

North Carolina Health Information Exchange Authority

PARTICIPATION AGREEMENT INSTRUCTIONS

Please read these instructions carefully, missing or inaccurate information will void the contract.

1. Read and review the NC HIEA Participation Agreement with your legal department, Contract Administrator, or other authorized signatory.
2. On page 1, include the legal entity name of the provider. If you “Do business as” another identity, please include that information. The address listed should be the appropriate USPS mailing address.
3. Please have an authorized signatory review and sign pages 22 and 44 to connect to the NCHIE. By signing these pages, you are also agreeing to exhibit F, the **Business Associate Agreement**.
4. In Exhibit D on page 35, please identify your **Participating Affiliates**, if applicable. A Participating Affiliate is an entity that your organization has authority to bind to the duties and obligations set forth in the Agreement, or you have the authority to guarantee their performance of the obligations listed in the Agreement. These can include but are not limited to; ambulatory practices, satellite or minute clinics.
5. In Exhibit E on page 37, You **must** include the name and contact information for your: Participant Account Administrator, Contract Administrator, and Technical Administrator (CIO or other Technical Support contact) where indicated. Refer to the original interest email for these defined roles as these individuals will be contacted at different times within the connection process. If one person fulfills multiple roles please indicate this.
6. In Exhibit F starting on page 38, please review the Business Associate Agreement.
7. **PLEASE REVIEW EXHIBIT G ON PAGE 45 CAREFULLY.** Please initial where indicated if you do **not** want your untransformed data to be sent to CCNC/N3CN. *If you were not connected to the NC HIE previously operated in part by Community Care of North Carolina, Inc. (CCNC) , you may wish to initial here.*
8. In Exhibit H on page 46, please initial where indicated if you would like your historical data that you previously sent to CCNC or the former HIE network to be transmitted to NC HIEA. A form letter will be emailed to your practice’s Contract Administrator that you must send to CCNC to authorize that your historical data be sent to NC HIEA. *Please send the letter directly to CCNC and keep a record that it was sent. If you were not connected CCNC’s HIE you may not wish to initial here.*
9. **Opt Out Process:** Patients can complete the NC HIEA opt out form available on our website and mail it directly to NC HIEA if they decide to opt out. However, Participants are still required by the Participation Agreement and NC law to educate patients about the HIE network and their continuing right to opt out at any time. NC HIEA is not currently requiring Participants to develop a process that allows patients to exercise their right to opt out of having their data shared through the HIE network. **Please contact NC HIEA if you would like to receive hard copies of the opt out form to distribute to your patients.**
10. Please return the entire 46 page signed Participation Agreement to the North Carolina Health Information Exchange Authority **as soon as possible** via email to hiealegal@nc.gov. Or you can mail it to the address below.

NC Health Information Exchange Authority Legal Team
Mail Service Center 4101
Raleigh, NC 27699-4101

The North Carolina Health Information Exchange Authority will confirm receipt of the fully executed Participation Agreement by email to one or more of the individuals identified in Exhibit E on page 37. This email will include important contact information for technical assistance and the next steps in the connection process.

NC HEALTH INFORMATION EXCHANGE AUTHORITY
PARTICIPATION & SUBSCRIPTION AGREEMENT

THIS PARTICIPATION & SUBSCRIPTION AGREEMENT (“Agreement”) is entered into and effective as of the Effective Date (as defined herein) by and between NORTH CAROLINA HEALTH INFORMATION EXCHANGE AUTHORITY (NC HIEA), an agency of the State of North Carolina having its principal office in Raleigh, North Carolina 27609 (hereinafter, “NC HIEA”), and the Participant (hereinafter, “Participant”) identified below:

Participant: _____

Address: _____

Attn: _____

WITNESSETH:

Whereas, NC HIEA was created and enabled by the NC General Assembly to assume operations of the existing health information exchange and associated network in S.L. 2015-241, and

Whereas, the Participant previously entered into agreements associated with the existing health information exchange, and

Whereas, NC HIEA is engaged in the oversight, administration and operation of an electronic health information exchange network (the “HIE Network”), and in connection therewith makes available certain Services (as defined herein) for use by Participants of the HIE Network; and

Whereas, Participants in the Exchange may submit or receive Data through the Exchange; and a Participant may be both a Data Provider and a Data Recipient; and

Whereas, Participant desires to subscribe to certain Services offered by NC HIEA, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is admitted and acknowledged, the parties hereto agree as follows:

TERMS OF AGREEMENT

- 1) EFFECTIVE DATE. The effective date (“Effective Date”) of this Agreement shall be the date on which the last of both of the following events occurs: (i) the full execution of this Agreement by both NC HIEA and Participant, and (ii) the full execution by of the Parties of the Business Associate Agreement attached hereto as Exhibit F.
- 2) INTERPRETATION. This Participation Agreement and together with all Exhibits shall be interpreted as an integrated agreement. Any ambiguity or material conflict between any of their provisions shall be resolved with an order of precedence among such documents as follows:

- a) This Participation & Subscription Agreement,
 - b) Glossary of defined terms, Exhibit A,
 - c) Business Associate Agreement, Exhibit F
 - d) HIE Service and Fee Schedule, Exhibit B
 - e) Service Level Agreement, Exhibit C
 - f) Participating Affiliates, Exhibit D
 - g) Participant Contact Information, Exhibit E
 - h) N3CN/CCNC Data Access and Use, Exhibit G
 - i) Permission for Access and Use of Historical Data, Exhibit H
- 3) PARTICIPATING AFFILIATES. If Participant has one or more Affiliates that shall be Participants and has authority to contract for such Affiliates, the Affiliates shall be listed on Exhibit D of this Agreement (“Participating Affiliates”) and each party so listed shall be individually entitled to the rights and subject to the obligations set forth in the Participation Agreement. Entities that control one another or are under common control by a parent or other entity (“Affiliates”), may elect to participate in the HIE Network as a single Participant or multiple Participants.
- 4) DEFINITIONS. All capitalized words and phrases not expressly defined herein and used within this Agreement and the recital paragraphs hereof shall have the definitions ascribed to such capitalized words and phrases as are set forth in the Glossary, Exhibit A, which definitions are incorporated herein by reference.
- a) Certain terms are defined by, or defined by reference, N.C.G.S. §90-414.3 and shall have the meaning and intent herein as set forth therein. Such terms include: Business associate, business associate contract, covered entity, department, disclose or disclosure, emergency medical condition, GDAC, HIE Network, HIPAA, individual, NC Health Information Exchange Advisory Board, NC Health Information Exchange Authority, opt out, protected health information, public health purposes, qualified organization, research purposes and State CIO.
 - b) Permitted Purposes shall mean the following reasons for which HIE Data may be acquired, Accessed, Disclosed or used through the HIE Network:
 - i) Treatment of the Individual. Treatment shall mean the provision, coordination, or management of health care and related services by one or more Providers and that the use or Disclosure otherwise complies with the requirements of HIPAA as set forth in 45 CFR §164.506(c) or successor provisions of HIPAA and is otherwise permitted by Applicable Law;
 - ii) Payment activities, provided that the Participant has an established Treatment relationship with the Individual and that the use or Disclosure otherwise complies with the requirements of HIPAA as set forth in 45 CFR § 164.506(c) or successor provisions of HIPAA and is otherwise permitted by Applicable Law;

- iii) Quality assessment and improvement activities, including care coordination, defined in the HIPAA Regulations as a subset of health care operations activities, provided that the Participant has an established Treatment relationship with the Individual and that the use or Disclosure otherwise complies with the requirements of HIPAA set forth in 45 CFR §164.506(c) or successor provisions of HIPAA and is otherwise permitted by Applicable Law;
 - iv) To demonstrate meaningful use of certified electronic record technology, provided that the purpose is not otherwise described in this definition and the purpose is permitted by Applicable Law, including but not limited to the HIPAA Regulations. Meaningful use of certified electronic health record technology shall have the meaning assigned to it in the regulations promulgated by the Department of Health and Human Services under 42 USC 1395w-4, -1395ww, (the American Recovery and Reinvestment Act; Sections 4101 and 4102);
 - v) To carry out NC HIEA's or a Participant's proper management and administration of its system or its responsibilities under this Agreement and Applicable law.
 - vi) A Participant may limit or expand the Permitted Purposes for which the data submitted by or for such Participant may be acquired, accessed, Disclosed or used through the HIE Network. In the event Participant elects to limit or expand the Permitted Purposes for which their HIE Data may be acquired, accessed, Disclosed or used, then "Permitted Purposes" shall mean the purposes set forth within the Permitted Purposes herein, as amended, or other written agreement.
- 5) HIE SERVICES. The HIE Services comprise a set of technical services that may be subscribed, or used, by one or more Participants for Permitted Purposes, and for such other purposes as permitted by Applicable Law. Each HIE Service is identified and offered for Subscription as identified in the Service Schedule included in this Agreement in Exhibit B. Participants shall subscribe to Services by executing the Participation Agreement, and such shall be effective upon the receipt by NC HIEA of the executed Participation Agreement or March 1, 2016, whichever event comes later.
 - a) All HIE Service Schedules shall be available through the NC HIEA webpage.
 - b) HIE Services are subject to NC HIEA policies, which shall be available on the NC HIEA webpage.
 - c) NC HIEA may amend the terms of any Policy, Schedule or Service Level, or terminate any Service upon written notice of at least ninety (90) days to a Participant.
- 6) SUBSCRIPTION TO SERVICES; FEES. Pursuant to S.L. 2015-241, s. 12A.5, NC HIEA shall become self-supporting through receipt of fees sufficient to offset costs of operation. However, at this time, NC HIEA will not charge Participant a fee for subscribing to HIE Services until further notice as required herein.
 - a) Subject to the terms and conditions of this Agreement, Participant hereby subscribes to use the services identified on the Service Schedule attached hereto as Exhibit B and incorporated herein by reference (severally and collectively, the "Services"). NC HIEA agrees to make such Services available to Participant for its use. Upon written notice delivered by NC HIEA to Participant at least ninety (90) days before the end of the initial term of this Agreement or the then current renewal term, NC HIEA reserves the right in its

sole discretion to discontinue the offering and availability of any or all of the Services and shall have no liability to Participant or its Authorized Users for or arising out of such discontinuance of Services, provided such discontinuance shall only be effective as of the expiration of the initial term of this Agreement or the then current renewal term. Participant is also entitled to receive support and maintenance as part of the subscription services and such Service Level Agreement is described in Exhibit C provided that Participant is not in default of their subscription fees as defined herein.

