



## Preliminary ARRA IFR Stage 1 Certification Program Agreement (Standard)

This Preliminary ARRA IFR Stage 1 Certification Agreement (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 201\_ (the “**Effective Date**”) by and between the Certification Commission for Health Information Technology (“**CCHIT**”) and \_\_\_\_\_ (“**Applicant**”).

CCHIT is a voluntary, private-sector initiative whose mission is to create an efficient, credible, sustainable mechanism for the certification of health information technology (“**HIT**”) technologies in order to accelerate the adoption of robust, interoperable HIT throughout the United States healthcare system.

The Certification Commission maintains two distinct programs of certification. In addition to its established CCHIT Certified® Certification Program, the Commission is also launching a more limited, Preliminary ARRA IFR Stage 1 Certification Program.

**CCHIT Certified® Certification** is the program where technologies are inspected against comprehensive functionality, interoperability, and security criteria using the Commission’s published methods and have been found in full compliance. As part of the inspection, key aspects of successful use are verified at live sites, and EHR Technology usability is rated. The Certification Facts™ label describes all certifications granted and lists which meaningful use objectives are supported by the EHR Technology. Any product that successfully achieves CCHIT Certified® Certification shall be eligible to undergo testing under the Preliminary ARRA IFR Stage 1 Certification Program at no additional cost, provided, however, that achievement of CCHIT Certified® status does not guarantee or indicate any particular outcome of the Preliminary ARRA Stage 1 Certification.

**Preliminary ARRA IFR Stage 1 Certification** is the program where certified technology is only inspected to meet applicable proposed Federal standards in existence as of the date of certification for certified EHR technology to support the IFR Stage 1 incentives under the American Recovery and Reinvestment Act of 2009 (ARRA HITECH). The Certification Facts™ label describes which meaningful use objectives are supported by the technology. This Agreement describes the terms of the Preliminary ARRA IFR Stage 1 Certification Program.

The Preliminary ARRA IFR Stage 1 Certification is considered preliminary because the definitions of meaningful use, criteria, and standards have been proposed but not yet finalized by the US Department of Health and Human Services (“DHHS”). (See the Interim Final Rule

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(“IFR”) on “Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology.” by the Department of Health and Human Services (DHHS on January 13, 2010.) Applicants may test against the IFR Stage 1 materials immediately with the assurance that they will be provided the opportunity to quickly close any gaps after the Final Rules are published in the Federal Register in Spring 2010, subject to Center for Medicare and Medicaid Services (“CMS”) timelines. Applicants who test before the Final Rules are published will be given priority for scheduling testing to complete the requirements for full ARRA HITECH Stage 1 compliance for no additional fee.

**CCHIT does not guarantee that the final Federal standards will not be more or less rigorous than the proposed standards. Furthermore, although CCHIT expects to be a recognized certification body under ARRA, CCHIT makes no representation, warranty or guarantee that it will be so recognized.**

Applicant is a software provider that has EHR technology deployed in the market.

Applicant desires to have this technology inspected and certified by CCHIT for the Domain and Meaningful Use Objectives that technology supports as indicated below. Note that Eligible Provider and Hospital inspections are conducted separately and fees are assessed for each accordingly.

### ☐ **Eligible Providers Domain**

<input type="checkbox"/>	1. Foundational Infrastructure: Security and Privacy	<input type="checkbox"/>	14. Patient Reminders
<input type="checkbox"/>	2. Computer Physician Order Entry	<input type="checkbox"/>	15. Clinical Decision Rule
<input type="checkbox"/>	3. Drug Decision Support	<input type="checkbox"/>	16. Insurance Eligibility
<input type="checkbox"/>	4. Problem List	<input type="checkbox"/>	17. Electronic Claims Submission
<input type="checkbox"/>	5. Electronic Prescribing	<input type="checkbox"/>	18. Patient Electronic Copy of Health Information
<input type="checkbox"/>	6. Medication List	<input type="checkbox"/>	19. Patient Electronic Access to Health Information
<input type="checkbox"/>	7. Medication Allergy List	<input type="checkbox"/>	20. Patient Clinical Summary
<input type="checkbox"/>	8. Demographics	<input type="checkbox"/>	21. Exchange Clinical Information
<input type="checkbox"/>	9. Vital Signs	<input type="checkbox"/>	22. Medication Reconciliation
<input type="checkbox"/>	10. Smoking Status	<input type="checkbox"/>	23. Immunization Registries
<input type="checkbox"/>	11. Lab Test Results	NA	24. Reportable Lab Submission
<input type="checkbox"/>	12. Patient Lists	<input type="checkbox"/>	25. Electronic Syndromic Surveillance
<input type="checkbox"/>	13. CMS Quality Reporting		

### ☐ **Hospitals Domain**

<input type="checkbox"/>	1. Foundational Infrastructure: Security and Privacy	NA	14. Patient Reminders
<input type="checkbox"/>	2. Computer Physician Order Entry	<input type="checkbox"/>	15. Clinical Decision Rule
<input type="checkbox"/>	3. Drug Decision Support	NA	16. Progress Note
<input type="checkbox"/>	4. Problem List	<input type="checkbox"/>	17. Insurance Eligibility

