

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality and Non-Disclosure Agreement (the “Agreement”) is entered into this _____ day of _____, 2021 (the “Effective Date”) between the STRATEGIC HEALTH INFORMATION EXCHANGE COLLABORATIVE, a Colorado non-profit corporation (“SHIEC”) and [Individual or Entity Name] a [describe entity type, if applicable] (“Consultant”).

1. SHIEC and Consultant acknowledge that, in the course of their evaluations and discussions concerning a possible partnership or service development (the “Evaluation”) involving SHIEC and Consultant, one party (the “Disclosing Party”) may provide certain proprietary and/or confidential information to the other party (the “Receiving Party”), and that the unauthorized disclosure and/or use of any such proprietary and/or confidential information will cause irreparable injury to the Disclosing Party.

2. “Confidential Information” shall mean all: (a) technical, business, financial, and other data and/or information provided by the Disclosing Party that is disclosed/transmitted to or otherwise received/retrieved by the Receiving Party, whether orally or in writing; and/or (b) other non-publicly available information related to the Disclosing Party. “Confidential Information” will not include any information: (i) that is publicly available through no breach of this Agreement by the Receiving Party; (ii) that is independently developed or was previously known by the Receiving Party; or (iii) that is rightfully acquired by the Receiving Party from a third party who is not in breach of an agreement to keep such information confidential.

3. Except pursuant to the Disclosing Party’s written authorization, the Receiving Party agrees that (a) it will not disclose, use, copy, distribute, sell, license, publish, reproduce, or otherwise make available Confidential Information to any third party, person, firm, corporation, or association for any purpose and that (b) it shall cause its respective employees, agents, associates, independent contractors, subcontractors, outsourcers, other service providers not to take any such actions.

4. The Receiving Party will: (a) secure and protect the Confidential Information by using the same or greater level of care that it uses to protect its own confidential and proprietary information of like kind, but in no event less than a reasonable degree of care, and (b) require each of its respective employees, agents, associates, independent contractors, subcontractors, outsourcers, other service providers who have access to such Confidential Information to execute confidentiality agreements in their own right that are no less restrictive than the terms of this Agreement. The Receiving Party further agrees that it will not make any copies of the Confidential Information and will not remove any copy or sample of Confidential Information from the Disclosing Party’s premises without the written authorization of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may disclose the Confidential Information to the extent required by applicable law or regulation or by order of a court or other government entity, in which case the Receiving Party will notify the Disclosing Party as soon as practicable and in any event, and if possible, at least thirty (30) days prior to the Receiving Party making such required disclosure.

5. The Disclosing Party or any party on whose behalf the Disclosing Party discloses Confidential Information shall retain ownership of all rights, including all intellectual property rights, in such Confidential Information. No other right, immunity, or license to the Confidential Information, either expressed or implied, is granted by the Disclosing Party pursuant to this Agreement under any patent, patent application, copyright, trademark, or other intellectual property right.

6. Upon receipt of a written or verbal request from the Disclosing Party, and unless the Receiving Party has an ongoing right to use the Confidential Information pursuant to the terms and conditions of another agreement between the parties, the Receiving Party shall return to the Disclosing Party, all originals, copies, samples, and/or derivatives of the Confidential Information in whatever form that, at the time of the receipt of the notice, are in the Receiving Party's possession or control.

7. The obligations imposed on the Receiving Party under this Agreement shall continue with respect to each item of the Confidential Information following any termination of the Evaluation (regardless of the reason for such termination), and such obligations shall not terminate until such item shall cease to be secret, proprietary, and/or confidential and shall be in the public domain, unless such event shall have occurred as a result of (a) wrongful conduct by (i) the Receiving Party, (ii) the Receiving Party's employees, agents, associates, independent contractors, subcontractors, outsourcers, and/or other service providers, or (b) a breach of this Agreement.

8. The Receiving Party acknowledges and agrees that a breach of this Agreement will cause the Disclosing Party to suffer irreparable damage that could not be adequately remedied by an action at law. Accordingly, the Receiving Party agrees that in the event of any breach of a party's obligations under this Agreement by the Receiving Party, the Disclosing Party shall be entitled, upon application to a court of competent jurisdiction, to obtain injunctive relief to enforce the provisions of this Agreement, which injunctive relief shall be in addition to any other rights or remedies available to the Disclosing Party. In any action or proceeding by the Disclosing Party to obtain a temporary restraining order and/or preliminary injunction, the Receiving Party hereby agrees to waive the necessity of the Disclosing Party's posting an injunction bond in order to obtain the temporary restraining order and/or preliminary injunction.

9. Each party acknowledges and agrees that the Disclosing Party does not make any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information. Each party acknowledges and agrees that nothing herein requires either party to proceed with any transaction as a result of the Evaluation.

10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado, exclusive of its choice of law rules. All disputes directly or indirectly related to this Agreement shall be litigated solely in the state and federal courts sitting in Mesa County in the State of Colorado and no other place, and SHIEC and Consultant hereby agree to waive any jurisdictional, venue, or inconvenient forum objections to such courts. In any action to enforce this Agreement, the prevailing party will be entitled to costs and attorneys' fees.

11. This Agreement contains the entire agreement and understanding between the parties and supersedes any and all prior agreements or understandings of the parties. No changes to the Agreement will be effective unless in writing and signed by both parties. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. In the event of a conflict between this Agreement and any prior agreement SHIEC has with Consultant or its predecessor(s), the provisions providing greater protection to the Confidential Information shall prevail and not serve to invalidate or supersede any other provision of the prior agreement.

12. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. A waiver shall not be effective unless it is set forth in a document signed by the party against which such waiver is asserted.

13. The parties agree that no third parties shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto.

14. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered (whether by facsimile, e-mail, or other electronic means) shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument. A facsimile, PDF, or other electronic signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) and shall be deemed an original signature for all purposes under this Agreement.

This Agreement has been signed by SHIEC and Consultant as of the Effective Date.

**STRATEGIC HEALTH INFORMATION
EXCHANGE COLLABORATIVE**

**[CONSULTANT LEGAL NAME, OR
INDIVIDUAL]**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____