- b) In consideration of the rights granted Participant hereunder, Participant shall pay to NC HIEA the fees set forth on the Service Fee Schedule attached hereto as Exhibit B and incorporated herein by reference, at the times and in the manner, and subject to all other terms and conditions, as are set forth on such Service Fee Schedule, without notice or demand therefor, and without deduction or offset therefrom. All fees paid by Participant to NC HIEA pursuant to this Agreement shall be non-refundable under all circumstances, including without limitation in the event of the early termination of this Agreement by Participant pursuant to Section 16) (Term; Termination) hereof.
 - c) Upon written notice by NC HIEA to Participant at least one hundred eighty (180) days before the end of the initial term of this Agreement or the then current renewal term, NC HIEA reserves the right in its sole discretion to charge fees or to increase or decrease fees for any or all of the Services to which Participant subscribes pursuant to this Agreement. NC HIEA shall have no liability to Participant or its Authorized Users for or arising out of such decision to charge, increase, or decrease in fees, provided any such change in fees shall only be effective as of the expiration of the initial term of this Agreement or the then current renewal term.
 - d) In the event that: (i) Participant elects to discontinue its subscription to the Services, (ii) Participant elects to subscribe to additional services offered by NC HIEA and not initially subscribed to by Participant, or that NC HIEA first makes available for subscription by Participant subsequent to the Effective Date of this Agreement, or (iii) NC HIEA elects to discontinue the offering and availability of any or all of the Services, the parties shall execute a new Service Election and Fee Schedule which shall be in substantially the form attached as Exhibit B, to reflect the change in Services or addition of additional services, and fees owed on account of the applicable subscription change(s). The execution of a new Service Election and Fee Schedule by both of the parties hereto shall be deemed to amend or modify any and all prior Service Election and Fee Schedule(s) executed by the parties and without the necessity of any further action on the part of either party.
 - e) In the event that Participant and NC HIEA subsequently execute a future Exhibit for any reason, the terms of this Agreement shall apply and such Exhibit shall be substituted for the superseded Exhibit from the effective date of such future Exhibit.
 - f) All fees paid hereunder are nonrefundable and are stated and must be paid in U.S. dollars. All amounts payable under this Agreement are exclusive of taxes and duties. Customer will pay all taxes and duties assessed by any authority in connection with this Agreement.
- 7) USE AND DISCLOSURE OF DATA.
- a) For and during the Term of this Agreement and conditioned upon the Participant's compliance with all of the terms and conditions of this Agreement, NC HIEA grants to

Participant a limited, non-exclusive, and non-transferrable, royalty-free right and license to access, disclose and use HIE Data solely to carry out Permitted Purposes. Any such access and use shall at all times and in each instance be undertaken in full compliance with this Agreement, the Participation Agreement, and applicable NC HIEA Policies and Procedures which may be amended from time to time.

- b) To the extent Participant makes available data to NC HIEA for Permitted Purposes, parties may agree to otherwise limit or expand the scope of Permitted Purposes for which the Participant's data may be acquired, accessed, used or Disclosed through the HIE Network. If the Participant desires to limit or expand the scope Permitted Purposes, Participant shall identify any restrictions or expansions and, subject to the decision by NC HIEA to implement such restrictions or expansions, this Agreement may be amended.
 - c) Opt Out. If an Individual exercises his or her rights in compliance with 45 CFR 164.520 to disallow disclosure of PHI or ePHI, NC HIEA shall not disclose such information to unauthorized third parties, provided that notice of the Individual's election is made known to NC HIEA.
- 8) MEDICARE RECORD ACCESS: In compliance with 42 U.S.C. 1395x(v)(1)(I) and implementing regulations, NC HIEA agrees, until the expiration of four (4) years after the services are furnished under this Agreement, to allow the Secretary of the U.S. Department of Health and Human Services and the Comptroller General access to this Agreement, all applicable purchase orders, and to the books, documents and records of NC HIEA necessary to verify the nature and extent of the costs of this Agreement. NC HIEA further agrees that if any of the duties of this Agreement are carried out by a subcontractor of NC HIEA, such subcontract will contain a clause to the effect that, until the expiration of four (4) years after the services are furnished under such subcontract, the Secretary of the U.S. Department of Health and Human Services and the Comptroller General will have access to such subcontract and to the books, documents and records of the subcontractor necessary to verify the nature and extent of the costs of such subcontract. This Section 8) will survive the expiration or termination of this Agreement.
- a) DISCLOSURE TO COVERED ENTITIES AND QUALIFIED ORGANIZATIONS: Pursuant to Section 4)(b) (Definitions) of this Agreement, in addition to those reasons for which HIE Data may be acquired, accessed, used or Disclosed through the HIE Network under the terms and conditions of the Participation Agreement, HIE Data made available by Participant to NC HIE may be acquired, accessed, use or Disclosed through the HIE Network as follows:
 - i) Where a Covered Entity has executed a Business Associate Agreement and Participation Agreement with NC HIEA.
 - ii) Where a Covered Entity has executed a Business Associate Agreement and Participation Agreement with NC HIEA and contracts for access through a Qualified Organization. This is provided that NC HIEA has executed a Qualified Organization Subscription Agreement with the Qualified Organization.
 - iii) Where a Covered Entity has executed a Business Associate Agreement and a Data Access and Use Agreement with NC HIEA.
- 9) LICENSING OF HIE DATA.

- a) By Participants. During the Term defined in Section 16) (Term, Termination), and solely as permitted by this Agreement, NC HIEA hereby grants Participants a non-exclusive, personal, non-transferable, revocable limited license to access, Disclose and use HIE Data to carry out Permitted Purposes and to comply with the requirements of Applicable Law.
 - b) By NC HIEA. Participant hereby grants separately to NC HIEA and all other Participants an irrevocable, non-exclusive, royalty-free right and license to use all HIE Data and Confidential Information that was Disclosed by, or for, Participant through the HIE Network during the Term of this Agreement as permitted by this Agreement. Nothing in the grant of a license shall be deemed to limit the provision of this Agreement or of Applicable Law that makes HIE Data incorporated into a Recipient's medical records, other data or databases, the legal responsibility of the Recipient.
- 10) OBLIGATIONS OF NC HIEA. NC HIEA shall maintain the functionality of the HIE Network and provide or arrange for the provision of such service, security, and other updates to NC HIE's System as NC HIEA determines are appropriate from time to time.
- a) Use of HIE Data. To the extent that NC HIEA has access to information, including HIE Data, PHI or ePHI or other Confidential Information of Participant, such information will be used only for one or more of the following purposes:
 - i) To facilitate the Disclosure of HIE Data to Participants for Permitted Purposes
 - ii) To process or otherwise implement Opt Out requests.
 - iii) To perform patient identity or patient records maintenance.
 - iv) To conduct or assist in the performance of audits permitted or required by the NC HIEA Policies and Procedure, including the performance of audits of Emergency Access.
 - v) To evaluate the performance of or develop recommendations for improving the operation of the HIE Network.
 - vi) To conduct technical system support and maintenance on the HIE Network.
 - vii) To engage in any other activities as may be required to facilitate the operation of the HIE Network that are authorized by NC HIEA and are consistent with this Agreement and Applicable Law.
 - b) Opt Out.
 - i) NC HIEA will provide information and education to Participants about the right of Individuals on a continuing basis to Opt Out or to rescind a decision to Opt Out.
 - ii) After Participant has notified NC HIEA that an Individual has Opted Out of the HIE Network, NC HIEA will ensure that the Individual's HIE Data will not be disclosed to any other entities, unless as permitted by N.C.G.S 90-414.10 and in accordance with Section 12) e) Emergency Medical Condition Exception to Opt Out.
 - c) Compliance with CLIA. For the sole and limited purpose of facilitating a "Report of Record" to be transmitted from an originating laboratory, or other authorized source, to a Participant pursuant to and in accordance with the Clinical Laboratory Improvement Amendments of 1988 ("CLIA"), NC HIEA agrees to be and by signing this Agreement Participant hereby designates NC HIEA to be the Participant's "Designated Agent" for

purposes of compliance with CLIA. This designation is limited and transient such that NC HIEA shall be considered “Designated Agent” of Participant only during the window of time beginning with the point at which a CLIA “Report of Record” is received by NC HIEA and ending with the point at which the “Report of Record” is delivered to Participant (the Designated Agent Window), and for the sole purpose of transmitting the “Report of Record” to the Participant. As used in this Section 10)(e), the “Report of Record” shall mean the information contained in a document, electronic or otherwise, that is certified by the originating laboratory, or other authorized source, as containing the requisite information needed to satisfy CLIA’s requirement for delivery of a test result to the ordering Participant.

