

**MEDICAL OFFICE SURVEY ON PATIENT SAFETY
SERVICES AGREEMENT**

This Services Agreement is made by and between the Indiana Hospital Association ("IHA") and _____ ("Facility"), located at _____, IHA and Facility are referred to herein jointly as the "Parties" and individually as a "Party."

RECITALS:

WHEREAS, Facility is a member of IHA, and IHA ("IHA Agreement") will provide Facility with access to certain Medical Office Survey on Patient Safety survey tools.

WHEREAS, IHA is using the Agency for Healthcare Research and Quality (AHRQ) Medical Office Survey on Patient Safety ("Survey") to enable outpatient medical office providers and staff to assess the safety culture in their medical offices. The Survey further enables medical offices to identify issues that when addressed will assist in establishing a culture that embraces patient safety. Additionally, the Survey can be used to track changes in patient safety over time and to evaluate the impact of patient safety interventions.

WHEREAS, Facility desires to participate and wants to contract with IHA to use the product and provide data management services to Facility as set forth in this Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

Terms and Conditions:

1. **Term.** This Agreement shall commence on January 1, 2016 (the "Effective Date") and continue until December 31, 2016 (the "Term").
2. **Data Collection and Submission to IHA by Facility.**
 - a. *Data Collection.* As necessary for external requirements, Facility administrator will create campaigns for employees to complete the survey. Employees shall then access the Survey through a SurveyMonkey link, answer questions as necessary, and submit surveys through SurveyMonkey ("Facility Data").
 - b. *Data Submission.* As surveys are completed, Facility will transmit such Data electronically to IHA via SurveyMonkey.
 - c. *Facility Responsibilities.* In collecting and submitting Facility Data to IHA, Facility shall comply with external requirements for Survey participation. Facility Data collection will be done either with a paper tool or online; if paper is used the Facility will be responsible for transcribing answers into the web-based system.
 - d. *Hardware and Software Specifications.* The Survey is provided solely through the Internet.
3. **Termination.** If either Party defaults in the observance or performance of any material obligation in this Agreement and such default is not cured or corrected within thirty (30) days after written notice thereof from the aggrieved party, the aggrieved party may, at its option, terminate this Agreement in whole or in part by written notice to the other Party. Upon the termination or expiration of this Agreement, Facility shall return to IHA all Proprietary Information (as hereinafter defined) that is in its possession or control.

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4. **Ownership.**

a. *Ownership of Proprietary Information.* Facility acknowledges and agrees that the SurveyMonkey tool, software, information, operating systems, application programs and database systems, together with all related specifications, documentation, designs, processes, procedures, methodologies and applications provided by IHA under or in connection with this Agreement (collectively, "Proprietary Information") are proprietary to IHA through IHA's agreement with SurveyMonkey.

b. *Ownership of Facility Data.* Facility shall retain all right, title and interest in and to Facility Data. IHA is granted a perpetual, royalty free license to use and distribute the Facility Data, including all derivatives and modifications made thereto by IHA in processing Facility Data, in accordance with the confidentiality obligations of this Agreement.

c. *Ownership/Use of the Reports.* Reports means all outputs of the Survey. IHA shall be the sole and exclusive owner of all Proprietary Information contained in the Reports. IHA shall be the sole and exclusive owner of all aggregated Facility Data contained in the Reports. IHA may release the Facility Data as it is aggregated and/or compared with other facilities, in all cases presenting the Facility Data in a manner that does not identify the Facility without written consent of the Facility. IHA shall have the unlimited right to use, modify, reproduce and/or distribute the Reports (which may include proprietary and aggregate level information), in whole or in part, or combine the Reports with other information, as it sees fit. Aggregate Facility Data and all Reports provided by IHA to Facility are the property of IHA.

5. **Confidentiality.**

a. *IHA Obligations.* IHA shall, at all times, treat all Facility Data in whatever form or medium as Facility's confidential information. IHA shall not release Facility Data except in accordance with the requirements of Section 4(b) and (c).

b. *Facility Obligations.* Facility shall keep all Proprietary Information confidential and shall not reproduce, duplicate, reveal, publish, transfer or disclose any Proprietary Information to anyone other than its employees with a "need to know" in the ordinary course and scope of their employment. Facility agrees to take at least the same precautions and measures to safeguard the secrecy and confidentiality of, and proprietary rights to, the Proprietary Information as it would with its own proprietary information and agrees not to disclose such Proprietary Information to any third party without IHA's prior written consent. Facility agrees to require all its employees, agents and other representatives who have access to any Proprietary Information to adhere to these confidentiality obligations.