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<b>NA</b>	5. Electronic Prescribing	<input type="checkbox"/>	18. Electronic Claims Submission
<input type="checkbox"/>	6. Medication List	<input type="checkbox"/>	19. Patient Electronic Copy of Health Information
<input type="checkbox"/>	7. Medication Allergy List	<input type="checkbox"/>	20. Patient Electronic Access to Health Information
<input type="checkbox"/>	8. Demographics	<b>NA</b>	21. Patient Clinical Summary
<input type="checkbox"/>	9. Vital Signs	<input type="checkbox"/>	22. Exchange Clinical Information
<input type="checkbox"/>	10. Smoking Status	<input type="checkbox"/>	24. Medication Reconciliation
<input type="checkbox"/>	11. Lab Test Results	<input type="checkbox"/>	25. Immunization Registries
<input type="checkbox"/>	12. Patient Lists	<input type="checkbox"/>	26. Reportable Lab Submission
<input type="checkbox"/>	13. CMS Quality Reporting	<input type="checkbox"/>	27. Electronic Syndromic Surveillance

**NA** Not Applicable

Now therefore, in consideration of the mutual rights and obligations of the parties set forth below, the parties agree as follows:

### 1. Definitions

- (a) **“Appeal for Committee Review”** means an appeal filed by Applicant requesting review by CCHIT of Applicant’s EHR Technology, after such technology is found non-compliant with the Certification Criteria through both the original Inspection Process and a subsequent New Jury Retest.
- (b) **“Applicant’s EHR Technology”** means the EHR Technology submitted by Applicant to CCHIT for the purpose of obtaining Preliminary ARRA IFR Stage 1 Certification.
- (c) **“CCHIT Staff Proctor”** means the CCHIT staff member on each Inspection Team who is responsible for monitoring (i) the progress of Applicant’s demonstration of its EHR Technology, and (ii) the observation of such demonstration by each Juror during the portion of the Inspection Process in which such Juror is engaged.
- (d) **“Certification”** means the status achieved by Applicant for its EHR Technology after CCHIT has: (i) evaluated such version against the Certification Criteria in accordance with the Handbook and the terms of this Agreement; (ii) determined that Certification is appropriate; and (iii) notified Applicant of such determination.
- (e) **“Certification Criteria”** means the criteria developed by the US Department of Health and Human Services (“DHHS”) for recognition under ARRA HITECH.
- (f) **“Certification Date”** means the date on which Applicant’s EHR Technology is added to CCHIT’s list of Certified Technologies. For Child Health or Cardiovascular Medicine certification the Certification Date shall mean the date on which Applicant’s Ambulatory EHR Technology is added to CCHIT’s list of Certified technologies.

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- (g) **“Certification Document”** means a document issued by CCHIT to Applicant confirming Certification of Applicant’s EHR Technology.
- (m) **“Certification Facts™ Label”** means the label that indicates the federally required Meaningful Use Objectives the EHR technology was successfully inspected against. Use of the label is subject to CCHIT’s Marketing Guidelines.
- (h) **“Certification Fee”** means fee payable at the time of application by Applicant for the evaluation of Applicant’s EHR technology for compliance with the Certification Criteria, from the initial Inspection Process through any subsequent New Jury Retest and Appeal for Committee Review; without including, however, any amounts that may be due for additional blocks of testing time. The amount of the Certification Fee is set forth in Exhibit A attached hereto and may be modified for future Certification Versions. This fee covers the cost of certification for the first 12 months.
- (i) **“Certification Renewal Fee”** means the fee for renewing Certification of Applicant’s EHR Technology beyond the 12 month anniversary, with respect to a particular Certification Version during the term of such Certification. The amount of the Certification Renewal Fee is set forth in Exhibit A attached hereto for the current Certification Version and may be modified for future Certification Versions.
- (j) **“Certification Version”** means a set of Certification Program items that are associated with a particular year, including the Certification Criteria, Test Scripts, Handbook, Certification Agreement and Certification Program fees. CCHIT updates these periodically in a coordinated release. This Preliminary ARRA IFR State 1 Certification program under Certification Version IFR Stage 1 is designed to meet applicable proposed Federal standards for certified EHR technology to support the Stage 1 incentives under ARRA HITECH, currently in Preliminary form. Past Certification Versions were designated by a year, e.g., 2006, 2007 or 2008.
- (k) **“Certified Organization”** means an Applicant who has achieved limited, modular Certification for part or all of its EHR Technology(s).
- (l) **“EHR Technology”** means electronic health record technology.
- (m) **“Fee for Technology Correction and Retest”** means the fee for retesting and certifying Applicant’s EHR Technology following an inability to demonstrate 100% compliance during previous testing by CCHIT. The amount of the Fee for Technology Correction and Retest is set forth in Exhibit A attached hereto and may be modified for future Certification Versions.
- (n) **“Handbook”** means the CCHIT Preliminary ARRA IFR Stage 1 Certification Handbook as of the Effective Date, as posted on the Web Site.
- (o) **“HIT”** means health information technology.
- (p) **“Inspection Process”** means the process followed by CCHIT to inspect Applicant’s EHR Technology for compliance with all applicable Certification Criteria,

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including a Security Inspection and inspection of other modules supporting designated Meaningful Use Objectives.

(q) “**Inspection Team**” means a team appointed by CCHIT in order to perform either a Modular Inspection or a Security Inspection on behalf of CCHIT, consisting of one (1) CCHIT Staff Proctor and an appropriate Jury.

(r) “**IT/Security**” means information technology security.

(s) “**Jury**” means the experts appointed to an Inspection Team, consisting of either a clinical expert and/or an IT/Security expert Each member of the Jury is referred to as a “**Juror**.”

(t) “**Marketing Guidelines**” means the CCHIT Marketing Guidelines that are set forth in Section 4 of the Handbook.

