

**RE: MEDICAID PROVIDER PROGRAM EXPANSION
TERM: October 1, 2017 to September 30, 2019**

**FIRST AMENDMENT
Entered Into Date: November ____, 2017
Effective Date: October 1, 2017**

**TO
MEMORANDUM OF AGREEMENT
BETWEEN
NEW JERSEY DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE & HEALTH SERVICES
AND
NEW JERSEY INSTITUTE OF TECHNOLOGY
NEW JERSEY INNOVATION INSTITUTE, INC.,
A New Jersey Institute of Technology Company
Original 2014 MOA Entered Into Date: July 29, 2014
2016 Amendment Entered Into Date: September 2, 2016
First Amendment Effective Date: October 1, 2107
Second Amendment Effective Date: October 1, 2017**

This First Amendment (the "First Amendment") to the Memorandum of Agreement between the New Jersey Department of Human Services, Division of Medical Assistance and Health Services (DMAHS), located at Quakerbridge Plaza, P.O. Box 712, Trenton, New Jersey 08625-0712, and New Jersey Institute of Technology (NJIT) New Jersey Innovation Institute, Inc., both located at University Heights, Newark, New Jersey 07102 (collectively, hereafter, "NJII") amends the Memorandum of Agreement (the "Original 2014 MOA"), dated July 29, 2014, as further amended by the "Medical Provider On-Boarding to Health Information Exchange Amendment" entered into on September 2, 2016 (the "2016 Amendment").

The purpose of this First Amendment is to memorialize that NJII will continue to provide support services for all New Jersey's Medicaid participating providers who are deemed to be "eligible" for the Medicaid EHR Incentive Program based on the provisions outlined below. This First Amendment eliminates Milestone 1 (sign-up) and Milestone 2 (Program Year 1 or AIU) under the Original MOA. Under this First Amendment, the achievement of only the following Milestones will result in Milestone-payments: Milestone 3 (Program Year 2), Milestone 4 (Program Year 3), Milestone 5 (Program Year 4), Milestone 6 (Program Year 5) and Milestone 7 (Program Year 6). "Program year" may be alternately designated as "program number" in the State's attestation application system.

1.0 Background and Purpose

1.1 Background:

A. NJ-HITEC, an instrumentality of the state of New Jersey pursuant to OMB Circular Letter 05-04-OMB, was one of the sixty-two (62) Regional Extension Centers established and that received funding from the ONC in 2010. With the support of NJIT, NJ-HITEC has become a national leader in the evolution of health information technology by assisting PCPs in adopting, implementing, and meaningfully using EHR technology. In 2015, NJIT reorganized several Health Information Technology activities and transferred them to the New Jersey Innovation Institute, Inc. (“NJII”), a newly-formed New Jersey not-for-profit, tax exempt corporation also located at University Heights, Newark, New Jersey. NJII is a NJIT corporation. In March 2015, New Jersey Innovation Institute, Inc. was designated by the state of New Jersey as the official State Designated Entity for state grants to advance interoperability of Health Information Technology. NJIT wound down and/or transferred NJ-HITEC’s few remaining operations to NJII in 2016, after NJ-HITEC’s federal funding ended. NJ-HITEC has, for the most part, ceased to exist as a separate program center.

B. NJII has a roster of over 1,500 Medicaid participating providers in New Jersey who are in various stages of attestation to “Meaningful Use” Medicaid EHR Incentive Programs. By contract between NJIT-NJII and DMAHS, entered into in July 2014, NJII, as successor-in-interest to NJ-HITEC, has established a program to provide its EHR assistance and consulting services to New Jersey’s Medicaid participating specialists and subspecialists. This New Jersey Medicaid Specialist Program was first operationalized in January of 2012 and had as its initial goal to service up to 500 specialist providers who were deemed to be “eligible” to receive New Jersey Medicaid EHR Incentive Program payments. This program was further expanded in July 2014 to include up to 550 PCPs under the Medicaid Provider Program who demonstrated that he/she was in a stage up through and including the fifth year of participation in New Jersey’s Medicaid EHR Incentive Program.

