACY, RELIABILITY, OR COMPLETENESS OF ANY CONTENT OR OTHER INFORMATION PROVIDED TO YOU IN CONNECTION WITH THE SERVICES PROVIDED TO YOU UNDER THIS AGREEMENT. WE EXPRESSLY AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, RESULTS, WORKMANLIKE EFFORT, COURSE OF DEALING AND TITLE, AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, CONTENT, AND ANY OTHER MATERIALS AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING. WE

MAKE NO WARRANTY, AND EXPRESSLY DISCLAIMS ANY OBLIGATION, THAT: (A) THE SERVICES OR ANY CONTENT, INCLUDING THIRD PARTY CONTENT, CONTAINED THEREIN WILL MEET YOUR REQUIREMENTS OR WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR VIRUS-FREE BASIS; (B) THE CONTENT, FORMS AND INFORMATION PROVIDED ON OR THROUGH THE SERVICES WILL BE UP-TO-DATE, COMPLETE, COMPREHENSIVE, OR ACCURATE; (C) THE INFORMATION THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF THE SERVICES, CONTENT, OR OTHER INFORMATION OR MATERIALS OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS; OR (E) THAT DEFECTS, IF ANY, WILL BE CORRECTED. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY TRANSACTION THAT WE FAIL TO TRANSMIT, OR SEND IN AN INCORRECT OR INCOMPLETE FORMAT, WILL BE, UPON YOUR WRITTEN REQUEST IF RECEIVED BY US WITHIN THIRTY (30) BUSINESS DAYS AFTER SUCH TRANSACTION WAS ORIGINALLY SENT, TO REPROCESS AND/OR RESUBMIT SUCH TRANSACTION AT OUR EXPENSE. WE WILL NOT BE RESPONSIBLE FOR ANY DOWN TIME OR SUSPENSION OF YOUR SYSTEM, ANY DEFECTIVE PROCESSING, OR FOR THE SECURITY OF DATA DURING TRANSMISSION THROUGH PUBLIC TELECOMMUNICATION LINES.

Links to other third-party websites may be provided from or through the Site or the Services. When you click on these links you will leave the Our website and will be redirected to a third party's website. Third party websites are not under Our control. WE ARE NOT RESPONSIBLE OR LIABLE FOR THE CONTENT, SECURITY, OR ANY OTHER ASPECT OF THE THIRD-PARTY WEBSITES, OR THE ACTS OR OMISSIONS OF THE APPLICABLE THIRD PARTY, IN ANY WAY.

**13. Limitation of Liability.** TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL WE, OUR AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, LICENSORS, SUPPLIERS, SUCCESSORS AND ASSIGNS OF EACH, BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY PERSONAL INJURY OR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES ARISING OUT OF ANY USE OF THE SERVICES AND/OR CONTENT, THE SITE, OR ANY OTHER HYPER-LINKED SITE, INCLUDING BUT NOT LIMITED TO THIRD PARTY WEBSITES. THIS INCLUDES, WITHOUT LIMITATION, ANY LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR DATA ON YOUR EQUIPMENT, OR OTHER DAMAGES OF ANY NATURE, EVEN IF WE ARE EXPRESSLY ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. WE SPECIFICALLY DISCLAIM ALL LIABILITY WITH RESPECT TO YOUR ACCESS AND USE OF ANY PHI AND ANY CLAIM BETWEEN YOU AND ANY PATIENT OR OTHER THIRD PARTY WITH RESPECT THERETO. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED. THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE AGREEMENT BETWEEN US AND YOU.

**14. General Indemnity.** You agree to defend, indemnify, and hold Us and Our affiliates, directors, officers, employees, agents, contractors, licensors, suppliers, successors, and assigns of each harmless against any and all losses, expenses, costs, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, or damages (including Our reasonable attorneys' fees, expert fees, and other reasonable costs of litigation) arising from, incurred as a result of, or in any manner related to (a) Your breach of the terms of this Agreement; (b) Your unauthorized or unlawful use of the Services, the Site or any Content; (c) the unauthorized or unlawful use of the Services by any other person using Your Login Credentials; and (d) any breach or unauthorized use of the Services of any person or entity to whom You delegate functions or User access to with regard to the Services.



**15. Term and Termination.** You may use the Services for so long as You possess valid Login Credentials, or unless otherwise terminated by Us. We may terminate or suspend Your access to the Services at any time, with or without cause. We may deny Your access to the Services in the event You breach this Agreement or at any time with or without notice to You. You are responsible for all acts or omissions by Users, and for any liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims, or demands of any kind or nature by or on behalf of any person, party, or governmental authority incurred by Us as a result of any User's use of the Services.