(u) “**Module Inspection**” means that part of the Inspection Process which examines the compliance of Applicant’s EHR Technology with the Certification Criteria related to a particular Meaningful Use Module.

(v) “**New Jury Retest**” means a retest of any Test Script steps for which Applicant’s EHR Technology was found to be non-compliant during the initial Inspection Process, using a new Jury for the Inspection Team, made up of Jurors who did not participate in either the initial modular inspection or the Security Inspection Team who found Applicant’s EHR Technology non-compliant during the initial Inspection Process.

(w) “**Non-compliant on First Pass**” means a determination by the Jury, during the initial phase of the Inspection Process for Applicant’s EHR Technology, that Applicant’s EHR Technology does not meet the Certification Criteria for one or more particular step(s) of the applicable Test Script(s) (subject to the Same Day Retest of such step).

(x) “**Preliminary ARRA IFR Stage 1 Appeal and Compliance Policy**” means the CCHIT Appeal and Compliance Policy set forth in Appendix C of the Handbook, as modified from time to time.

(y) “**Preliminary ARRA IFR Stage 1 Certified**” or “**Preliminary ARRA IFR Stage 1 Certification**” means an EHR Technology that may be marketed or advertised as having achieved Preliminary ARRA IFR Stage 1 Certification from CCHIT, in accordance with the Marketing Guidelines. For purposes of this Agreement, Preliminary ARRA IFR Stage 1 Certified or Preliminary ARRA IFR Stage 1 Certification shall also include, as applicable, an EHR Technology that is submitted for gap testing in connection with the final ARRA Certification Criteria published by DHHS.

(z) “**Same Day Retest**” means the retest of any portion of the Test Script(s) for which Applicant’s EHR Technology is deemed Non-compliant on First Pass, as determined by the Inspection Team, during the same Inspection Process and with the same Jury, either on the same day as the first pass determination or during a block of additional time purchased by Applicant.

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- (aa) “**Security Inspection**” means that part of the Inspection Process which examines the compliance of Applicant’s EHR Technology with the Certification Criteria related to security.
- (bb) “**Security Inspection Team**” means an Inspection Team appointed by CCHIT in order to perform the Security Inspection of Applicant’s EHR Technology on behalf of CCHIT.
- (cc) “**SPOC**” means Applicant’s designated single point of contact who will oversee and coordinate Applicant’s participation in the Preliminary ARRA IFR Stage 1 certification program and respond to CCHIT inquiries as necessary during each phase of the Preliminary ARRA IFR Stage 1 certification program.
- (dd) “**Test Scripts**” means the test scripts developed by CCHIT and posted on the Web Site that are intended to simulate clinical use scenarios, with each step mapped against one or more of the applicable Certification Criteria.
- (ee) “**Web Site**” means the CCHIT web site at [www.cchit.org](http://www.cchit.org).

## 2. Certification Process

- (a) **Technology Eligible for Certification.** In order to qualify for Preliminary ARRA IFR Stage 1 Certification, Applicant’s EHR Technology must be able to support one to all of the meaningful use objectives defined by HHS under the IFR, either alone or in combination with other technology or systems, as specified in Section 3.6 of the Handbook.
- (b) **Application Process.** Applicant and CCHIT shall follow the process described in Section 3 of the Handbook for the submission, review and processing of Applicant’s application for Certification of Applicant’s EHR Technology.
- (c) **Inspection Process.** Applicant and CCHIT shall follow the process described in Section 2.3 and 2.6 of the Handbook for the initial Inspection Process and any New Jury Retest of Applicant’s EHR Technology.
- (d) **Certification Outcome.** The outcome of the Certification process shall be determined by CCHIT and handled by Applicant and CCHIT as described in Section 2.7 of the Handbook.
- (e) **New Jury Retesting.** Applicant and CCHIT shall follow the process described in Section 2.8.1 of the Handbook to request a New Jury Retest of Applicant’s EHR Technology.
- (f) **Appeal for Committee Review.** If Applicant’s EHR Technology is found non-compliant with the Certification Criteria through the original Inspection Process and a subsequent New Jury Retest, Applicant may submit an Appeal for Committee Review to CCHIT and CCHIT shall handle any such appeal in accordance with the Preliminary ARRA IFR Stage 1 Appeal and Compliance Policy.

(g) **Technology Correction and Retest.** If an Applicant is unable to demonstrate complete compliance during the Inspection Process of Applicant's EHR Technology, Applicant shall have the option to make corrections to the EHR Technology and retest in accordance with the process described in Section 2.9.3 of the Handbook.

(h) **Additional Testing.** If Applicant successfully tests against the IFR Stage 1 materials before the Final Rules are published, Applicant will be given priority for scheduling testing to complete the requirements for full ARRA HITECH Stage 1 compliance at no additional fee to Applicant.

### 3. Fees

(a) **Standard Fees.** The following standard fees shall apply:

(i) Certification Fee. At the time of application, Applicant shall pay the Certification Fee, which covers the cost of the first 12 months of certification as set forth on Exhibit A attached hereto. Payment of the total Certification Fee must be received in full by CCHIT before processing of the application will begin.