- 11) PARTICIPANT’S AUTHORIZED USERS. For and during the Term of this Agreement and conditioned upon Participant’s compliance with all of the terms and conditions of this Agreement, NC HIEA grants to Participant the non-exclusive, non-transferable, right to authorize Participant’s Users, if any, to use the Services.
- 12) PARTICIPANT OBLIGATIONS.
 - a) Participant shall be responsible for assuring that Participant and its Authorized Users have all equipment, software and other resources necessary and appropriate to acquire, access, use and Disclose HIE Data through the HIE Network in accordance with this Agreement and to conform to any applicable technical specifications outlined in the NC HIEA Policies and Procedures.
 - b) Participant may authorize persons whose conduct, in the performance of work for the Participant, is under the direct control of the Participant, including members of its own workforce, its independent contractors, and credentialed members of its medical or other professional staffs to access, Disclose or use HIE Data through the HIE Network only to the extent consistent with this Agreement and solely for Permitted Purposes. Participant acknowledges and agrees that it is responsible for its Authorized Users’ access, Disclosure and use of HIE Data and for any other individuals’ use of the HIE Data by use of any security credential received or obtained, directly or indirectly, lawfully or unlawfully, from the Participant or its Authorized Users. Participant shall Disclose or Use HIE Data through the HIE Network only to the extent consistent with this Agreement and solely for Permitted Purposes. Participant acknowledges and agrees that it is responsible for its Authorized Users’ access, Disclosure and use of HIE Data through the HIE.
 - c) Participant will use and maintain reasonable and appropriate administrative, technical and physical safeguards to protect the confidentiality, integrity, and availability of HIE Data and to prevent the acquisition, access, Disclosure or use of HIE Data through the HIE Network other than for Permitted Purposes or as required by Applicable Law. To that end, Participant agrees to:
 - i) Establish role-based access standards reasonably designed to enable each Authorized User to access such HIE Data through the HIE Network as is necessary for the performance of Participant’s Authorized Users. These standards shall ensure that Authorized Users access, Disclose, or use only the Minimum Necessary amount of HIE Data reasonably required to carry out the Permitted Purpose.

- ii) Establish policies and procedures that provide for appropriate: (i) identification and authentication of its Authorized Users; (ii) security audit controls and documentation to guard against unauthorized access to; and (iii) protection against any type of virus or malicious software designed to disrupt the operation of, destroy or damage its or NC HIEA's System or the HIE Network.
 - iii) Provide timely notice to NC HIEA of any Individual's election to Opt Out, and to rescind an election to Opt Out, pursuant to the HIPAA Privacy Rules.
- d) Implementation of Opt Out. Participant shall establish a process for notifying Individuals about:
 - i) the benefits of the HIE Network,
 - ii) the Individual's right to Opt Out and the potential consequences to Individuals of Opting Out,
 - iii) the Individual's right to rescind a previous decision to Opt Out, and
 - iv) a process whereby an Individual may exercise the right to Opt Out and the right to rescind a previous decision to Opt Out.
- e) Emergency Medical Condition Exception to Opt Out. Authorized Users may access the PHI maintained by the HIE Network of an Individual who has exercised his or her right to Opt Out if all of the following requirements are satisfied:
 - i) The reasonably apparent circumstances indicate to the Authorized User that: (a) the Individual has an Emergency Medical Condition; (b) a meaningful discussion with the Individual or his or her personal representative about whether to rescind a previous decision to Opt Out is impractical due to the nature of the Individual's Emergency Medical Condition; and (c) information available through the HIE Network could assist in the diagnosis or Treatment of the Individual's Emergency Medical Condition.
 - ii) The Authorized User obtains access to the HIE Network through a Participant that is treating or diagnosing the Individual's Emergency Medical Condition.
 - iii) The Authorized User is involved in providing or arranging for the diagnosis or Treatment of the Individual's Emergency Medical Condition.
 - iv) Authorized Users shall cease emergency access of an Individual's HIE Data under this Section 12)e) promptly upon (a) stabilization of the Individual's Emergency Medical Condition, or (b) a request by the Individual or his or her Personal Representative to cease such access.
- f) Participant shall have written User Access Policies that govern its Authorized Users' ability to access, Disclose and use HIE Data through the HIE Network using such Participant's System. Such Policies shall be consistent with this Agreement. Participant agrees to provide to NC HIEA, upon reasonable request, copies or detailed summaries of its User Access Policies.
- g) Participant is responsible for establishing a means to inform its Authorized Users of notices, changes, information and restrictions applicable to the use and Disclosure of HIE Data through the HIE Network under this Agreement. Participant shall require that all of its Authorized Users comply with the applicable requirements of this Agreement and

Applicable Law and shall promptly take appropriate action in the event that Participant knows, or reasonably should have known, of a violation of the Agreement by an Authorized User. Participant will be responsible for any breach of this Agreement by an Authorized User. Participant agrees that notices provided to Participant will be effective as to Authorized Users and the Participant will secure Authorized Users agreement to the foregoing.

- h) Participants shall provide periodic reports to NC HIEA upon request about the security measures implemented for using the HIE Network, including any material security incidents that have arisen since any prior report. A “material security incident” is one that results in unauthorized acquisition, access, use, disclosure, modification, destruction of HIE Data, PHI, or ePHI collected by Participant, or interference with NC HIEA’s or Participant’s System operations that may result in a server being taken off-line. Security incidents that are not material include, but are not limited to pings on a firewall, attempts to log onto a system with an invalid security credential, malware, and denial-of-service attacks that do not result in a server being taken off-line.
 - i) NC HIEA, in its discretion, may deny access to HIE Data through the HIE Network to any Participant or an Authorized User it believes has acquired, accessed, used or Disclosed HIE Data through the HIE Network other than as permitted under this Agreement or Applicable Law.
 - j) If a Participant identifies “Participating Affiliates” on Exhibit D, the Participant warrants, represents and agrees that the Participant:
 - i) Has written authority to bind each of the identified Participating Affiliates to the duties and obligations set forth in this Agreement; and
 - ii) To the extent the Participant does not have appropriate written authority to bind a Participating Affiliate, the Participant hereby guarantees the Participating Affiliate’s performance of Participating Affiliate’s obligations under this Agreement.
 - k) Make its internal practices, books and records relating to uses and Disclosures of HIE Data pursuant to applicable Subscription Agreements and this Agreement available to the Secretary of the U.S. Department of Health and Human Services or his/her designee, as necessary to comply with the HIPAA Regulations or other Applicable Law.
 - l) To the extent that a Participant uses technology partners in connection with the Participant’s acquisition, access, use or Disclosure of HIE Data through the HIE Network, such Participant shall have valid and enforceable agreements with each technology partner that require the technology partner to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of HIE Data to which it has access; (iii) as soon as reasonably practicable after determining a Security Breach has occurred, report such Breach to the Participant in accordance with Section 15) (Security Breach Notification) of this Agreement and (iv) reasonably cooperate with other Participants and NC HIEA on issues related to this Agreement, under the direction of the Participant.
- 13) PARTICIPANT REPRESENTATIONS.
- a) Participant is duly organized and validly existing under the laws of the State of North Carolina.

- b) Participant will submit raw clinical and demographic information at least twice daily to the HIE Network. The daily submissions required under this subsection shall be by connection to the HIE Network periodic asynchronous secure structured file transfer or any other secure electronic means commonly used in the industry and consistent with document exchange and data submission standards established by the Office of the National Coordinator for Information Technology within the U.S. Department of Health and Human Services.
 - c) Participant agrees that it will not enter any agreement with a third party that might abridge any rights or operation of NC HIEA.
 - d) Participant will provide written assurances, if any are necessary or proper for the purposes of the HIE Network, confirming that funding contingencies are sufficient for the purposes and scope of the Agreement. This Agreement constitutes a binding obligation of Participant, enforceable against it in accordance with its terms. The execution and delivery of this Agreement have been duly authorized by all necessary action on the part of Participant, and does not violate any applicable organizational documents of Participant, or any agreement or undertaking to which it is a party or by which it is bound.
 - e) There is no action, suit, proceeding, or investigation at law or in equity or before any court, public board or body pending, or to Participant's knowledge, threatened against or affecting it, that could or might adversely affect this Agreement or the validity or enforceability of this Agreement or Participant's ability to discharge its obligations under this Agreement.
 - f) All consents or approvals necessary from any governmental authority as a condition to the execution and delivery of this Agreement have been obtained by Participant. Participant shall provide NC HIEA with evidence of the existence of all such contracts at the time of the execution of this Agreement.
- 14) CONFIDENTIALITY. NC HIEA may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* and other Applicable Law limiting disclosure of data or information. Participant may designate data and information as confidential, consistent with and to the extent permitted under Applicable Law, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL" or by identifying electronically supplied information as "CONFIDENTIAL". By so marking any information, Participant warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information of Services be designated as confidential. NC HIEA may serve as custodian of Participant's confidential information and not as an arbiter of claims against Participant's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel NC HIEA to disclose information marked confidential, the Participant agrees that it will intervene in the action through its counsel and participate in defending NC HIEA, including any public official(s) or public employee(s). The Participant agrees that it shall hold NC HIEA and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against NC HIEA in the action. NC HIEA agrees to promptly notify the Participant in writing of any action seeking to compel the disclosure of Participant's confidential

information. NC HIEA shall have the right, at its option and expense, to participate in the defense of the action through its counsel. NC HIEA shall have no liability to Participant with respect to the disclosure of Participant's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

- a) Care of Information: Participant agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from NC HIEA during performance of any contractual obligation from loss, destruction or erasure.
- b) Participant warrants that all its employees and any third parties or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Participant will, upon request of NC HIEA, verify and produce true copies of any such agreements.
- c) Nondisclosure: Participant agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of NC HIEA.
- d) Participant Confidential Information Protected by Law. For purposes of this Agreement, "Participant confidential information" shall include certain classes of information whose confidentiality Participant is obligated by federal or state law to protect, including PHI and ePHI, and employee information of which Participant is custodian. NC HIEA agrees to hold Participant confidential information in strictest confidence and:
 - i) to use any Participant confidential information disclosed to it solely for the purpose required in connection with the business relationship of the parties as expressed in this Agreement with respect to HIE Data of Participant;
 - ii) not to disclose any Participant confidential information, except as permitted by this Agreement with respect to HIE Data of Participant, to any person or entity other than its agents, employees, or representatives in accordance with the provisions of this Section 14) and in accordance with NC HIEA's obligations under state and federal law;
 - iii) not to reproduce, distribute, or otherwise disseminate Participant confidential information, except as permitted by this Agreement with respect to HIE Data of Participant; and
 - iv) to destroy or return non-HIE Data Participant confidential information to Participant upon its request or upon the termination of this Agreement, whichever occurs first.
- e) NC HIEA warrants that its obligations regarding Participant confidential information will be made known to and honored by its agents, employees, and representatives; by its third-party contractors and their consultants, employees, and representatives.