C. The parties intend for New Jersey’s Medicaid EHR Incentive Provider program to continue to assist a growing number of Medicaid participating providers who are enrolled in the Medicare and Medicaid EHR Incentive Programs and Meaningful Use (MU) of EHR technology Programs. In addition, with the adoption by DMAHS of new Modified Stage 2 Meaningful Use requirements and the Stage 3 requirements, New Jersey’s Medicaid participating providers who have already met Stage 1 or Stage 2 in the past will continue to be entitled to receive further additional assistance to meet future requirements. NJII has identified the need to continue to support Medicaid participating providers eligible for the New Jersey Medicaid EHR Incentive Programs through these newly adopted changes and NJII has proposed adding a sixth and seventh milestone to the Medicaid Provider Programs as Medicaid participating providers will continue attesting to Program Year 5 and 6 milestones.

1.2 Purpose of First Amendment:

In accordance with the Original MOA in 2014, the New Jersey Division of Medical Assistance and Health Services’ (DMAHS) State Medicaid Health Information Technology Plan (SMHP), as approved by the U.S. Department of Health and Human Services’ Centers for Medicare and Medicaid Services (CMS), provided for the implementation of the New Jersey Electronic Health Record (EHR) Incentive Program, and included a strategy for the expansion of services being provided to Physician Specialties

and Sub-specialists by the New Jersey Health Information Technology Extension Center (NJ-HITEC) Medicaid Provider Program. NJ-HITEC was established in 2010 as an unincorporated center of program activity at NJIT through a \$23 million grant from the U.S. Department of Health and Human Services' Office of National Coordinator (ONC) as part of the 2009 American Recovery and Reinvestment Act stimulus package.

The services awarded to NJ-HITEC under the Original MOA are being expanded under this First Amendment to ensure that Medicaid participating providers in New Jersey who are in need of assistance obtain assistance in the field regardless of the Program Year of participation he/she may currently be attesting for, including Stage 3 in the Reporting Years of 2018 and 2019. This First Amendment makes null and void all prior milestone-based provisions in the original Medicaid Provider Expansion Original MOA and any remaining milestone-based provider payments that are or may be still outstanding and payable pursuant to the original MOA. This First Amendment eliminates the methodology of the Original MOA that tied payments to a fixed number of providers per milestone. Instead, under this First Amendment, DMAHS adopts a "total milestone" approach that allows NJIT to assist any Medicaid participating provider who is trying to meet the "Meaningful Use" criteria in any program year. This First Amendment has an "Effective Date" of October 1, 2017 and a Term through and including September 30, 2019 (the "Term") based on the provisions in the CMS approval of the State's HIT Implementation Advanced Planning Document Update (the "HIT IAPD-U"), effective as of October 2017.

This First Amendment applies to the following provisions under the Medicaid Provider Program expansion with a Term of October 1, 2017 through and including September 30, 2019. Assistance for achieving a total of 1,250 milestones in the Medicaid EHR Incentive Program. Following are the Milestones that will be eligible to be funded by the First Amendment:

- 1.1 Milestone 3 – MPP's receipt of a Year 2 Medicaid EHR Incentive Program payment
- 1.2 Milestone 4 – MPP's receipt of a Year 3 Medicaid EHR Incentive Program payment
- 1.3 Milestone 5 – MPP's receipt of a Year 4 Medicaid EHR Incentive Program payment
- 1.4 Milestone 6 – MPP's receipt of a Year 5 Medicaid EHR Incentive Program payment
- 1.5 Milestone 7 – MPP's receipt of a Year 6 Medicaid EHR Incentive Program payment

2.0 Definitions

2.1 State Medicaid Health Information Technology Plan (SMHP): A document that describes DMAHS's current and future Health IT activities, as well as the administrative process and vision for the next five (5) years relative to implementing the Medicaid provisions contained in Section 4201 of the American Recovery and Reinvestment Act (ARRA).