(ii) Annual Certification Renewal Fee. To maintain Modular IFR Stage 1 certifications, Applicant must pay a Certification Renewal Fee as set forth on Exhibit A attached hereto within 30 days after of the first anniversary of the Technology's Certification Date. Applicant must pay this fee annually up until December 31, 2014, or if the certification is extended by CCHIT beyond December 31, 2014, such later date, when this certification is terminated. The last year will be pro-rated based on the number of months certified. If Federal authorities extend the IFR Stage 1 incentives, CCHIT will extend the term of this certification, provided Applicant pays the renewal fee, which would be similarly pro-rated to the new expiration date. If Applicant fails to pay such Certification Renewal Fee within ten days of the date due, the Certification will expire and Applicant will be removed from the list of Certified Vendors on the Web Site. Notwithstanding the foregoing, in the event that Applicant releases a new version of Applicant's EHR Technology, the provisions of Section 4(c) below shall govern.

(iii) Certification Fees for Other Versions of a Preliminary ARRA IFR Stage 1 Certified EHR Technology. If Applicant desires to extend Certification of its Preliminary ARRA IFR Stage 1 Certification EHR Technology to other versions of such EHR Technology that are added after such EHR Technology receives Preliminary ARRA IFR Stage 1 Certification and wishes to have such other version listed on the CCHIT website, such Applicant must follow the procedure set forth in Section 4(d) below and pay CCHIT a Certification Confirmation Fee of \$2,000. In order to maintain any such listing after the first year of the Certification term for such additional listing, Applicant must pay a renewal fee of \$1,000 within thirty (30) days after the first anniversary of the original listing date for such Applicant. If such Applicant fails to pay such

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renewal fee within ten days of the date due, Applicant's additional listing will be removed from the list of Preliminary ARRA IFR Stage 1 Certified EHR Technologies on the Web Site.

(iv) EHR Technology Correct and Retest Fees. If Applicant is unable to demonstrate complete EHR Technology compliance during the Inspection process, Applicant make request a EHR Technology correct and retest, as provided in Section 2.9.3 of the Handbook. Fees for the EHR Technology correct and retest shall be as set forth on Exhibit A attached hereto.

### (b) **Service Charges**

(i) Incomplete Applications. If Applicant is unable to resolve all deficiencies in the application and self-attestation materials to CCHIT's satisfaction, as provided in Section 2.4.5 of the Handbook, CCHIT will reject the application as incomplete. In this case, CCHIT will retain 15% of the Certification Fee as a non-refundable service charge and will refund the remaining 85% of the Certification Fee. Applicant may reapply in the future by resubmitting its application and the full Certification Fee.

(ii) Application and Inspection Extension Fee. If Applicant is unable to schedule and complete the Inspection Process within ninety (90) days of the Application Date, as provided in Section 2.5.2 of the Handbook, CCHIT may require an additional fee equal to 15% of the Certification Fee to complete the Inspection Process. CCHIT may, in its sole discretion, agree to extensions if unexpected delays occur as a result of CCHIT's efforts.

(iii) Test Cancellations. If, after receiving a confirmed test date for a Module Inspection, Security Inspection or New Jury Retest, Applicant cancels or fails to appear for such test, Applicant will be assessed a test cancellation fee as set forth on Exhibit A. Payment of the test cancellation fee must be received by CCHIT before the test will be rescheduled. Notwithstanding the foregoing, CCHIT, in its sole discretion, may waive such fee if the cancellation was due to an event of force majeure and Applicant submits a written waiver request to CCHIT explaining the force majeure event and its impact on Applicant.

(c) **Refunds**. Except as specified in Section 3(b) above, the Certification Fee is non-refundable.

(d) **Fees for Recertification after Certification Term**. If Applicant desires to recertify Applicant's EHR Technology after the expiration of the initial Certification term, Applicant must pay the Initial Certification Fee for the then-current Certification version (see Section 4(b) below).

(e) **Fees for Technology Correction and Retest**. At the time of application for retesting, Applicant shall pay a reduced Certification Fee set forth in Exhibit A under EHR Technology Correction and Retest, which is discussed in Section 3(a)(ii) above.



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Payment of the total Certification Fee must be received in full by CCHIT before processing of the application will begin

**(f) Fees for Additional Inspection Time.**

(i) Module Inspection. If Applicant has not completed inspections of all modules applied for, within the time allotted for such testing as described in the Handbook, Applicant may schedule and purchase additional testing of up to eight hours. Such additional testing may be purchased in one hour time blocks for the fee set forth in Exhibit A attached hereto.

(ii) Security Inspection. If Applicant has not completed its Security Inspection within the allotted for such testing as described in the Handbook, Applicant may schedule and purchase additional testing of up to four hours. Such additional testing may be purchased in one hour time blocks for the fee set forth on Exhibit A attached hereto.

### **4. Term of Certification; Technology Version Applicability**

(a) **Term of Certification**. The term of Certification, as it relates to a specific EHR Technology version, begins at the applicable Certification Date, provided that the annual Certification Renewal Fees are received in timely fashion as described in Section 3(a)(ii) above and expires on December 31, 2014. This date is keyed to rules defined by DHHS under ARRA HITECH. If DHHS extends this expiration date, CCHIT will grant extension of certification with the same annual renewal fees applying.

(b) **Recertification after Expiration of the Term**. At the end of the Certification term, to recertify Applicant's EHR Technology as compliant with the then-current Certification Version, Applicant must submit a new Certification application, pay the Certification Fee and have Applicant's EHR Technology tested against the Certification Criteria for such Certification Version. Once Applicant's EHR Technology is found compliant, the Certification is updated to reflect the most recent Certification Version. Failure to recertify after expiration of the Certification term will result in withdrawal of Certification and removal of Applicant from the list of Certified Vendors on the Web Site.