**16. Third Party Software and Content.** You agree to use any third-party software or content We may provide to You solely for the purposes of using the Services in accordance with the terms of this Agreement. You acknowledge and agree that We are not responsible for any third-party software or content, including its accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. We do not assume and will not have any liability or responsibility to You or any other person or entity for any third-party software or content. Third-party software and content and links thereto are provided solely as a convenience to You, and You access and use them at entirely at Your own risk and subject to the terms and conditions of any licenses relating to such third-party software. We may, but have no obligation to, assist in the installation of such software. Upon Our request, You will return all copies of such third-party software to Us and remove, and certify to Us such removal, of any electronic copies of such third-party software stored or residing on Your systems.

**17. Governing Law; Venue; Arbitration.** This Agreement is governed by the laws of the State of Florida, without regard to its conflicts of law provisions. Any dispute relating to this Agreement, the Site, or the Services will be brought only in a federal or state court sitting in Duval County, Florida. At Our sole and absolute discretion, You may be required to submit any disputes arising from this Agreement or Your use of the Services, including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or termination, to final and binding arbitration under the Rules of Arbitration of the American Arbitration Association applying Florida law in Duval County, Florida.

**18. Force Majeure**

We are not liable in any way for delays, failure in performance, loss, or damage due to any of the following conditions beyond Our control: computer "virus" infections, computer system downtime, fire, strike, embargo, explosion, power blackout, earthquake, volcanic action, flood, war, water, the elements, labor dispute, civil disturbance, governmental requirement, civil or military authority, acts of God, public enemy, inability to secure fuel, inability to secure products, inability to secure transportation, or other causes beyond Our reasonable control, whether or not similar to the foregoing. We are not liable in any way for delays, failure in performance, loss or damage due to acts or omissions cause by You, Your Users, or other providers, payers, or other third parties.

**19. Order of Precedence.** If You have entered into other agreements with Us or any affiliate of Availity, L.L.C., and there is any conflict between the terms of this Agreement and any other agreement by and between You and Us or any affiliate of Availity, the terms of this Agreement, including Exhibit A, shall control with respect to Your use of and access to Availity Essentials.

**20. Miscellaneous.**

- (a) It is understood and agreed that no failure or delay by a Party in exercising any right, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof

preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

- (b) If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision will be eliminated or limited to the minimum extent such that the remaining provisions of this Agreement will continue in full force and effect.
- (c) You may not assign or delegate any of Your rights or obligations under this Agreement without Our prior written consent. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves You of any obligations under this Agreement.
- (d) All legal notices related to this Agreement must be given in writing to Availity at [legalnotice@availity.com](mailto:legalnotice@availity.com). Any legal notice given by Availity to you will be delivered via email to Your Administrator.
- (e) Any media releases related to this Agreement, including, without limitation, promotional or marketing material, must be approved in writing by Us prior to release. This restriction does not apply to any announcement intended solely for internal distribution or any disclosure necessary to meet legal, accounting, or regulatory requirements.
- (f) The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party has authority to contract for or bind the other Party in any manner whatsoever.
- (g) This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- (h) Provisions of this Agreement, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Restrictions; HIPAA, Privacy and Business Associate Provisions; Confidentiality; Data; Intellectual Property; Limitation of Liability; General Indemnity; Governing Law, Venue, and Arbitration; and Miscellaneous.
- (i) This Agreement may be amended or modified from time to time in Our sole and absolute discretion by posting such amendments or modifications to Our Site.
- (j) This Agreement, including all Exhibits and other terms referenced and incorporated herein constitute the sole and entire agreement between You and Us regarding the Services and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Services.

**EXHIBIT A**  
**BUSINESS ASSOCIATE PROVISIONS**

This Exhibit A: Business Associate Provisions (“BAA”) sets forth the terms and conditions under which We in Our capacity as a business associate or a sub-business associate (in either case “Business Associate”) will create, receive, maintain or transmit Protected Health Information as defined below (“PHI”) or Electronic Protected Health Information (“Electronic PHI”) in order to perform the Services or other certain specified services for You in Your capacity as a Covered Entity or business associate of a Covered Entity (in either case, “Covered Entity”) under applicable federal or state law, including but not limited to the regulations promulgated pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations, as amended from time to time, including by certain provisions of the Health Information Technology for Economic and Clinical Health (“HITECH”) Act referred to individually as the “HIPAA Privacy Regulations”, the “HIPAA Security Regulations”, the “HIPAA Breach Notification Regulations” and, collectively, as the “HIPAA Regulations”.