2.2 Regional Extension Center (REC): An organization that has received funding under the Health Information Technology for Economic and Clinical Health Act (HITECH Act) to assist health care providers with the selection and implementation of electronic health record (EHR) technology.

2.3 Electronic Health Records (EHR): A computerized system where patient records are created, used, exchanged, stored and retrieved.

2.4 New Jersey Medicaid EHR Incentive Program: The program authorized by the HITECH Act of 2009 that provides incentive payments to eligible professionals, eligible hospitals and critical access hospitals as they adopt, implement, upgrade or demonstrate meaningful use of certified EHR technology.

2.5 Certified EHR Technology: An EHR that meets the certification standards defined by the Office of the National Coordinator for Health Information Technology located within the Office of the Secretary for the U.S. Department of Health and Human Services (HHS).

2.6 Priority Primary Care Providers (PPCP): As defined by the HITECH Act, priority primary care providers are physicians (Internal Medicine, Family Practice, OB/GYN, Pediatrics) and other healthcare professionals (Physician Assistant, Nurse Practitioner, Nurse Midwife) with prescribing privileges in the following settings: small group practices (10 or less providers), ambulatory clinics connected with a public or critical access hospital, community health centers and rural health clinics, or other ambulatory settings that predominantly serve uninsured, under-insured, and medically under-served populations.

2.7 Meaningful Use: Under the HITECH ACT, and subsequent federal regulations, the minimum requirements providers must attest to in order to receive Medicare or Medicaid EHR Incentive Program payments.

2.8 Stages of Meaningful Use: The Medicaid EHR Incentive Program includes three stages with increasing requirements for participation.

3.0 NJII First Amendment Services to DMAHS

NJII will use its best efforts to perform the following activities and functions for DMAHS:

3.1 Outreach: Make outreach calls to Medicaid participating provider offices on behalf of DMAHS to advance the adoption of healthcare-related IT and to advocate for the value of participating in the Medicaid Provider Program Expansion during the Term of the First Amendment by working towards achieving Milestones and earning Medicaid E H R Incentive Program payments.

3.2 Participation Agreements: On behalf of NJII, obtain completed and signed Participation Agreements from Medicaid participating providers who are eligible to participate in the New Jersey Medicaid EHR Incentive Program. Notwithstanding the foregoing sentence, for those Medicaid participating providers who have already executed a Participation Agreement with NJ-HITEC/NJII for the Medicaid Provider Program pursuant to the Original MOA, rather than sign a new agreement, NJII may satisfy this requirement by providing a written "Notice" to such Medicaid participating provider informing of (i) the historical progression from NJ-HITEC to NJII as the "provider" of the services under this First Amendment compared with the Original MOA, and (ii) the new Milestones under this First Amendment and that the prior Milestones under the Original MOA are no longer in effect and have been superseded by the Milestones under this First Amendment. The terms of the Participation Agreement or Notice under this First Amendment will be approved by DMAHS and cannot be changed by request of a Medicaid participating provider or practice. Documentary proof of a fully executed Participation Agreement between NJII and the Medicaid participating provider or practice under this First Amendment or a Notice

under this First Amendment is required to be provided to DMAHS for review in conjunction with the Milestone approval process.

3.3 Assessments: Within a reasonable time after the signing of the First Amendment Participation Agreement, to be determined by NJII, conduct an assessment of the Medicaid participating provider's practice using the NJII assessment tools and complete a NJII questionnaire after consulting with the Medicaid participating provider(s) and/or Practice manager.

3.4 Submission of Results: Submit results of the Section 3.3 assessment and questionnaire to the Medicaid participating providers and work with the provider and/or the practice to obtain any additional information or data needed by NJII to adequately determine the current state of Medicaid participating provider's practice, assets and capabilities, the provider's needs and expectations, and complete a standardized NJII workflow redesign and proposal for the provider.