**(c) Notice of New Releases.**

(i) Applicant is not required to notify CCHIT of a new EHR Technology version unless this new release is no longer compliant with the criteria, then Applicant has a duty to disclose the non compliance and return to have the EHR Technology reinspected should Applicant wish to retain certification.

(ii) If the Certification Criteria used in the Inspection Process for the earlier, Preliminary ARRA IFR Stage 1 Certified version of Applicant's EHR Technology are still current, Applicant shall pay 50% of the Certification Fee

for inspection of the newer version of Applicant's EHR Technology, CCHIT will determine the scope of the testing required.

(iii) If Applicant has a new version of the EHR Technology, that is still in compliance with the Certification Criteria, and would like it listed as Preliminary ARRA IFR Stage 1 certified on CCHIT's Web Site, they must file with CCHIT a New Certified Technology Version Form and pay the fee for Additional Web Site listings as set forth in Exhibit A.

(d) **Additional Web Listings of a Certified Product.** CCHIT may extend Preliminary ARRA IFR Stage 1 Certification to EHR Technologies to other versions of such product that are added after such product is Certified. Applicants may request such listing by submitting a written statement to CCHIT that describes the new version, and attests that such new version is identical in functionality and fully comply with the CCHIT Certification Criteria and pay the applicable fee. Written requests must be submitted on Applicant's letterhead and signed by an official in Applicant's organization.

## **5. Suspension, Revocation or Expiration of Certification**

(a) **Suspension.** CCHIT may suspend Applicant's Preliminary ARRA IFR Stage 1 Certification (or any successor thereto) upon notice to Applicant, effective as of the date specified in such notice, if:

(i) CCHIT determines in accordance with the process in its Preliminary ARRA IFR Stage 1 Appeals and Compliance Policy, that there is a substantial compliance discrepancy between the EHR Technology submitted for testing and an EHR Technology being marketed by Applicant as having Preliminary ARRA IFR Stage 1 Certification, and Applicant has not provided an explanation thereof reasonably satisfactory to CCHIT within 15 days after notice from CCHIT; or

(ii) Applicant is in material breach of this Agreement or is in breach of any of the obligations, terms and conditions contained in the Handbook and fails to cure such breach within 15 days after notice from CCHIT or, in the reasonable determination of CCHIT, such breach is not capable of remedy.

(b) **Remediation.** If Applicant's Certification is suspended:

(i) Within five days of CCHIT's decision to suspend Applicant's Preliminary ARRA IFR Stage 1 Certification, CCHIT shall provide written notice of such suspension to Applicant (a "**Suspension Notice**").

(ii) Promptly after receipt of such Suspension Notice, Applicant must begin the remedial actions necessary to enable the suspension of its Preliminary ARRA IFR Stage 1 Certification to be lifted and Applicant also must take all steps reasonably required by CCHIT to prevent the public from being misled or otherwise harmed.

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If CCHIT is satisfied with the remedial actions taken by Applicant, CCHIT may lift the suspension of Preliminary ARRA IFR Stage 1 Certification by notice to Applicant.

**(c) Revocation** CCHIT may revoke Applicant's Preliminary ARRA IFR Stage 1 Certification (or any successor thereto) with immediate effect by giving notice to Applicant if Applicant's Modular IFR Stage 1 Certification has remained suspended for a period of more than 30 days. Applicant may appeal the decision to suspend Applicant's Modular IFR Stage 1 Certification to the Modular IFR Stage 1 Appeal and Compliance Committee pursuant to the terms of the Handbook by providing written notice to CCHIT within five days of receipt of the notice of revocation.

**(d) Effect of Suspension, Expiration or Revocation.** If Applicant's Preliminary ARRA IFR Stage 1 Certification is suspended, expires or is revoked, or this Agreement is terminated under Section 14 hereof, Applicant must immediately:

- (i) Cease using any references to Preliminary ARRA IFR Stage 1 Certification or other references to Certification in connection with Applicant's EHR Technology, including the CCHIT logo;
- (ii) Withdraw from public display and return to CCHIT or destroy any original and all copies of the Certification Document;
- (iii) Cease all marketing, advertising or other publication of the fact of Preliminary ARRA IFR Stage 1 Certification within 30 days; and
- (iv) Take all steps reasonably required by CCHIT to ensure that third parties are not misled into believing that the Preliminary ARRA IFR Stage 1 Certification has not expired or been withdrawn and is still in effect.

## 6. CCHIT Responsibilities

**(a) Disclaimers.** CCHIT will post disclaimers on its Web Site that caution potential purchasers of EHR Technologies about the limits of Preliminary ARRA IFR Stage 1 Certification, including, without limitation, that: (i) the Certification Criteria represent only broad, basic capabilities that may prove insufficient for some practice specialties, or inappropriate or excessive for others; (ii) the Certification Criteria do not assess EHR Technology usability; and (iii) other facts as appropriate.

**(b) Juror Selection and Monitoring.** The selection, training and monitoring of Jurors for the Inspection Process and New Jury Retests will be handled by CCHIT in accordance with Section 2.11 of the Handbook.

**(c) Purchaser Complaints.** CCHIT will maintain a complaint intake process on its Web Site for use by purchasers of EHR Technologies that have Preliminary ARRA IFR Stage 1 Certification. CCHIT will process complaints in accordance with the Preliminary ARRA IFR Stage 1 Certification Appeal and Compliance Policy.

**(d) Certification Criteria and Test Scripts.** CCHIT will post on its Web Site its then-current Certification Criteria and Test Scripts, as modified from time to time.