15) SECURITY BREACH NOTIFICATION.

- a) Responsibilities of Participants. Participants are required to notify NC HIEA if they become aware of any actual or suspected Security Breach through the HIE Network. Except as otherwise provided in the NC HIE Policies and Procedures, notification shall be made as expediently as possible and without unreasonable delay.

- b) Responsibilities of NC HIEA. If NC HIEA becomes aware of any actual or suspected Security Breach, either through notification by a Participant or otherwise, NC HIEA must, at a minimum, notify any Participants whose HIE Data is affected by the Security Breach. Except as otherwise provided in the NC HIEA Policies and Procedures, such notification shall be made as expediently as possible and without unreasonable delay.
- c) Contents of Notification. The notification required by this Section 15) (Security Breach Notification) shall include sufficient information for NC HIEA and notified Participants to understand the nature and the extent of the Security Breach. For instance, such notification should include, to the extent available at the time of the notification the following information:
 - i) A brief description of what happened, including the date of the Security Breach and the date of discovery of the Security Breach, if known;
 - ii) The identification of each Individual whose HIE Data has been, or is reasonably believed to have been, accessed, acquired, used, or Disclosed during the Security Breach;
 - iii) Description of the roles of the people involved in the Security Breach (e.g., employees, Authorized Users, service providers, unauthorized persons, etc.);
 - iv) Description of the types of HIE Data that were involved in the Security Breach (whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code; or other types of information were involved);
 - v) Description of Participants likely impacted by the Security Breach;
 - vi) Number of Individuals or records impacted or estimated to be impacted by the Security Breach;
 - vii) Description of actions taken to investigate the Security Breach, to mitigate risks or actual harm to Individuals, and to protect against any further Breach;
 - viii) Current status of the Security Breach (under investigation or resolved);
 - ix) Contact procedures for Individuals to ask questions or to learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address; and
 - x) Corrective action taken and steps planned to be taken to prevent a similar Security Breach.
- d) The notifying party shall have a duty to supplement the information contained in the notification as it becomes available and to cooperate with other Participants and NC HIEA investigating and mitigating the effects of the Security Breach.
- e) Except as provided for in Section 15)(c)(ii), (Security Breach Notification) the notification required by this Section shall not include any HIE Data.
- f) NC HIEA will provide, in a timely manner, a summary of the Security Breach to such Participants that does not identify any of the Participants or Individuals involved in the Security Breach.

- g) This Section 15) (Security Breach Notification) shall not be deemed to supersede or relieve a Party's reporting obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law, including, but not limited to, those related to Individuals.
- h) The Parties shall work together to coordinate any notification to Individuals, and applicable regulatory agencies, and any public announcement regarding the Security Breach that may be required by Applicable Law or the policies of a Party.

16) TERM; TERMINATION.

- a) Term; Without Cause Termination Rights. The term of this Agreement shall commence on the Effective Date and shall continue in effect thereafter for a one (1) year period from the Effective Date (Renewal Date). Following such initial term, this Agreement will automatically renew for consecutive periods of one (1) year each (the initial term, collectively with any such renewal terms, the "Term") unless either party provides written notice to the other party, and such other party shall have actually received such notice, within ninety (90) days of the Renewal Date, of such party's intention that this Agreement not renew, in which event the Term of this Agreement shall expire on such Renewal Date of the then current year. Either party may terminate this Agreement upon ninety (90) days prior written notice to the other party. In the event of a merger, acquisition, or change of agreement with a QO, the parties will establish a transition plan to ensure the Data is maintained pursuant to this Agreement.
- b) Disposition of PHI and ePHI upon Termination by NC HIEA of this Agreement. Upon termination by NC HIEA of the HIEA Services, NC HIEA will return (in a manner or process approved by the Participant) or destroy all PHI received from Participant, or created, maintained or received by NC HIEA on behalf of Participant, that NC HIEA still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, NC HIEA will (i) provide notification of the conditions that make return or destruction not feasible, (ii) retain only that Protected Health Information required; (iii) extend the protections of this Agreement to the retained Protected Health Information; (iv) limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information not feasible; and (v) return or destroy the retained Protected Health Information when it is no longer needed by NC HIEA. This paragraph shall survive the termination of this Agreement and shall apply to Protected Health Information created, maintained, or received by NC HIEA and any of its subcontractors.
- c) Termination by Participant for Cause. Participant may terminate this Agreement immediately in the event of NC HIEA's breach of any term or condition of this Agreement, provided that such breach remains uncured after a period of sixty (60) days following NC HIEA's receipt of written notice from Participant describing in reasonable detail the nature of such breach, and provided further that in the event any such breach is incapable of being cured within such sixty (60) day time period, Participant shall have no right to terminate this Agreement in the event that NC HIEA shall have begun diligently pursuing a cure of such breach during said sixty (60) day time period.
- d) Termination by NC HIEA for Cause. NC HIEA may terminate this Agreement immediately upon the occurrence of any of the following events:

- i) A breach by Participant of any of the terms and conditions of this Agreement, including without limitation any failure of Participant to pay to NC HIEA any fees owed by Participant pursuant to this Agreement at the time when due, which breach remains uncured beyond a period of thirty (30) days following Participant's receipt of written notice from NC HIEA describing in reasonable detail the nature of such breach;
 - ii) The termination by Participant of its status as a party to this Agreement, or the termination by NC HIEA of Participant in accordance with the terms of this Agreement.
- e) Availability of Funds. HIE Services are expressly contingent upon and subject to the appropriation, allocation, and availability of funds to NC HIEA for the purposes set forth in this Agreement. Notwithstanding NC HIEA's authority to become self-supporting, NC HIEA services and operations funded in whole or in part by federal funds, or appropriations by the N.C. General Assembly, NC HIEA's performance shall be subject to and contingent upon the continuing availability of such funds for the purposes of this Agreement. If funds to support NC HIEA operations or Services are not available, NC HIEA will provide written notification to Participant together with notice of termination. NC HIEA shall have no liability or continuing obligation if this Agreement is terminated for lack of available funds.
- f) Termination Based upon Change in Law. NC HIEA and Participants intend and in good faith believe that this Agreement complies with all federal, State and local laws. If any provision of this Agreement is declared void or unenforceable in a final, non-appealable ruling by a court of competent jurisdiction, or otherwise rendered void, unenforceable or obsolete by the enactment of any law or regulation, and if the provision(s) at issue is necessary to effectuate the purposes of this Agreement, the parties agree to attempt to renegotiate in good faith the affected provision(s) of this Agreement so as to comply with such rulings(s), law(s), or regulation(s) to the satisfaction of NC HIEA and Participants. In the event the parties are not able to renegotiate the affected provision(s) of this Agreement to their mutual satisfaction within one hundred eighty (180) days, unless a shorter period is required under such law or ruling, of the enactment of the applicable ruling(s), law(s), or regulations(s), then this Agreement shall automatically terminate.
- 17) WAIVER OF DEFAULT. Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Agreement, unless so stated in writing and signed by authorized representatives of the Agency and the Participant, and made as an amendment to this Agreement pursuant to Paragraph 37) (Amendment) hereinbelow.
- 18) INSURANCE. During the Term of this Agreement, Participant shall obtain, and keep in force reasonable Cyber Liability or other insurance coverage to insure against Security Breach notification expenses, including, but not limited to, regulatory investigation, notification, and credit monitoring provided for affected individuals. Participant shall provide certificates of insurance evidencing such coverage to NC HIEA upon the reasonable request of NC HIEA during the time of Participant's subscription to Services through NC HIEA.
 - a) Notwithstanding the foregoing, Participant may self-insure by assuming in whole or in part the liability for such expenses without purchasing and obtaining commercial Cyber Liability or other insurance. If Participant does not maintain, in whole or in part,

commercial Cyber Liability or other insurance set forth in this Section 18) it shall be deemed to have elected to self-insure. If Participant does self-insure, Participant shall not be obligated to deliver any certificate or other evidence of insurance otherwise required by this Agreement.

- 19) LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF NC HIEA, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, UNDER THIS AGREEMENT OR WITH RESPECT TO THE SERVICES, SHALL BE LIMITED TO THE PARTICIPANTS' PRO RATA USE OF THE NETWORK. NOTWITHSTANDING THE FOREGOING, NEITHER NC HIEA NOR PARTICIPANT SHALL HAVE ANY LIABILITY TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING FROM THE COURSE OF SUCH PARTY'S PERFORMANCE OF, OR OMISSION TO PERFORM, ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.