3.5 WorkFlow Redesign: NJII will conduct and draft a workflow redesign based on its assessment of the Medicaid participating provider's practice and needs. After completion of the workflow redesign, NJII will convey to the provider(s) the workflow redesign, recommendations for improvement and a proposal prepared by NJII for the provider. NJII will follow-up on any questions or concerns raised by the provider(s). In the event that participation by a member of NJII's workforce and/or a third-party IT vendor is necessary, appropriate or advisable, NJII may, at the provider's request, and with the provider's consent, coordinate and participate in any resulting meetings with the provider. At the provider's request, NJII will assist the provider in selecting any products, services and features that the provider deems necessary, appropriate or advisable, or wants and/or needs, to achieve meaningful use, all in the provider's sole discretion.

3.6 Privacy and Security: The development and publication of best practices for, and the sharing of national standards relating to, security and privacy of patient information, and the support of the Medicaid participating providers in implementing these "best" privacy and security practices. NJII has prepared a Business Associate Agreement (BAA) the terms of which have been approved by DMAHS and cannot be changed by request of a Medicaid participating provider or practice. Documentary proof of a fully executed BAA between NJII and the Medicaid participating provider or practice under this First Amendment is required to be provided to DMAHS for review in conjunction with the Milestone approval process.

3.7 Notification and Delays: As each new Milestone of Meaningful Use is attained by a Medicaid participating provider, NJII shall so advise DMAHS. In the event of any delay or possible delay for any possible reason, NJII will alert DMAHS and take all appropriate and necessary steps to lessen, eliminate, mitigate and/or resolve the problem causing the delay. NJII will use all commercially reasonable measures to enforce the rights of the provider (absent taking any steps prior to and/or commencing legal action and/or litigation, arbitration, mediation and/or any other dispute or pre-dispute resolution steps and engaging in any steps that result in any out of pocket cost or expense to NJII). If the Medicaid participating provider is either clearly responsible for the delay, and/or is the next objectively reasonable

party to have to move forward, NJII will advise and remind the Medicaid participating provider of the obligation to take all reasonable and customary “next steps” to achieve the approval of its application to achieve the Meaningful Use Milestone, in accordance with federal requirements in a timely fashion, *provided, however*, that it is the decision of the Medicaid participating provider whether to accept NJII’s advice, in the provider’s sole discretion.

3.8 Compliance with Timelines/Milestones: NJII shall comply in a reasonable and workmanlike manner with the performance timelines and guidelines established by the ONC and DMAHS in working under this First Amendment to move New Jersey’s eligible Medicaid participating providers forward to achieve the “Meaningful Use” Milestones for which he/she may be eligible under this First Amendment.

4.0 Description of Milestones and Documentation

In accordance with CMS guidelines, for the purpose of documentation of the achievement of a Milestone under this First Amendment, a Medicaid participating provider will be considered to have “existing electronic health record technology” if the provider has installed an electronic record system of health related information that has been certified by the United States Office of the National Coordinator of Health Information Technology. NJII will use a customer resource management (CRM) tool or other comparable software to document and track each of the following five (5) Milestones and will submit the following documentation, together with a separate invoice to DMAHS for payment, for each individual Milestone, for which the Medicaid participating provider is seeking payment.

4.1 Milestone 3: Receipt of a Year 2 New Jersey Medicaid EHR Incentive Program Payment. This Milestone will include all providers that receive a Year 2 New Jersey Medicaid EHR Incentive Program payment. DMAHS will verify reception of payment through reports generated from the New Jersey Medicaid EHR Incentive Program Attestation Application system.

4.2 Milestone 4: Receipt of a Year 3 New Jersey Medicaid EHR Incentive Program Payment. This Milestone will include all providers that receive a Year 3 New Jersey Medicaid EHR Incentive Program payment. DMAHS will verify reception of payment through reports generated from the New Jersey Medicaid EHR Incentive Program Attestation Application system.

4.3 Milestone 5: Receipt of a Year 4 New Jersey Medicaid EHR Incentive Program Payment. This Milestone will include all providers that receive a Year 4 New Jersey Medicaid EHR Incentive Program payment. DMAHS will verify reception of payment through reports generated from the New Jersey Medicaid EHR Incentive Program Attestation Application system.