## **7. Applicant Responsibilities**

**(a) Preliminary ARRA IFR Stage 1 Certification Program.** Applicant shall perform all of Applicant's obligations specified for all phases of the Preliminary ARRA IFR Stage 1 certification program, in accordance with the Handbook and this Agreement.

**(b) Documentation.** Within the timeline described in the Handbook, prior to the scheduled Security Inspection date for Applicant's EHR Technology, Applicant shall submit all Documentation and other Technology documentation specified in the Test Scripts. Applicant also shall promptly submit any additional supporting materials requested by CCHIT for purposes of the Preliminary ARRA IFR Stage 1 Certification program.

**(c) Test Environment.** Applicant shall fully set up the required test environment prior to the scheduled Module Inspection date for Applicant's EHR Technology.

**(d) SPOC.** Applicant shall designate a SPOC, and make available each day of the Inspection Process its SPOC and other Applicant personnel as necessary to execute the Test Scripts and demonstrate Applicant's EHR Technology effectively to CCHIT, as well as for review of elements contained in any other testing methods used in the Preliminary ARRA IFR Stage 1 certification program and to answer questions and attend meetings as required by CCHIT. Applicant will notify CCHIT promptly in the event of a change in the SPOC for Applicant's EHR Technology.

**(e) Post-Certification.** If Applicant's EHR Technology achieves Preliminary ARRA IFR Stage 1 Certification, such Certification will be in effect for the Preliminary ARRA IFR Stage 1 Certification term, provided that Applicant complies with the renewal requirements set forth in Section 4 above.

**(f) New Versions.** Applicant shall notify CCHIT promptly of any modification made or planned to Applicant's EHR Technology only if those modification render the technology non-compliant with the Certification Criteria and Test Scripts.

**(g) Use of Certification, Certification Facts™.** Applicant shall comply with the requirements of CCHIT's Marketing Guidelines as set forth in Section 4 of the Handbook.

## **8. Dispute Resolution**

Any dispute arising out of, or related to, the Preliminary ARRA IFR Stage 1 Certification program, this Agreement, or the breach thereof, and in general all disputes between CCHIT and Applicant must be settled by arbitration in accordance with the Commercial Rules of the American Arbitration Association then in effect, unless the parties to the dispute mutually agree otherwise. Notwithstanding the foregoing, no arbitrator shall have power to adjudicate any

dispute as a class arbitration or as a consolidated arbitration without the express consent of all the parties to any such dispute. Notice of the demand for arbitration must be filed in writing with all other parties to the arbitration and with the American Arbitration Association. A demand for arbitration in a matter that is covered by the Appeal and Compliance Policy must be made in accordance with the Appeal and Compliance Policy. The arbitrators must conduct all arbitration proceedings in the Office of the American Arbitration Association in Chicago, Illinois. The parties may agree on the selection of a single arbitrator, but if they cannot agree, each party will select an arbitrator, and the selected arbitrators will select either one or two arbitrators, as appropriate in order for the arbitration panel to have an odd number of arbitrators. Except in the case of financial hardship or unless the parties agree otherwise, each party will share equally in the cost of arbitration. Where a party to an arbitration proceeding claims financial hardship, CCHIT reserves the right to require sufficient documentation of such financial hardship before agreeing to bear more than its pro rata share of the cost of arbitration. Notwithstanding the foregoing, CCHIT does not agree to bear more than its pro rata share of the cost of any class arbitration proceeding or any consolidated proceeding to which it consents. The award by the arbitrator or arbitrators will be final and must be in writing. Judgment upon the award rendered may be entered in any court having jurisdiction thereof, so long as the arbitrators acted in good faith. The arbitrator shall not have the power to make an award that is inconsistent with the provisions of this Agreement or with Illinois substantive law.

## **9. Ownership of Materials**

All reports and materials concerning the results or progress of the Preliminary ARRA IFR Stage 1 certification program or any other aspect of CCHIT's efforts related to the Preliminary ARRA IFR Stage 1 Certification of Applicant's EHR Technology shall belong to CCHIT; provided that CCHIT will continue to be obligated to abide by its obligations in Section 10 of this Agreement with respect to any Applicant Confidential Information (as defined in Section 10(a) below) contained in such reports or materials. Applicant acknowledges that CCHIT is the owner or licensee of copyright, know-how and other intellectual property rights in the Preliminary ARRA IFR Stage 1 certification program and any associated documentation; and that no right, title or interest in the Preliminary ARRA IFR Stage 1 certification program or such documentation is transferred to Applicant under this Agreement. Applicant shall not challenge the validity of such ownership. Applicant shall not represent that it owns or has any rights in relation to the Preliminary ARRA IFR Stage 1 certification program, including, without limitation CCHIT marks, other than as granted under this Agreement. Applicant shall not apply for registration of any trademark, business name or company name that incorporates any name or logo the same as, substantially similar to or deceptively similar to any CCHIT marks without the prior written consent of CCHIT.