- 20) LIMITATIONS OF PARTY LIABILITY.

- a) As between parties to this Agreement: No party shall be responsible to one another for any claims, demands, expenses, liabilities, or losses including reasonable attorney fees, which may arise from any acts or failures to act by the other parties to this Agreement or such other parties' members or agents in connection with this Agreement. In circumstances involving harm to other parties caused by the acts or omissions of individuals who access HIE Data or Confidential Business Information through the HIE Network by use of a security credential received or obtained directly or indirectly, lawfully or unlawfully, from a Participant or NC HIEA or any Authorized Users, each party shall be responsible for such harm to the extent that the individual's access was caused by the Party's breach of this Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. Notwithstanding any provision in this Agreement to the contrary, the Party shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. If the Participant is an agency of the State of North Carolina, this limitation and any liability shall be limited by applicable sovereign or governmental immunity.
- b) Patient Care. NC HIEA and its contractors do not assume any role in, and shall have no liability for, the care of any Individual, or outcomes therefrom. Each Participant and each Participant's Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management of Individuals resulting from or in any way related to the use of the HIE Network or HIE Data made available thereby. Neither Participants nor any of their Authorized Users shall have any recourse against, and each hereby waives any and all claims against NC HIEA for any loss, damage, claim or cost relating to or resulting from such Participant's or its Authorized Users' use or misuse of the HIE Network and HIE Data.
- c) HIE Data. The parties acknowledge that HIE Data made available through the HIE Network is subject to change due to numerous factors, including without limitation changes to HIE Data made at the request of the Individual, changes in the Individual's health

condition, the passage of time, and other factors. Without limiting any other provision under this Agreement, no party shall have responsibility for or liability related to the accuracy, content, currency, completeness, or delivery of any HIE Data provided by NC HIEA, a Participant or a Participant's Authorized Users to or through the HIE Network.

- d) Limitation on Damages. It is expressly agreed that in no event shall a party be liable to another party for consequential, incidental, indirect, punitive, exemplary, or special damages suffered by a Party or any other third party. Notwithstanding the foregoing, this Section 20)(d) (Limitations of Party Liability) shall not be construed to limit a Party's liability to a third party for consequential damages arising from a Party's non-compliance with Applicable Law or the obligations under this Agreement.

21) AUDIT, ACCESS TO RECORDS.

Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Participant insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to this Agreement or to costs charged to this Agreement. The Participant shall retain any such books, records, and accounts for a minimum of three (3) years after the completion or termination of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

22) DISCLAIMERS.

- a) Data transmission. The parties acknowledge that access to the HIEA Network is to be provided over various telecommunications facilities and information may be transmitted over such facilities including local telephone exchanges and Internet backbone carrier lines and through routers, switches, and other devices (collectively, telecommunications facilities) owned, maintained and serviced by third parties, all of which are beyond the Parties' control. NC HIEA HEREBY DISCLAIMS ANY LIABILITY FOR OR RELATING TO THE ACCESS, INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED ON OR BY SUCH TELECOMMUNICATIONS FACILITIES, OR ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY HIE DATA OR CONFIDENTIAL BUSINESS INFORMATION ATTRIBUTABLE TO TRANSMISSION. USE OF TELECOMMUNICATIONS FACILITIES IS SOLELY AT THE RISK OF EACH PARTICIPANT AND ITS AUTHORIZED USERS, AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, NATIONAL AND INTERNATIONAL LAWS.
- b) HIEA SERVICES AND SOFTWARE. HIEA SERVICES AND ALL ASSOCIATED SOFTWARE ACCESSED OR USED BY PARTICIPANT THROUGH THE HIE NETWORK ARE PROVIDED ON AN "AS IS" BASIS ONLY. ACCORDINGLY, BUT WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, NC HIEA DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR ASSOCIATED SOFTWARE WILL MEET THE REQUIREMENTS OF ANY PERSON OR WILL OPERATE ERROR-FREE OR CONTINUOUSLY, AND NC HIEA MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR

IMPLIED, INCLUDING WARRANTIES OR REPRESENTATIONS CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY ONE OR MORE OF THE GOODS AND SERVICES REFERRED TO ABOVE. THE PARTIES AGREE THAT NO AGREEMENTS, REPRESENTATIONS, OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE NC HIEA PRIVACY AND SECURITY POLICIES HAVE BEEN MADE AND THAT NO FUTURE AGREEMENT, REPRESENTATION WARRANTY OF ANY PARTY WITH REGARD TO INFORMATION, GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO, OR AN AMENDED AND RESTATED VERSION OF, THIS AGREEMENT.

- c) HIE DATA. HIE DATA THAT MAY BE PROVIDED TO PARTICIPANTS AND THEIR AUTHORIZED USERS THROUGH THE HIEA NETWORK ARE BEING PROVIDED 'AS IS' AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED; WHETHER STATUTORY OR COMMON LAW ARISING FROM COURSE OF DEALING, OR OTHERWISE INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NO PARTY WARRANTS THAT THE PERFORMANCE OF ITS SYSTEM OR THE HIE NETWORK OR THE DELIVERY OF HIE DATA WILL BE TIMELY, UNINTERRUPTED, OR ERROR FREE.
- 23) INDEMNITY. Participant shall protect, defend, indemnify, and hold NC HIEA, and NC HIEA's officers, directors, agents, contractors, and employees harmless from and against any and all third party claims, demands, actions, or suits brought against NC HIEA, and any and all losses, costs, reasonable expenses (including reasonable attorneys' fees), damages, liabilities, recoveries and judgments of every nature or description brought against NC HIEA or any of the foregoing officers, directors, agents and employees of NC HIEA and arising out of (i) the performance by Participant of the obligations to be performed by it hereunder, (ii) any breach by Participant of any representation or warranty made by it under this Agreement, and (iii) any breach by Participant of its obligations, agreements or covenants under this Agreement.
- 24) FLOW UP TERMS FOR HIE NETWORK SOFTWARE VENDOR INDEMNITY AND LIMITATION OF LIABILITY.
- a) The provisions of this Section 24 (Flow Up Terms For HIE Network Software Vendor Indemnity and Limitation of Liability) are contractually required by SAS Institute, and are not the consequence of negotiations of the Parties to this Agreement. The Parties to this Agreement further acknowledge and agree that Section 24 of this Agreement shall not be interpreted in favor of or against any Party to this Agreement based upon which Party drafted or participated in drafting this Agreement.
 - b) Participant acknowledges that certain software and related implementation and hosting services that are used in connection with the operation of the HIE by NC HIEA are provided by NC HIEA's third party vendor SAS Institute Inc. and its licensors and subcontractors (collectively, "SAS"). For purposes of this Section 24, the terms "Software and Services"

shall mean, collectively, the software, hosting services and related implementation, professional or other services combined by SAS in a hosted system, including, without limitation, any connection services relating thereto, relating to the NC HIEA's operation of the HIE and/or Participant's use of the HIE.

- c) SAS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, WITH RESPECT TO THE SOFTWARE AND SERVICES. THE SOFTWARE AND SERVICES ARE PROVIDED BY SAS "AS IS."
 - d) SAS SHALL HAVE NO LIABILITY FOR ANY THIRD PARTY CLAIMS RELATING TO USE BY PARTICIPANT OF THE SOFTWARE AND SERVICES. PARTICIPANT SHALL DEFEND AND INDEMNIFY SAS WITH RESPECT TO ANY THIRD PARTY CLAIM ARISING FROM PARTICIPANT'S USE OF THE SOFTWARE AND SERVICES.
 - e) SAS SHALL NOT BE LIABLE TO PARTICIPANT FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE) AND DISCLAIMS ANY AND ALL LIABILITY TO PARTICIPANT RELATED TO THIS PARTICIPATION AGREEMENT, PARTICIPANT'S USE OF THE SOFTWARE AND SERVICES, OR THE STORAGE, PROCESSING OR DISCLOSURE OF PATIENT INFORMATION, HEALTHCARE INFORMATION OR ANY OTHER PARTICIPANT INFORMATION OR DATA CONTAINED IN, UPLOADED TO, DOWNLOADED FROM, PROVIDED OR OTHERWISE MADE AVAILABLE TO OR THROUGH THE HIE.
 - f) SAS is not obligated to enter into any agreements with any Participant including, without limitation, for any Software and Services provided that require access to Participant's facilities or systems. Participant will provide such access to SAS at NC HIE Authority's or SAS' reasonable request.
 - g) SAS is an intended third party beneficiary of the terms of this Section 24 and may enforce the same as if SAS was a party hereto with regard to this Section 24.
- 25) GOVERNMENTAL RESTRICTIONS. In the event any restrictions are imposed by governmental requirements that necessitate alteration of the performance of this Agreement, each Party shall provide written notification of the necessary alteration(s) to the other Party's Contract Administrator. NC HIEA reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. NC HIEA may advise Participant of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Participant shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by NC HIEA, NC HIEA may terminate this Agreement.
- 26) NOTICES. Any and all notices required or permitted to be given hereunder shall be sent to the recipient party at the address for such party as is reflected on the first page of this

Agreement, and either hand delivered or sent by certified mail, return receipt requested, postage prepaid, or by nationally recognized courier service for overnight delivery. Either party may change its address for notices at any time by notifying the other of such party's new address in writing, which change of address notice shall be tendered in the manner required by this Section 26) for notices generally.