4.4 Milestone 6: Receipt of a Year 5 New Jersey Medicaid EHR Incentive Program Payment. This Milestone will include all providers meeting Milestone 1 that receive a Year 5 New Jersey Medicaid EHR Incentive Program payment. DMAHS will verify reception of payment through reports generated from the New Jersey Medicaid EHR Incentive Program Attestation Application system.

4.5 Milestone 7: Receipt of a Year 6 New Jersey Medicaid EHR Incentive Program Payment. This Milestone will include all providers that receive a Year 6 New Jersey Medicaid EHR Incentive Program payment. DMAHS will verify reception of payment through reports generated from the New Jersey Medicaid EHR Incentive Program Attestation Application system.

5.0 Responsibilities of NJ-DMAHS

5.1 Core Funding: During the Term of this First Amendment, DMAHS will pay core funding to NJII for a period no longer than the Term in accordance with the receipt of the required documentary proofs set forth herein pursuant to the following payment structure:

5.1.1 Core Activity Funding: DMAHS shall pay NJII the total amount of Six hundred thousand dollars (\$600,000) made in eight (8) equal quarterly payments (beginning three months following the Effective Date and every three months thereafter) of \$75,000, payable no later than fifteen (15) business days from receipt of an invoice from NJII, commencing in the Calendar Year quarter in which this First Amendment is executed.

5.2 Direct Funding: In addition to “Core Activity Funding,” DMAHS will pay “Direct Funding” to NJII NJIT pursuant to the payment structure below.

5.2.1 Payment Amount: The total payment amount to NJII for Direct Funding for demonstrating the achievement by a Medicaid participating provider of any one or more Milestone, whether Milestone 3, 4, 5, 6, and/or 7, shall be limited to One thousand five hundred dollars (\$1,500). There is no limit on the number of Milestones, from one to five, that an individual Medicaid participating provider may achieve, namely, a provider may achieve any one or all of Milestones 3, 4, 5, 6 and/or 7, *provided, however,* that proof of achievement shall be required to be submitted individually as proof of achievement of each Milestone and that one submission of proof for more than a single Milestone will not be accepted. Under no circumstances shall the total number of individual payment of Milestones paid to NJII by DMAHS exceed 1,250 individual Milestone achievements.

5.2.2 Payment Milestones: The Provider Specific milestones include:

5.2.2.1 Milestone 3. DMAHS will fund Milestone 3 at the payment amount of a single Milestone in Section 5.2.1, upon proof of achievement of the Milestone as defined in Section 4.1 and receipt of Milestone 3 documentation from NJII for each Medicaid participating provider (MPP). The Milestone 3 documentation is information on the MPP receiving a Year 2 New Jersey Medicaid EHR Incentive Program payment.

5.2.2.2 Milestone 4. DMAHS will fund Milestone 4 at the payment amount of a single Milestone in Section 5.2.1, upon proof of achievement of the Milestone as defined in Section 4.2 and receipt of Milestone 4 documentation from NJII for

each MPP. The Milestone 4 documentation is information on the MPP receiving a Year 3 New Jersey Medicaid EHR Incentive Program payment.

5.2.2.3 Milestone 5. DMAHS will fund Milestone 5 at the payment amount of a single Milestone in Section 5.2.1, upon proof of achievement of the Milestone as defined in Section 4.3 and receipt of Milestone 5 documentation from NJII for each MPP. The Milestone 5 documentation is information on the MPP receiving a Year 4 New Jersey Medicaid EHR Incentive Program payment.

5.2.2.4 Milestone 6. DMAHS will fund Milestone 6 at the payment amount of a single Milestone identified in Section 5.2.1, upon proof of achievement of the Milestone as defined in Section 4.4 and receipt of Milestone 6 documentation from NJII for each MPP. The Milestone 6 documentation is information on the MPP receiving a Year 5 New Jersey Medicaid EHR Incentive Program payment.

5.2.2.5 Milestone 7. DMAHS will fund Milestone 7 at the payment amount of a single Milestone identified in Section 5.2.1, upon proof of achievement of the Milestone as defined in Section 4.5 and receipt of Milestone 7 documentation from NJII for each MPP. The Milestone 7 documentation is information on the MPP receiving a Year 6 New Jersey Medicaid EHR Incentive Program payment.