## **10. Confidentiality**

**(a) Confidential Information.** Confidential Information furnished by either party under this Agreement is provided solely for use in the Preliminary ARRA IFR Stage 1 certification program and both parties desire to ensure the safeguarding of such information and limit its distribution. "**Confidential Information**" shall include the following:

## Standard Preliminary ARRA IFR Stage 1 Certification Agreement

- (i) EHR Technology documentation and technical information submitted to CCHIT by Applicant under this Agreement;
- (ii) EHR Technology operation, display screens, controls, workflows and any other features and capabilities made visible to the Jurors, the CCHIT Staff Proctor and any other CCHIT staff, or management during the course of any Inspection Process, New Jury Retest or Appeal for Committee Review;
- (iii) Item-by-item compliance results for Applicant's EHR Technology developed during the course of any Inspection Process, New Jury Retest or Appeal for Committee review; and
- (iv) Any other non-public information that is disclosed by one party (the "**Disclosing Party**") to the other (the "**Recipient**"), whether before or after the execution of this Agreement, provided that such information is marked in writing as "Confidential" or "Proprietary."

**(b) Exclusions.** Irrespective of any marking, Confidential Information shall not include:

- (i) Applicant's company name, EHR Technology name and version, and contact information for Applicant's representatives;
- (ii) Item-by-item compliance results, when de-identified as to Applicant, and aggregated statistically with corresponding compliance results from other applicants;
- (iii) Information that is, or subsequently becomes, generally available to the public through no act or fault of the Recipient;
- (iv) Information that was in the possession of the Recipient prior to its disclosure;
- (v) Information that was lawfully acquired by the Recipient from a third party who was not under an obligation of confidentiality to the Disclosing Party; or
- (vi) Information that was independently developed by the Recipient by personnel without access to the Confidential Information.

**(c) Required Disclosures.** It will not be a violation of this Agreement to disclose any information required to be disclosed by law or legal process. However, the Recipient shall: (i) promptly notify the Disclosing Party of the disclosure request; and (ii) at the Disclosing Party's request, provide reasonable assistance in any effort by the Disclosing Party to prevent or limit such disclosure.

**(d) Disclosure and Use Restrictions.** Except as otherwise provided herein, the Recipient shall:

- (i) retain in confidence all Confidential Information, using at least the same degree of care in safeguarding the Disclosing Party's Confidential Information as it uses in safeguarding its own confidential information, subject to a minimum standard of reasonable diligence and protection;
- (ii) use and disclose Confidential Information only in the course of performing its obligations pursuant to this Agreement; and
- (iii) disclose Confidential Information within its organization only to those of its employees, faculty, agents or subcontractors who both have a need to know such information for the Recipient's performance under this Agreement and have a legal duty to protect it comparable to that of the Recipient. For purposes of this Section 10, the Jurors shall be considered to be within CCHIT's organization.

(e) **Injunctive Relief.** Each party recognizes and acknowledges that any use or disclosure of the Confidential Information of the other party in a manner inconsistent with the provisions of this Agreement may cause such other party irreparable damage for which remedies at law may be inadequate, and each party agrees that in any request to a court of competent jurisdiction by such other party for injunctive or other equitable relief seeking to restrain such use or disclosure, it will not maintain that such remedy is not appropriate under the circumstances.

## 11. **Limitation of Liability; Right of Action**

(a) EXCEPT WITH RESPECT TO THE CONFIDENTIALITY OBLIGATIONS IN SECTION 10 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT OR BY STATUTE OR OTHERWISE) TO THE OTHER OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE LOSS, DAMAGES OR EXPENSES (INCLUDING LOST PROFITS OR SAVINGS).

(b) No claim or cause of action, regardless of form, arising out of or related to the Preliminary ARRA IFR Stage 1 certification program, this Agreement, or the breach thereof, or any other dispute between CCHIT and Applicant may be brought in an arbitral, judicial, or other proceeding by any party more than one year after the cause of action has accrued, regardless of any statute, law, regulation, or rule to the contrary ("**Limitation Period**"). The Limitation Period shall commence the day after the day on which the cause of action accrued. Failure to institute an arbitration proceeding within the Limitation Period will constitute an absolute bar and waiver of the institution of any proceedings, whether in arbitration, court, or otherwise, with respect to such cause of action. A cause of action that has become time-barred may not be exercised by way of counter claim or relied upon by way of exception.

## 12. **Warranties; Disclaimer**

Applicant warrants and represents that:

## Standard Preliminary ARRA IFR Stage 1 Certification Agreement

- (a) It has the full power and authority to execute the Certification application and to enter into this Agreement and that any representative of Applicant who signed the Certification application or signs this Agreement had or has full power and authority to do so on behalf of Applicant.
- (b) The information submitted to CCHIT in the Certification application, Applicant's Self-Attestation Documentation and any other documentation provided by Applicant to CCHIT is, to the best of Applicant's knowledge, accurate and complete.
- (c) It will use the Seal and any references to Certification status only in accordance with the Marketing Guidelines.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT: (a) NEITHER PARTY MAKES NOR WILL BE DEEMED TO MAKE OR HAVE MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW); AND, (b) EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, TITLE, DESIGN, NON-INFRINGEMENT, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OR USAGE IN TRADE.

### 13. Indemnification

Applicant, at its expense, will defend, indemnify and hold CCHIT (together with its directors, officers, employees and agents) harmless from any claim, action, suit or proceeding made or brought against CCHIT by a third party arising out of a material breach by Applicant of Section 12(b) or Section 12(c) of this Agreement (each, a "**Claim**"). CCHIT shall provide Applicant with prompt notice of any Claim, cooperate with Applicant in the defense and settlement of the Claim, and grant Applicant sole control over the defense or settlement of the Claim. Any such settlement will include an immediate and effective release of CCHIT. Applicant shall not settle any Claim in a manner that would admit liability or require the payment of damages by CCHIT without CCHIT's prior written consent.