Facility shall not reproduce, duplicate, or publish any IHA Reports without listing IHA as the source of such Reports. Facility shall not release comparative Reports containing identified or blinded medical office-specific data for other Facilities.

c. *Exclusions.* This Section 5 shall not be construed to restrict the use or disclosure of confidential information including Facility Data and Proprietary Information that (i) has been previously published or is now or becomes public knowledge through no act or omission of the receiving Party; (ii) at the time of disclosure to the receiving Party, is already in the possession of, or known to, such Party, (iii) is made available to a Party as a matter of right by any person or entity other than a Party hereunder, or (iv) is required by law to be disclosed pursuant to applicable law, order or regulation provided prompt notice of the same is given to the disclosing Party. The foregoing exceptions to the confidentiality provisions do not confer any license or other rights to either Party for any of the information referenced in such exceptions.

d. *Breach.* Each Party will give the other written notice of any breach of any confidentiality obligation set forth in this Agreement as soon as such Party becomes aware of the breach. Each Party

agrees that any violation of the provisions of this Section 5 may cause irreparable harm to the other Party. Accordingly, in addition to any other remedies available to the aggrieved Party at law or in equity, the aggrieved Party shall be entitled to an injunction or other decree of specific performance with respect to any violation or threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. Nothing herein shall be construed as prohibiting the aggrieved Party from pursuing any other remedy available under this Agreement for such actual or threatened breach.

6. Limited Warranties/Limitation on Damages.

a. Access to the Survey. Facility acknowledges that access to the Survey is beyond the control of IHA. Although IHA has made efforts to ensure the availability of the Survey, Facility shall not hold IHA liable for any periods of unavailability of the Survey.

b. Disclaimer. The Survey Services (including, without limitation, the Reporting and Reports) require use of data and/or information compiled from Facility which IHA does not control and whose information has not been independently investigated or verified. Facility shall rely solely upon its business judgment in drawing conclusions from and making recommendations and taking action based on the Survey Services (including, without limitation, the Reporting and Reports). Accordingly, except as expressly provided in this Agreement, IHA DOES NOT MAKE ANY WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AS TO THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE. IN ADDITION, IHA MAKES NO EXPRESS, IMPLIED, OR STATUTORY WARRANTY OF NON-INFRINGEMENT.

c. Limitation of Liability. IN NO EVENT SHALL IHA BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SIMILAR DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. No action arising out of this Agreement may be brought by either Party more than two (2) years after the cause of action has accrued.

7. Indemnification.

Facility Indemnification Obligations. Facility shall indemnify, defend and hold harmless IHA and its directors, officers, employees, agents and subsidiaries, from and against all costs arising from third party claims arising out of or resulting from (i) the alleged wrongdoing of Facility in its use or application of the Survey Services; (ii) IHA's use of Facility Data in accordance with the terms of this Agreement, or Facility's failure to perform or observe any of its covenants or obligations under this Agreement.

8. Training and Support Services. IHA may provide training and support to Facility regarding the Survey.

9. Miscellaneous. Paragraph headings contained in this Agreement are for convenience only and shall not be considered for any purpose in governing the provisions of this Agreement. Facility shall not assign this Agreement without the prior written consent of IHA. This Agreement shall be binding on, inure to, and be enforceable against the Parties and their respective successors and permitted assignees. No term or provision hereof will be considered waived by a Party, and no breach excused by a Party, unless such waiver or consent is in writing signed by the Party against whom the waiver is asserted. A waiver by a Party hereto shall not constitute a continuing waiver or a waiver of a different or subsequent breach. If any part of this Agreement is found invalid or unenforceable, the remainder of this Agreement will remain in full force and effect. This Agreement shall be governed by the laws of the State of Indiana, without regard to conflicts of law principles. Any action relating to this Agreement must be brought in the federal or state courts located in Marion County, Indiana and the Parties consent to the jurisdiction of such courts. There is no relationship of agency, partnership, joint venture, employment or franchise between the Parties, and a Party hereto has no authority to bind the other Parties or to incur any obligation

on their behalf. The terms and conditions of this Agreement that expressly or by their nature ought to shall survive the termination or expiration hereof. This Agreement may be executed in one or more counterpart copies, each of which shall be considered an original, and all of which when taken together shall constitute one and the same agreement. This Agreement shall constitute the entire understanding of the Parties with respect to the subject matter hereof, and supersede all prior and contemporaneous promises, agreements and understandings, whether written or oral, pertaining thereto. This Agreement cannot be modified, amended or rescinded except by a writing duly executed by an authorized representative of the Party to be charged.

AGREED TO BY:

FACILITY:

IHA:

Indiana Hospital Association

By: _____

Name: _____

Title: _____

Date: _____

By:  _____

Name: Karin Kennedy

Title: Administrative Director, IPSC

Date: _____