5.2.3 Payment Frequency and Reporting Requirements (Direct (Non-Core) Funding): Payments, in addition to the Core Funding, earned by NJII shall be paid by DMAHS quarterly upon receipt of an invoice from NJII, within fifteen (15) business days after the end of the preceding Calendar quarter identifying the number of Medicaid participating [providers who achieved one or more specific Milestone described in Section 4.0 within or during the preceding quarter. NJII shall provide quarterly status reports to DMAHS and also provide access to the CRM tool or a comparable software used by NJII for managing the Direct Funding database. Among other things, the Direct Funding reports may provide the identity and the total number of Medicaid participating providers who are participating under this First Amendment and the progress of each of the providers toward one or more Milestones as well as a monthly summary of NJII's activities relating to this First Amendment in a format to be mutually agreed upon by the parties. The total Milestone-based Direct Funding paid to NJII may not exceed the total of \$1,500 per Milestone x 1,250 milestones for a total of \$1,875,000.

5.3 Term/Termination: The Term of this First Amendment is effective as of October 1, 2017 to and including September 30, 2019, for a total of twenty-four (24) months. DMAHS may cancel this First Amendment for any reason on no less than thirty (30) days prior written notice to NJII. Upon receipt of such written notice from DMAHS, NJII will terminate any further outreach efforts and no new MPPs will be solicited by NJII into the Medicaid Provider Program Expansion program. During the thirty (30) or more - day wind down period, NJII will notify all MPPs that have been enlisted into the Medicaid Provider

Program Expansion that this First Amendment has been terminated and that NJII shall not continue any services beyond the effective date of the termination of the First Amendment. NJII is permitted to continue to enlist, and provide eligible proofs toward payment, of any MPP which had been contacted and for which services toward achievement of one or more Milestones had commenced prior to the receipt by NJII of the written notice of termination from DMAHS. NJII will provide a final list of all MPPs that will effectively become “terminated providers” from the Medicaid Provider Program Expansion to DMAHS as soon as possible after the effective date of the termination of the First Amendment. In the event of early termination of this First Amendment by DMAHS, DMAHS shall remain liable for the reasonable value of the services performed by NJII through and including the time of the effective date of such termination including, but not limited to, all non-cancelable obligations incurred by NJII (not to exceed the total agreed-upon possible consideration to NJIT NJII under this First Amendment of \$1,875,000).

5.4 Manner of Payments/Survival: DMAHS shall make all payments due under this First Amendment payable to “New Jersey Institute of Technology”, and forward the same to New Jersey Institute of Technology, P.O. Box 18110, Newark, New Jersey 07191-8110. Any provisions of this First Amendment that by their nature extend beyond the Term and/or any early termination shall survive such termination for any reason.

6.0 General Provisions

6.1 Warranties and Representations. Each party warrants that it has the right and power to enter into this First Amendment and that its authorized representative has executed this First Amendment NJIT NJII represents that it will use its best efforts to perform the services in a timely and competent manner, *provided, however*, that no specific result is assured or guaranteed BY NJIT NJII. NJIT NJII EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, TO THE EXTENT PERMITTED BY LAW AND, FURTHER, NJIT NJII EXPRESSLY EXCLUDES ANY WARRANTY OF TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

6.2 Limitation of Liability. IN NO EVENT SHALL NJIT NJII BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

6.3 Independent Contractor Status. Each party performs under this First Amendment as an independent contractor, not as an employee of the other party. Nothing in this First Amendment is intended or shall be construed to imply or impart the existence of a partnership, joint venture, agency and/or any other relationship between the parties.