- 27) INSPECTION AT PARTICIPANT'S SITE. The State reserves the right to inspect, during Participant's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective equipment or other tangible goods, or the plant or other physical facilities of a prospective Participant prior to Contract award, and during the Agreement term as necessary or proper to ensure conformance with the specifications or requirements and their adequacy and suitability for the proper and effective performance of the Agreement.
- 28) AUTHORITY; NO CONFLICT. NC HIEA and Participant each represent and warrant to the other as follows: (i) that it is authorized to enter into this Agreement and to perform its obligations hereunder, and that the individual signatory executing this Agreement on its behalf is authorized, and has the capacity, to so execute this Agreement on its behalf, and (ii) that the execution of this Agreement by it and the performance of its obligations hereunder shall not conflict with or result in, with or without the passage of time or the giving of notice thereof, any breach, default or violation of any third party agreement to which it is bound, or any judgment, order or ruling of any court, administrative or regulatory agency or body, or arbitration award, to which it is bound or subject.
- 29) RELATIONSHIP. The relationship between the parties to this Agreement is strictly that of independent parties, and this Agreement shall not create a partnership or any other form of business relationship, or create an agency relationship, between the parties hereto. Neither party to this Agreement shall, nor shall either party have any authority to, create or incur any liability or obligation on behalf of the other.
- 30) PUBLICATIONS.
 - a) Any Participant published or distributed reports, data, or other information shall contain a disclaimer statement to the following effect: Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view and policies of the North Carolina Health Information Exchange Authority.
 - b) NC HIEA may publish or arrange for the publication of information resulting from work carried out under this Agreement, and copyright any books, publications, films, or other copyrightable materials developed in the course of or resulting from work under this Agreement.
 - c) Upon Participant's publication of materials resulting from the HIE Data, Participant shall furnish a minimum of two copies of reprints to NC HIEA.
- 31) ASSIGNMENT. Participant shall not assign, sublicense or otherwise transfer in any manner any of Participant's rights and obligations under this Agreement without the prior written consent of NC HIEA in each instance.
- 32) CONFLICTS OF INTEREST. Participant acknowledges and represents that it has adopted policies governing conflicts of interest and ethics in the exercise of its authority, and its

actions under this Agreement. Participant will review, disclose and employ its best efforts to resolve any anticipated or reported conflict of interest or issue involving its ethics policies during the performance of this agreement. Participant shall, upon request, submit a copy of its conflict to interest policy, and shall ensure that such policy conforms to the requirements of N.C.G.S. §143C-6-23 and other applicable laws.

- 33) EXCUSABLE DELAY (FORCE MAJEURE). Neither party shall be liable for any failure or delay in performing any of its obligations under this Agreement that is due to causes beyond its reasonable control, such as, but not limited to, acts of God, earthquakes and other natural catastrophes, governmental acts, shortages of supplies, riots, war, fire, epidemics, delays in common carriers, labor strikes or other difficulties or circumstances beyond its reasonable control. Participant shall notify NC HIEA promptly of any factor, occurrence or event that comes to its attention that may affect or delay Participant's ability to perform any of its other obligations hereunder. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- 34) DISPUTE RESOLUTION. The Parties agree that it is in their mutual interest to resolve disputes informally. A claim by Participant shall be submitted in writing to NC HIEA for decision. A claim by NC HIEA shall be submitted in writing to Participant for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Agreement, or at law; or invite the other party to submit the matter to mediation. If both Parties agree to submit the matter to mediation, the following actions shall be taken:
- a) Each Party shall recommend a mediator certified by the North Carolina Courts after first determining that the recommended mediator, and said mediator's firm, if any, have no conflict or prior knowledge of the matter to be resolved, and no prior work for or against either Party; and,
 - b) The recommended mediators must have knowledge of the general subject matter of the Applicable Law; and,
 - c) The recommended mediators must be able to execute and deliver a satisfactory confidentiality and non-disclosure agreement if information exempt from disclosure under N.C. Gen. Stat. §132-1, et seq. is relevant or material to the matter to be resolved; and,
 - d) Recommended mediators and their respective contact and qualification information shall be exchanged within five (5) days to each Party following the agreement to mediate; and
 - e) Unless the Parties mutually agree to select a particular mediator, the selection of a mediator shall be determined by the mediator's earliest available date to initiate mediation. Any agreement to mediate shall require the Parties to appear and mediate the matter in good faith in accordance with the schedule and calendar established by the Mediator; and,
 - f) Provided, however, that this term shall not constitute an agreement by either Party to mediate or arbitrate any dispute; and that any agreement to mediate may be revoked or terminated without penalty therefore if so advised by the North Carolina Attorney General.

- 35) REMEDIES. In the event of Participant's non-compliance with any provision in this Agreement, Participant agrees that NC HIEA may take any actions authorized by law or by this Agreement. These remedies include, but are not limited to, reducing or suspending HIE Services or terminating this Agreement.
- 36) MISCELLANEOUS.
- a) Each Party shall immediately notify the other of any change in conditions or applicable law, or any other event, which may significantly affect its ability to perform.
 - b) Compliance with Laws. The Participant shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority. In the event any one or more provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other instrument or document, and this Agreement and such other instruments and documents shall be interpreted and construed as if such invalid, illegal or unenforceable provision had never been contained therein.
 - c) The rights and obligations of the parties to this Agreement shall be binding upon and inure to the benefit of their respective successors and permitted assigns.
 - d) Equal Employment Opportunity: Participant shall comply with all federal and state requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
 - e) This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Participant agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
 - f) The following Sections of this Agreement, which by their nature should survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement: 4), 8), 16)b), 36)b), 36)c), 36)e), 36)f), and 36)g).
 - g) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral statements or agreements between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements between NC HIEA and Participant, and expresses the entire understanding of the Parties with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Parties.
- 37) AMENDMENT. This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Participant.

IN WITNESS WHEREOF, NC HIEA and Participant have executed this Agreement as of the dates set forth underneath their signatures below.

NC HIEA:

NORTH CAROLINA HEALTH INFORMATION
EXCHANGE AUTHORITY,

By: _____
Title: _____
Date: _____

PARTICIPANT:

By: _____
Title: _____
Date: _____

EXHIBIT A

NC HEALTH INFORMATION EXCHANGE
PARTICIPATION & SUBSCRIPTION AGREEMENT
GLOSSARY

Defined Term	Citation (if applicable)	Definition
Access	45 CFR §164.524;	An Individual's right to inspect and obtain a copy of Protected Information about that Individual, held by or for a Participant.
Accounting of Disclosures	45 CFR §164.528;	The set of information which a Covered Entity is required to provide an Individual upon request with respect to Disclosures of their Protected Health Information, including and limited to that information required under 45 CFR § 164.528.
Administrator		An individual member of a Participant's Workforce, who has been designated and authorized by the Participant to be a point of contact for issues under the NC HIEA Policies, and to be responsible for the Participant's compliance with the NC HIEA's Policies.
Applicable Law		Means all North Carolina law, federal statutes and regulations governing the activities of NC HIEA, Participants and Qualified Organizations in connection with the Health Information Exchange.
Authorization	45 CFR §164.508;	A written document signed by an Individual which gives another person permission to use or disclose Protected Information about that Individual.

Authorized Users		Means persons health care providers, employees, professional staff, and other Workforce members of a Participant organization who have been authorized by the Participant to utilize the HIE Network for a Permitted Purpose through Participant's System or through user interfaces made available by NC HIE and who have, at the request of Participant or as otherwise provided in the NC Policies and Procedures, been assigned a user name and password by NC HIE. Authorized Users shall only be natural persons and shall not be other legal or operating entities or affiliates or subsidiaries of Participant except as may be provided in the NC HIE Policies and Procedures, References to Participant will be deemed to include a reference to the Participant's Authorized Users unless the context requires otherwise.
Business Associate	45 CFR §164.103	A person performing a function or activity on behalf of a Covered Entity which involves that person obtaining, using or disclosing Protected Health Information on behalf of that Covered Entity, as defined under HIPAA and HITECH.
Comptroller General		The Comptroller General of the United States.
Consent	45 CFR §164.506(b)	A written document signed by an Individual which gives another person permission to use or disclose Protected Information about that Individual. See Authorization.
Covered Entity	45 CFR §160.103	A health care provider, health care clearinghouse or health plan, as defined under HIPAA and HITECH.

Designated Record Set	45 CFR §164.501	A group of records maintained by or for a Covered Entity that is used, in whole or in part, by or for the Covered Entity to make decisions about the Individual(s) to whom they apply. This includes but is not limited to medical and billing records of health care providers, and enrollment, payment, claims adjudication, and case or management records of health plans.
Disclose, Disclosure	45 CFR §160.103	Any release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
Health Care Operations	45 CFR §164.103;	Any of the various activities performed by or for Covered Entities included under the HIPAA definition of this term.
HIE		The HIE is the NC Health Information Exchange, and means the set of health information exchange-related services provided through NC HIEA, under the oversight of the HIE Advisory Board. Participants in the HIE may use the HIE to exchange health information with other HIE Participants.
HIE Advisory Board (Oversight Organization)		The role of the HIE Advisory Board is to help ensure that NC HIEA operates the HIE in the public interest, including review and oversight of pricing; privacy and security policies; and HIE accessibility.
HIE Business Associate Policy	45 CFR §§164.502(e), - .504(e); HITECH §§ 13401(a), 13404(a)	The policy published by NC HIEA which provides the terms and conditions required by HIPAA and HITECH for a Business Associate.
HIE Data		Medical or other health care information of or about an Individual which is Disclosed by Participants through the HIE Network or which is maintained by NC HIE for indexing, record location or other purposes all in accordance with this Agreement, NC HIE Policies and Procedures and Applicable Law.

