

## BASIC CONTRACT AND CONSULTING SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into on January \_\_\_\_\_, 2013 between [name] of [street, number, city, state, zip] ("Consultant") and MiHIN ("Client"), with its principal place of business located at 120 W. Saginaw, East Lansing, MI 48823 and shall be effective as of \_\_\_\_\_ (the "Effective Date").

### RECITALS

WHEREAS, Consultant has expertise in the areas of \_\_\_\_\_ and \_\_\_\_\_

WHEREAS, Client wishes to utilize the services of Consultant in connection with its efforts to improve health care for patients and providers throughout Michigan,

NOW, THEREFORE, Consultant and Client agree as follows:

#### 1. Scope of Services

Consultant will perform the following work ("Consultant's Work" or the "Work") for Client in accordance with the Statement of Work ("SOW") as set forth in one or more numbered SOWs ("SOW").

#### 2. Price and Payment Terms

Client agrees to cooperate with Consultant's reasonable requests with respect to the scheduling and performance of the work and to pay Consultant for Consultant's Work as set forth in the SOW.

#### 3. Term and Termination

Unless terminated as provided herein, this Agreement shall extend to and terminate upon completion of Consultant's Work as provided herein. Additional SOW's that extend Consultant's Work may be added to this Agreement via simple amendment through additional SOW Exhibits by mutual written agreement of the parties. Client may terminate this Agreement without cause upon thirty (30) days written notice. In the event of termination, Client agrees to pay Consultant for all of Consultant's Work performed up to the date of termination. Either party may terminate this agreement for material breach, provided, however, that the terminating party has given the other party at least 21 days written notice of and the opportunity to cure the breach. Termination for breach shall not preclude the terminating party from exercising any other remedies for breach.

#### 4. Ownership of Intellectual Property

Consultant hereby assigns to Client all right, title, and interest in any intellectual property created or developed by Consultant for Client under this agreement.

## **5. Confidential Information**

A. All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Consultant and shall not be disclosed or used by Consultant except to the extent that such disclosure or use is reasonably necessary to the performance of Consultant's Work.

B. All information relating to Consultant that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Client and shall not be disclosed or used by Client except to the extent that such disclosure or use is reasonably necessary to the performance of Client's duties and obligations under this Agreement.

C. These obligations of confidentiality shall extend for a period of 360 days after the termination of this agreement, but shall not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

## **6. Warranty and Disclaimer**

Consultant warrants that Consultant's Work will be provided in a workmanlike manner, and in conformity with generally prevailing industry standards. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

## **7. Limitation of Remedies**

Client's sole and exclusive remedy for any claim against Consultant with respect to the quality of Consultant's Work shall be the correction by Consultant of any material defects or deficiencies therein, of which Client notifies Consultant in writing within fourteen (14) days after the completion of that portion of Consultant's Work. In the absence of any such notice, Consultant's Work shall be deemed satisfactory to and accepted by Client.

## **8. Limitation of Liability**

In no event shall Consultant be liable for any loss of profit or revenue by Client, or for any other consequential, incidental, indirect or economic damages incurred or suffered by Client arising as a result of or related to Consultant's Work, whether in contract, tort, or otherwise, even if Client has advised of the possibility of such loss or damages. Client further agrees that the total liability of Consultant for all claims of any kind arising as a result of or related to this Agreement, or to any act or omission of Consultant, whether in contract, tort or otherwise, shall not exceed an amount equal to the amount actually paid by Client to Consultant for Consultant's Work during the three (3) month period preceding the date the claim arises. Client shall indemnify and hold Consultant harmless against any claims by third parties, including all costs,

expenses and attorneys' fees incurred by Consultant therein, arising out of or in conjunction with Client's performance under or breach of this Agreement.

## **9. Relation of Parties**

The performance by Consultant of its duties and obligations under this Agreement shall be that of an independent contractor, and nothing herein shall create or imply an agency relationship between Consultant and Client, nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties.

## **10. Miscellaneous Provisions**

A. Consultant agrees to notify client in writing if it intends to subcontract any part of the Work to an independent contractor. Except as provided herein, neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party which shall not be unreasonably withheld. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

B. Any dispute arising under this Agreement shall be subject to binding arbitration by a single Arbitrator, in accordance with its relevant industry rules, if any. The parties agree that this Agreement shall be governed by and construed and interpreted in accordance with the laws of Michigan. The arbitration shall be held in Michigan. The Arbitrator shall have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the Arbitrator may be entered in any Court of competent jurisdiction.

C. If any litigation or arbitration is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

D. If any term of this Agreement is found to be unenforceable or contrary to law, it shall be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

E. Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay is caused by events or circumstances beyond the delayed party's reasonable control.

F. The waiver by any party of any breach of covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

G. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that

they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

**11. Flow-Down Terms.**

The Flow-down terms required by the State of Michigan, set forth on the attached Exhibit A, apply to this Agreement. In the event of any conflict between the terms of this Agreement and Exhibit A, the terms of Exhibit A shall control.

**12. Protect Health Information.**

Consultant may, in the course of performing the services set forth in this Agreement, have access to certain Protected Health Information (PHI), the terms and conditions of the disclosure of which is subject to the Health Insurance Portability and Accountability Act (HIPAA), the American Recovery and Reinvestment Act of 2009 (ARRA), and the Health Information Technology for Economic and Clinical Health Act (HITECH). Consultant will comply with all applicable laws necessary to perform this Agreement. Applicable laws include Federal, State and local laws, statutes, acts, codes, regulations and judicial or administrative decisions promulgated by any governmental or self-regulatory agency, including the State of Michigan, the Michigan Health Information Technology Commission, any Federal, State or local action having the affect of the law, as any of the foregoing may be amended, modified, codified, re-enacted, promulgated or published, in whole or in part, in effect from time to time. Without limiting the generality of the foregoing, this would include HIPAA, ARRA, HITECH, the Rehabilitation Act of 1973, the Anti-Lobbying Act as revised by the Lobbying Disclosure Act, Section 503 of the Department of Labor, Health and Human Services, and education and related agency section of the FY1997 Omnibus Consolidated Portions Act and the Michigan Identity Theft Protection Act.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

Consultant: [ Name ] Client MiHIN

By: \_\_\_\_\_

By: \_\_\_\_\_  
Tim Pletcher, Executive Director