**ARTICLE 1**  
**DEFINITIONS**

Capitalized terms used, but not otherwise defined, in this BAA have the meanings set forth below.

- 1.1 “Business Associate” has the same meaning as the term “business associate” at 45 C.F.R. §160.103, and in reference to the party to this BAA, shall mean You and/or Us, as applicable.
- 1.2 “Covered Entity” has generally the same meaning as the term “covered entity” at 45 C.F.R. §160.103, and in reference to the parties to this BAA, shall mean You and/or Us, as applicable.
- 1.3 “Designated Record Set” has the same meaning as the term “designated record set” in 45 CFR §164.501.
- 1.4 “Electronic Protected Health Information” or “Electronic PHI” means PHI transmitted by or maintained in Electronic Media.
- 1.5 “HIPAA Rules” means the Privacy, Security, Breach Notification, Transactions, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- 1.6 “HITECH Act” means the Health Information Technology for Economic Clinical Health Act, Title VIII of Division A and Title VI of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L.111-5).
- 1.7 “Parties” means Us and You. (Us and You, individually, may be referred to as a “Party”.)
- 1.8 “Protected Health Information” or “PHI” has the meaning set forth under HIPAA, but limited to that protected health information that Business Associate creates, receives, maintains or transmits in connection with the Services.
- 1.9 “Organization Access Agreement” means the Organization Access Agreement between Us and You and other separate agreement(s) between the Parties in which either Party performs functions or activities on behalf of the other.
- 1.10 “Services” has the same meaning as the term “Services” in the Organization Access Agreement.
- 1.11 Other definitions: The following terms used in this BAA have the same meaning as those in the HIPAA Rules: Breach, Data Aggregation, Disclosure, Health Care Operations, Individual, Minimum Necessary, Limited Data Set, Notice of Privacy Practices, Required By Law, Secretary, Security

Incident, Standard, Subcontractor, Transaction, Unsecured Protected Health Information, and Use. Other terms have the definitions set forth in this BAA.

## **ARTICLE 2 CONFIDENTIALITY**

### **2.1 Obligations and Activities of Parties.** Business Associate agrees as follows:

- (a) not to use or further disclose PHI other than as permitted or required by this BAA or as Required By Law;
- (b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted by this BAA, the Organization Access Agreement, and the HIPAA Rules, and to comply with Subpart C of 45 C.F.R. part 164 with respect to Electronic PHI;
- (c) to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (d) to report to Covered Entity within a reasonable time any use or disclosure of PHI not provided for by this BAA or Breach of Unsecured PHI of which Business Associate becomes aware. Business Associate will take (i) prompt action to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of such use, disclosure or Breach; and (ii) any further action required of Business Associate by applicable Federal and State laws and regulations. For incidents constituting a Breach, the report will include, to the extent available, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, used or disclosed during a Breach of Unsecured Protected Health Information;
- (e) to report to Covered Entity any Security Incident of which Business Associate becomes aware. Notwithstanding the foregoing, Covered Entity acknowledges that Business Associate routinely experiences Unsuccessful Security Incidents (as defined below) that do not result in a Breach of Unsecured PHI. The Parties agree that this section satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents for which no additional notice to Covered Entity will be required. For purposes of this BAA, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Electronic PHI;
- (f) to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA;
- (g) in accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to no less restrictive restrictions and conditions that apply to Business Associate with respect to such information and agree to comply with the HIPAA Security Regulations with respect to Electronic PHI;
- (h) at the request of Covered Entity and in the time and manner reasonably designated by Covered Entity, furnish access to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524, provided that Business Associate will not be required to furnish access to the same

PHI that is maintained in more than one Designated Record Set or at more than one location, as provided in 45 CFR §164.524(c)(1);

- (i) to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity;
- (j) subject to Business Associate's reasonable confidentiality and security practices, to make internal practices, books, and records relating to the use and disclosure of PHI available to Covered Entity or the Secretary, in a time and manner reasonably requested by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule;
- (k) to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- (l) to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1(k) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528; and
- (m) if and only to the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 C.F.R. part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