HIE Network	N.C.G.S. §90-414.2	The voluntary, statewide health information exchange network overseen and administered by NC HIEA pursuant to Article 29B of Chapter 90 of the North Carolina General Statutes that enables the secure exchange of HIE Data between and among Participants in support of the provision and improvement of healthcare services and health.
HITECH ACT	P.L. No. 111-5	Means Title XIII and Title IV of Division B of the American Recovery and Reinvestment Act of 2009
HIE Service		The HIE Services comprise a set of technical services that may be subscribed, or used, by one or more Participants for Permitted Purposes, and for such other purposes as permitted by Applicable Law. Each HIE Service is identified and offered for Subscription as identified in the Schedule annexed to this Agreement. Participants shall subscribe to Services by submitting an HIE Service Election form to NC HIEA, and such shall be effective upon the earlier of receipt by NC HIEA or a subsequent specified date.
HIE Service Schedule		A form published by NC HIEA for the subscription to a specific Service.
HIE User		An individual who is a member of a Participant's Workforce, whose duties on behalf of the Participant include functions or activities involve the use of one or more Services on behalf of the Participant, who has been authorized and is currently authorized by the Participant to use such Service(s) on its behalf, and has a valid User Name and password issued for that purpose.
HIE User Name		The unique identifier issued to an authorized HIE User, by or for NC HIEA, used for access to and use of one or more Services.

HIE User Policy		The policy published by NC HIEA which provides the terms and requirements for use of the Services by HIE Users. The HIE User Policy is published as part of the NC HIEA HIE Policy Manual.
HIPAA		The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules.
HIPAA-Regulated Services		Any Service for which NC HIEA or a Services Vendor acting under contract with NC HIEA has access to, uses or discloses Protected Health Information except on a random or infrequent, non-routine basis.
HIPAA Regulations		The Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health information (45 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 and the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) of the American Recovery and Reinvestment Act of 2009, as in effect on the Effective date of this Agreement and as may be amended, modified, or renumbered hereafter.
HITECH		The Health Information Technology for Economic and Clinical Health Act (HITECH Act or "The Act") is part of the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA contains incentives related to health care information technology in general (e.g. creation of a national health care infrastructure) and contains specific incentives designed to accelerate the adoption of electronic health record (EHR) systems among providers.

Individual	45 CFR §160.103	A person who is the subject of Protected Health Information, including but not limited to a patient who receives or has received health care.
Information System	45 CFR §164.304	An interconnected set of information resources under the management control of a single entity, including hardware, software, information , data, applications, communications, and people.
Marks		Logos, trademarks and service marks.
Master Patient Index		Shall mean an electronic database that maintains a unique index (or identifier) for every Individual.
Minimum Necessary	45 CFR §164.502(b)	The set of Protected Health Information which is the minimum data set necessary for purposes of the function or activity for which it is obtained, used or disclosed.
Notice of Privacy Practices		A notification published by a Covered Entity or other party which gives an Individual notice of the Uses and Disclosures of Protected Information which that party may make, as well as the Individual's rights and the party's duties with respect to that information.
NC HIEA		NC Health Information Authority, established by N.C.G.S. §90-414.1 <i>et seq.</i>
Participant		A covered entity that collects individuals' protected health information.
Privacy Rule	45 CFR Part 164, Subpart E	The HIPAA privacy regulations.

Protected Health Information or “PHI”	45 CFR § 160.103	The information protected by the HIPAA Privacy Rule. “Protected Health Information” means individually identifiable health information which is transmitted or maintained in any medium, and excludes information in education records. PHI and ePHI shall have the same meanings as the term “protected health information” in the HIPAA Regulations and shall include electronic PHI (“ePHI”) covered by the Family Educational Right and Privacy Act or described at 20 U.S.C. 1232g(a)(4)(B)(iv).
Protected Information	45 CFR §160.103;	Protected Information includes Protected Health Information, as well as “health care information” and “personal information” which is protected under Applicable Law.
Provider		Means (i) an entity such as a hospital, nursing home, home health agency, adult care home, mental health facility or professional corporation legally authorized to provide health care service in North Carolina, (ii) a health care professional licensed under Chapter 90 of the N.C. General Statutes or a resident or student acting under the supervision of such a professional, or (iii) a local health department as defined in N.C. General Statutes §130A-2.
Qualified Organization or “QO”		Means an entity identified by NC HIEA and that contracts with NC HIEA upon terms and conditions mutually agreed, and that contracts with Participants to facilitate exchange of data. A QO may, but is not required to, provide certain services as permitted under Applicable Law. Any such QO shall not have authorized access to HIE Data delivered by or through the HIE Network prior to identification of the QO to the Participant and acceptance of this Agreement by Participant.
Reasonable and Appropriate Safeguard	45 CFR Part 164, Subpart C	Protections for Protected Information consistent with the requirements of the Security Rule and Applicable law.

Recipient		Means a party, a public health official, a governmental entity or other individual or entity that receives HIE Data transmitted through the HIE Network.
Required by Law	45 CFR §164.103; G.S. 90-414.1 et seq.	A mandate contained in law that compels a party to make a Use or Disclosure of Protected Information and that is enforceable in a court of law, including but not limited to court orders and court- ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
Schedule		A document published by or for NC HIEA which describes a Service and includes information about services levels and fees for the Service.
Security Breach	N.C.G.S. 75-61, 45 CFR §164.102;	The acquisition, access, Use, or Disclosure of Protected Information in a manner not permitted by the Privacy Rule, or state law if applicable, which compromises the security or privacy of the Protected Information.
Security Incident	45 CFR §164.304	The attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
Security Rule	45 CFR Part 160, 164, Subpart C	Means the Security Standards and Implementation Specifications of 45 C.F.R. part 160 and 164, subchapter C.
Service		A technical or administrative service offered by NC HIEA, as described and under the conditions published in a Schedule.

Services Vendor		A person who provides one or more Services, or elements of a Service.
Unauthorized Use or Disclosure of Protected Information		Any Use or Disclosure of Protected Individual by any party which that party is prohibited from making under federal or state law, any HIE Policy, or any policy of a Participant which applies to that party.
Use	45 CFR §160.103	Any sharing, employment, application, utilization, examination, or analysis of Protected Information within an entity which maintains that information.
Unsecured Protected Health Information		Means PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary as published at 74 Fed. Reg. 19006 (April 27, 2009), and as amended or modified.
NC HIEA HIE Participation Agreement		The NC HIEA Health Information Exchange Participation Agreement, as published and amended by the HIEA from time to time.
State Health Information Exchange		A statutory, contractual, administrative and technical infrastructure implemented in the State of North Carolina to improve patient access to and control of their own health care information, and implement methods for the secure exchange of clinical data as a means to promote continuity of care, quality of care, patient safety and efficiency in medical practices.
Workforce	45 CFR §160.103	Any employee, volunteer, trainee, independent contractor or other person whose conduct on behalf of a Participant is under the direct control of that Participant, whether or not they are paid by the Participant.
Workstation	45 CFR §164.304	Any electronic computing device, including a laptop or desktop computer, smartphone, or any other device that performs similar functions, and electronic media stored in its immediate environment.

EXHIBIT B

SERVICE AND FEE SCHEDULE

Services provided or to be provided to Participant as part of this agreement are defined in the table below.

Service	Definition
HIE Connectivity Services	NC HIEA will connect Participant to the HIE network and allow for the exchange of healthcare information between authorized Participants. The HIE Connectivity Service will provide Participants the ability to <ol style="list-style-type: none">publish information to other Participants,the ability for other Participants to publish information to Participant, andthe ability for Participant to query the HIE network for information The HIE network will provide the following services as part of supporting the exchange of information: <ol style="list-style-type: none">Enterprise Master Patient IndexProvider DirectoryPrivacy and Consent ModuleIntegration Bus supporting HL7, CCD, and other industry standardsNormalization and Transformation ModuleAuditing and Compliance Function
Patient Record Network	NC HIEA will make available to Authorized Users of Participant access to the Patient Record Network portal. This portal can be used to view the longitudinal patient record, set alerts and notifications, and access other HIE services.
Direct Secure Messaging	NC HIEA will provision Authorized Users of Participant with an ONC compliant Direct messaging environment. Each Authorized User will be provided access to a web-based messaging environment with a unique address assigned in the NC HIEA Direct domain. Users will have the ability to append files containing Protected Health Information to their Direct messages.
Lab Distribution Program	NC HIEA will provide a common lab interface to Participants through which they can receive lab results from lab companies that are participating in this program. Submitting lab orders is not yet available.
Hospital Lab Integration	Routing of hospital lab results through common HIE interface to Participants. Routing of lab orders is not yet available.
State Connectivity Services <ol style="list-style-type: none">NCIRELR (if applicable)	<ol style="list-style-type: none">Bi-directional routing of patient immunization information through a common HIE interface.Electronic reporting from laboratories to the Division Public Health of laboratory reports which identify required reportable communicable diseases and conditions.
Training services	NC HIEA will offer training services for the initial on-boarding for Portal use and Opt-out.
Integration Services	NC HIEA will offer integration services for connectivity to the HIE Network for the services selected by the Participant

SERVICE FEE SCHEDULE

This Service Fee Schedule is provided to Participant as part of this Participation Agreement and is effective on the date of execution by and between NC HIEA and Participant and any capitalized terms which appear herein shall have the same meaning as given in the Agreement unless otherwise noted.