### 14. Term and Termination

- (a) **Term.** This Agreement shall commence on the Effective Date and continue until terminated under this Section 14.
- (b) **Termination by Applicant.** Applicant may terminate this Agreement at any time prior to receiving Preliminary ARRA IFR Stage 1 Certification by providing written notice to CCHIT of its intent to so terminate this Agreement.
- (c) **Termination by CCHIT.** CCHIT may terminate this Agreement with immediate effect by giving notice to Applicant if:



## Standard Preliminary ARRA IFR Stage 1 Certification Agreement

(i) Applicant is in material breach of any of the terms and conditions of this Agreement and fails to remedy such breach within 30 days after receiving notice of such breach; or

(ii) Applicant breaches a material provision of this Agreement where such breach is not capable of remedy.

**(d) Effect of Termination.** Upon termination of this Agreement, Applicant must immediately comply with its obligations under Section 5 of this Agreement. Sections 10-16 of this Agreement shall survive any expiration or termination of this Agreement.

### 15. Notices

Any formal notice or other significant communication given pursuant to this Agreement must be in writing and shall be deemed to have been received either (a) upon personal delivery (or refusal thereof) to the party for whom intended, (b) on the date receipt is confirmed by a courier service or the United States Post Office (sent certified mail, return receipt requested), in each case addressed to such party at the address specified below (or such other address designated by notice to the other party).

For Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

For CCHIT:

200 S. Wacker Drive  
Suite 3100  
Chicago, IL 60606  
Attn: Alisa Ray, Executive Director

### 16. General

**(a) Non-Disclosure of Applicant Status.** Except as specifically provided in Section 4 of the Handbook, without Applicant's prior written approval (which may be given by email), CCHIT shall not: (i) advertise or otherwise name Applicant as a participant in the Preliminary ARRA IFR Stage 1 certification program; nor (ii) publicly disclose the results of Applicant's participation in the Preliminary ARRA IFR Stage 1 certification program, except in de-identified form.

**(b) Force Majeure.** Neither party shall be responsible for any delays or failures in performance due to circumstances beyond its reasonable control, including, without limitation, failures of computers, computer-related equipment, hardware or software.

(c) **Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be modified to the minimum extent necessary to achieve the purpose originally intended, if possible, and the remaining provisions of this Agreement shall remain in full force and effect and enforceable.

(d) **Survival of Rights and Obligations.** All Sections, which by their nature are meant to survive this Agreement, including but not limited to Section 10 hereof, shall survive expiration or termination of this Agreement.

(e) **Forum and Jurisdiction.** This Agreement is governed by and shall be construed in accordance with the laws of the State of Illinois, without regard to its conflicts of laws provisions, and both parties consent to the jurisdiction and venue of the state and federal courts in the State of Illinois. In any action to enforce this Agreement the prevailing party (as specifically determined by the court) will be entitled to recover its costs, including reasonable attorneys' fees.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding agreement when each party shall have executed one counterpart.

(g) **Captions.** Captions appearing in this Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions of this Agreement.

(h) **Independent Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between Applicant and CCHIT. Except as specifically set forth herein, neither party shall have the power to control the activities and operations of, or contractually bind or commit, the other party and their status with respect to one another is that of independent contractors.

(i) **No Third Party Beneficiary.** Nothing contained in this Agreement will be deemed to create, or be construed as creating, any third party beneficiary right of action upon any third party or entity whatsoever, in any manner whatsoever.

(j) **Assignment.** None of this Agreement, any of the rights hereunder nor any resulting certification shall be assignable by Applicant whether by operation of law or otherwise without the express written approval of CCHIT.

(k) **Entire Agreement; Waiver.** This Agreement contains the entire understanding of the parties with regard to the subject matter contained herein and may not be amended except by mutual written agreement. The failure of either party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach, nor shall any delay by either party to exercise any right under this Agreement operate as a waiver of any such right.

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**[Signature Page Follows]**

Standard Preliminary ARRA IFR Stage 1 Certification Agreement

*[Signature Page to CCHIT Standard Preliminary ARRA IFR Stage 1 Certification Agreement]*

FOR

**FOR THE CERTIFICATION COMMISSION FOR  
HEALTH INFORMATION TECHNOLOGY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: **Alisa A. Ray**  
Title: **Executive Director**

# Standard Preliminary ARRA IFR Stage 1 Certification Agreement

## Exhibit A

### Preliminary ARRA IFR Stage 1 Certification Program Pricing

Note: Eligible Provider and Hospital Domains are separate inspections and priced as such

Total Dollars	Number of Meaningful Use Objectives Inspected				
	1 (Security) to 2	3 to 5	6 to 10	11 to 20	> 20
<b>Standard Fees</b>					
Certification (due with application)	\$6,000	\$10,000	\$15,000	\$24,000	\$33,000
Annual Renewal	\$1,000	\$2,000	\$3,000	\$4,000	\$5,000
Additional Web Listings (Year 1/Year 2)	\$2,000/\$1,000	same	same	same	same
Rebranded Technology Listing (Open Source only)	\$2,000/\$1,000	same	same	same	same
<b>Service Charges</b>					
Incomplete Applications	15% of Application Fee	same	same	same	same
Inspection Extension (beyond 90 days)	15% of Application Fee	same	same	same	same
Test Cancellations	\$1,000	\$2,000	\$3,000	\$4,000	\$5,000
Additional Inspection Time (if required) (1 hour increments)	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
<b>Correct and Retest</b>					
Certification Fee (due with application)	\$3,000	\$5,000	\$7,500	\$12,000	\$16,500