## 2.2 Specific Use and Disclosure Provisions.

- (a) Except as otherwise provided in this BAA, Business Associate may use PHI only (i) in accordance with and as permitted by this BAA, (ii) for the proper management and administration of Business Associate; or (iii) to carry out Business Associate's legal responsibilities.
- (b) Except as otherwise provided in this BAA, Business Associate may only disclose PHI for the purposes set forth in (a) above (i) as Required By Law, or (ii) provided that Business Associate has obtained reasonable assurances from the person to whom the information is disclosed that (A) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (B) such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Business Associate may create de-identified information that may be used and disclosed by Business Associate for any purpose, provided that the information is de-identified in accordance with the HIPAA Rules and may only be used and disclosed consistent with applicable law.
- (d) Business Associate may use PHI to provide Data Aggregation services.
- (e) Business Associate may also create and use a Limited Data Set for Health Care Operations, Research and/or public health purposes, provided that Business Associate will:
  - (i) Not use or further disclose the Limited Data Set other than as permitted by this BAA or Required by Law;

- (ii) Use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this BAA;
- (iii) Report to the Covered Entity any use or disclosure of the Limited Data Set not provided for by this BAA;
- (iv) Ensure that any agents to whom it provides the Limited Data Set agree to no less restrictive restrictions and conditions that apply to Business Associate with respect to the Limited Data Set; and
- (v) Not identify the information or contact the Individuals.

2.3 Further Obligations of the Parties:

- (a) Covered Entity will notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.
- (c) Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) Covered Entity will comply with all applicable state and federal privacy and security laws and regulations, including the HIPAA Rules. Covered Entity agrees to ensure that any patient permissions, authorizations or consents that may be required under applicable state or federal law or regulation have been obtained in order to transmit PHI to Business Associate and to enable Business Associate and its Subcontractors to use and disclose PHI as contemplated by this BAA.

2.4 Permissible Requests by Covered Entity. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations.

**ARTICLE 3  
EXCHANGE OF STANDARD TRANSMISSIONS**

3.1 Obligations of the Parties. Each of the Parties agrees that it will not enter into a trading partner agreement that affects the Transactions Rule's implementation specifications by:

- (a) changing the definition, data condition, or use of a data element or segment;
- (b) adding any data elements or segments to the maximum defined data set;
- (c) using any code or data elements that are either marked "not used" or are not contained in the implementation specifications, and/or;
- (d) changing the meaning or intent of any of the implementation specifications.

3.2 Backup. Covered Entity will maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary.

- 3.3 Incorporation of Modifications to HHS Transaction Standards. Each of the Parties agrees and understands that from time-to-time, The United States Department of Health and Human Services ("HHS") may modify and set compliance dates for the Transactions Rule. Each of the Parties agrees to incorporate by reference into this BAA any such modifications or changes.

#### **ARTICLE 4 MISCELLANEOUS**

4.1 Term and Termination.

- (a) Term. This BAA will be effective for so long as the Organization Access Agreement is in effect, unless earlier terminated in accordance with paragraph 4.1(b) of this BAA.
- (b) Termination. Upon a material breach by either Party of its obligations under this BAA, the other Party may terminate this BAA and the Organization Access Agreement. If this BAA is terminated by a Party, the Organization Access Agreement will also be deemed to be terminated.
- (c) Effect of Termination.
  - (i) Except as provided in paragraph 4.1(c)(ii), upon termination of this BAA, for any reason, Business Associate will return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.
  - (ii) In the event that Business Associate determines that returning or destroying the PHI is infeasible, with respect to PHI received from Covered Entity, or created, maintained, transmitted, or received by Business Associate on behalf of Covered Entity, Business Associate will:
    - a. Retain only that PHI which Business Associate determines is infeasible to return or destroy;
    - b. Return to Covered Entity or destroy the remaining PHI that Business Associate still maintains in any form;
    - c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
    - d. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same protections set out in this BAA which applied prior to termination; and
    - e. Return to Covered Entity or destroy the PHI retained by Business Associate when it is feasible to do so.

- 4.2 Regulatory References. A reference in this BAA to a section of the HIPAA Rules means the section as in effect or as amended.

- 4.3 Survival. The respective rights and obligations of the Parties under Sections 4.1(c), this Section 4.3, and Section 4.4 of this Agreement will survive the termination of this Agreement.

- 4.5 No Third Party Beneficiaries. Nothing in this BAA will create any right in any third party as against Covered Entity or Business Associate or be construed for the benefit of any third party.
- 4.6 Interpretation. Any ambiguity in this BAA will be resolved to permit the Parties to comply with the HIPAA Rules. This BAA supersedes any and all prior representations, understandings, or agreements, written or oral, concerning the subject matter herein.
- 4.7 Amendment. The Parties agree that in the event of a change in the HIPAA Rules that affects this BAA, the terms of this BAA will be updated within sixty (60) days of the effective date of the change in the HIPAA Rules requiring the amendment.