6.4 Notice. All notices or other communications referenced under this First Amendment shall be made in writing and sent to the address designated above or designated from time to time in writing by the parties. All notices shall be deemed given to the other party if delivered by hand, and/or sent by registered or certified U.S. first class mail, postage prepaid, or by recognized overnight courier delivery

with a reliable system for tracking and proof of delivery. If to NJIT NJII: Donald H. Sebastian, Ph.D., S.V.P. For Research & Development, Office of Research & Development, New Jersey Institute of Technology, and President/CEO, NJII, Fenster Hall – 4th Floor, University Heights, Newark, New Jersey 07102. If to DMAHS: New Jersey Department of Human Services, Division of Medical Assistance and Health Services, P.O. Box 712, Trenton, New Jersey 08625-0712, Attention: Meghan Davey.

6.5 Waiver. No provision of this First Amendment shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claiming to have waived or consented. No modification to this First Amendment nor any failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by both parties.

6.6 Force Majeure. Neither party shall be liable for any failure to perform its obligations under this First Amendment if prevented from doing so by a cause or causes beyond its control including, without limitation, acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government.

6.7 Governing Law and Venue. This First Amendment shall be governed by the laws of the State of New Jersey, without reference to its choice of law principles. The venue of all disputes under this First Amendment will be exclusively in the federal or state Courts of the State of New Jersey.

6.8 Severability. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy at all or in any order. If any provision of this First Amendment is held to be unenforceable, the other provisions shall nevertheless remain in full force and effect to the fullest extent possible.

6.9 Entire Agreement. This First Amendment constitutes the entire understanding between the parties with respect to the subject matter herein. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original as against the party whose signature appears thereon, but all of which taken together shall together constitute but one agreement as between the parties. An electronic signature, with the assurance of identifying the signer, and capable of being printed and retained, shall be valid as an original signature. This First Amendment replaces and supersedes any prior verbal or written understandings, communications, and representations between the parties regarding the subject matter contained herein.

6.10 Assignment. This First Amendment shall not be assigned by either party without the prior written consent of the other. Notwithstanding the foregoing, NJIT NJII shall be permitted to supplement its staff with respect to performance of its services under this First Amendment in its sole discretion and assign or transfer its rights hereunder to any wholly-owned legal entity of NJII.

6.11 Agreement Modification. Any agreement to change the terms of this First Amendment in any way shall be valid only if the change is made in writing and executed by authorized representatives of the parties hereto.

6.12 No Third Party Beneficiaries. Nothing in this First Amendment shall be considered or construed as conferring any right or benefit on a person not a party nor imposing any obligation on either party set forth herein on any persons not a party, except as to any wholly-owned legal entity of NJII, the Department of Health and Human Services' Office of National Coordinator for HIT, and/or the ONC Office of Grants Management.

6.13 Federal Compliance. NJII complies with the applicable sections of federal regulations found at 42 C.F.R. 495 (regulations establishing the Incentive Program). This First Amendment shall not exceed the total amount of \$2,475,000 (inclusive of \$1,875,000 for MPP Milestone payments and \$600,000 in Core Funding to NJIT NJII). The Effective Date of the First Amendment is October 1, 2017 and, unless sooner terminated in accordance with the terms of this First Amendment, shall automatically terminate on September 30, 2019.

6.14 Recitals. The Recitals above are incorporated in this First Amendment as though fully set forth herein.

6.15 Non-Business Associate Relationship. Services under this First Amendment do not invoke the creation, receipt, use, disclosure, maintenance or transmission of Protected Health Information as defined under the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended.

6.16. Headings. All headings are inserted as a matter of convenience and shall not be considered in the construction or interpretation of any provision herein.

Approvals and Signatures on Next Page

APPROVALS

Now, Therefore, in consideration of the mutual promises and undertakings contained herein, the parties hereto consent to the provisions of this First Amendment, with an Effective Date of October 1, 2017 and an "Entered Into" Date of the date of the last signature of a party's authorized representative set forth below.

New Jersey Institute of Technology:

By:  _____

Name: Joel S. Bloom, Ed.D.

Title: President

Date of Signature: 11-17-17

New Jersey Department of Human Services, Division of Medical Assistance and Health Services:

By: _____

Name: Meghan Davey

Title: Director, Division of Medical Assistance and Health Services

Date of Signature: _____