NC HIEA – Bundled Services – Subscription Fees

Description	Standard Price	Quantity	Fees
Full Participant Package – would include the following services <ul style="list-style-type: none">• HIE Connectivity Services• Patient Record Network• Direct Secure Messaging• State Connectivity Services including NCIR and ELR, if applicable• Training for initial on-boarding for Opt-out and HIE portal• Integration fees for connectivity to the HIE Network	\$0.00	1	\$0.00

Subscription Fees are invoiced annually in advance. One-time charges shall be invoiced upon delivery or completion of the integration services. All invoices are due within thirty days of the invoice date. Connectivity to the HIE Network (“Go Live” date) is considered to be the time that the first interface such as an ADT interface is connected to the HIE Network from the Participant’s electronic medical record system and data may be exchanged.

TOTAL FEES AND INVOICING

Total Subscription Fees for this Service Fee Schedule are \$0.00 and are invoiced as follows:

- INVOICE – One-Hundred Percent (\$0.00) – due upon connection to the HIE Network (“go live” date)

EXHIBIT C

SERVICE LEVEL AGREEMENT

Service Desk

HIEA shall provide Service Desk coverage to Participants Monday through Friday, from 8 a.m. to 8 p.m. EST. This will provide a manned telephone call center that Participants can call for assistance during the noted hours if they experience an incident with regard to the HIE Network. Critical incident support will occur after hours on a 24x7x365 basis.

EXHIBIT D

PARTICIPATING AFFILIATES

	Legal Entity Name	Address	Contact Person	Email	Phone
1					
2					
3					
4					
5					
6					
7					
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EXHIBIT E

PARTICIPANT STAFF CONTACT INFORMATION

Please provide contact information for the following staff members at your organization. Each field must be filled even if one person occupies more than one role. **All fields must be completed or the processing of your Participation Agreement will be delayed.**

Participant Account Administrator

Staff member who will be the point of contact for the NC HIEA for communications and credentialing HIE users in your organization

Name:

Email Address:

Phone Number

Mailing Address:

Contract Administrator

Staff member who will be contacted in the event of issues with or changes to this Agreement

Name:

Email Address:

Phone Number

Mailing Address:

Technical Services Contact

Staff member who will work with our technology vendor to build a connection from your organization to the HIE Network

Name:

Email Address:

Phone Number

Mailing Address:

Participant EMR & DSM Background Information

Name of EMR/EHR Vendor: _____

Number of practice locations: _____

Estimated number of Authorized Users in all locations: _____

Do you currently have access to encrypted Direct Secure Messaging (secure email)? ☐ Yes ☐ No

If yes, please list HISP or secure email provider: _____

If no, would your practice be interested in having DSM provided by the NC HIE? ☐ Yes ☐ No

EXHIBIT F

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the _____, 2016 by and between _____, on behalf of its Participating Affiliates as identified on Exhibit D of the Participation Agreement, hereinafter referred to as "Covered Entity", and North Carolina Health Information Exchange Authority, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties"). This Agreement supersedes any previously executed Business Associate Agreement between the parties.

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as modified by the Health Information Technology for Economic and Clinical Health Act, known collectively as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of the U.S. Department of Health and Human Services has issued regulations at 45 CFR Parts 160 and 164, as the same may be amended from time to time (the "HIPAA Security and Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into a Participation Agreement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate maybe considered a "business associate" of Covered Entity as defined in the HIPAA Security and Privacy Rule (the agreement evidencing such arrangement is referred to herein as the "Participation Agreement" and is a made a part hereof); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Participation Agreement, compliance with the HIPAA Security and Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule, but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control. In the event of an inconsistency between the provisions of this Agreement and the provisions of the Participation Agreement, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes without limitation "Electronic Protected Health Information" as defined below.

The term "Electronic Protected Health Information" means Protected Health Information that is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement. If Business Associate is also a Covered Entity, as that term is defined in the HIPAA Security and Privacy Rule, this Agreement does not apply to its own Protected Health Information received, created, transmitted, or maintained by Business Associate in its capacity as a Covered Entity.

II. PERMITTED USES AND DISCLOSURES

- a. Business Associate may use or disclose Protected Health Information only as permitted or required by this Agreement or as required by law. Except as specifically set forth herein, Business Associate may not use or disclose Protected Health Information in a manner that would violate the HIPAA Security and Privacy Rule if such use or disclosure were done by Covered Entity. Specifically, Business Associate may use or disclose Protected Health Information (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, including the Participation Agreement, or (2) as required by applicable law, rule or regulation, or by an accrediting or credentialing organization to whom Covered Entity is required to disclose such information, or (3) as otherwise permitted under this Agreement, the Participation Agreement (if consistent with this Agreement and the HIPAA Security and Privacy Rule), or the HIPAA Security and Privacy Rule, or (4) as would be permitted by the HIPAA Security and Privacy Rule as if such use or disclosure were made by Covered Entity.
- b. Business Associate may de-identify Protected Health Information only at the specific direction of and only for the use of Covered Entity. Business Associate may not sell Protected Health Information except at the direction of Covered Entity and in compliance with the requirements of the HIPAA Security and Privacy Rule.
- c. Notwithstanding the prohibitions set forth in this Agreement:
 1. Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;

2. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
 - i. The disclosure is required by law; or
 - ii. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
3. Business Associate may provide data aggregation services relating to the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

III. CONFIDENTIALITY AND SECURITY REQUIREMENTS

- a. Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by the Participation Agreement, this Agreement or as required by law. To the extent Business Associate carries out obligations of Covered Entity under the HIPAA Security and Privacy Rule, Business Associate shall comply with the applicable provisions of the HIPAA Security and Privacy Rule as if such use or disclosure were made by Covered Entity. Covered Entity will not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Security and Privacy Rule if done by Covered Entity, except as otherwise provided herein. Business Associate agrees to comply with Covered Entity's policies regarding the minimum necessary use or disclosure of Protected Health Information.
- b. Business Associate agrees to provide HIPAA training to all of its personnel who service Covered Entity's account or who otherwise will have access to Covered Entity's Protected Health Information.
- c. At termination of this Agreement, the Participation Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return (in a manner or process approved by the Covered Entity) or destroy all Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, Business Associate will (i) provide notification of the conditions that make return or destruction not feasible, (ii) retain only that Protected Health Information required; (iii) extend the protections of this Agreement to the retained Protected Health Information; (iv)

limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information not feasible; and (v) return or destroy the retained Protected Health Information when it is no longer needed by NC HIEA. This paragraph shall survive the termination of this Agreement and shall apply to Protected Health Information created, maintained, or received by Business Associate and any of its subcontractors.

- d. Business Associate agrees to ensure that its agents, including any subcontractors, that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate agree to the same (or greater) restrictions and conditions that apply to Business Associate with respect to such information, and agree to implement reasonable and appropriate safeguards to protect any of such information that is Electronic Protected Health Information. Business Associate agrees to enter into written agreements with any subcontractors in accordance with the requirements of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to take reasonable steps to ensure that its employee's actions or omissions do not cause Business Associate to breach the terms of this Agreement.
- e. Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security and Privacy Rule.
- f. To the extent applicable, Business Associate will comply with (i) any limitations to which Covered Entity has agreed in regard to an Individual's permission to use or disclose his or her Protected Health Information; and (ii) any restrictions to the use or disclosure of Protected Health Information to which Covered Entity has agreed or is required to agree.
- g. Business Associate will make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, of the Department of Health and Human Services for purposes of the Secretary determining Covered Entity's compliance with the terms of the HIPAA Security and Privacy Rule, and, at the request of the Secretary, will comply with any investigations and compliance reviews, permit access to information, and cooperate with any complaints, as required by law. Unless prohibited from doing so by applicable law or by a court order, without unreasonable delay, Business Associate will notify Covered Entity in writing of any request by any governmental entity, or its designee, to review Business Associate's compliance with law or this BAA, to pursue a complaint, or to conduct an audit or assessment of any kind, if such review, complaint, audit or assessment pertains to the Participation Agreement or this BAA.
- h. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information that is not in compliance with the terms of this Agreement, as well as any Security Incident and any actual or suspected Breach, of which it becomes aware, without unreasonable delay, and in no event later than five (5) calendar days of such

discovery. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclose modification or destruction of information or interference with system operations in an information system. Such notification shall contain the elements required by 45 C.F.R. 164.410. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement, as well as to provide complete cooperation to Covered Entity should Covered Entity elect to review or investigate such noncompliance or Security Incident. Business Associate shall cooperate in Covered Entity's breach analysis and/or risk assessment, if requested. Furthermore, Business Associate shall cooperate with Covered Entity in the event that Covered Entity determines that any third parties must be notified of a Breach, provided that Business Associate shall not provide any such notification except at the direction of Covered Entity. To the extent any of the parties to this Agreement are an entity of the State of North Carolina, nothing this Agreement is intended to affect or abrogate that party's sovereign immunity as an entity of the State of North Carolina including all protections and immunities granted to that party under the North Carolina Tort Claims Act.

- i. Business Associate shall permit Covered Entity, in its discretion, to conduct an audit of Business Associate's compliance with this BAA, HIPAA, and HITECH. Such audit may consist of a series of inquiries that require written responses. Business Associate shall promptly and completely respond to Covered Entity's request for information in support of the audit, which shall not be conducted more than once annually except in cases of an actual or reasonably suspected Security Incident or reasonably suspected noncompliance with this BAA, HIPAA or HITECH. Each Party shall bear its own costs associated with the audit.

IV. AVAILABILITY OF PHI

- a. Business Associate agrees to make available Protected Health Information in a Designated Record Set to Covered Entity to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule.
- b. Business Associate agrees to make available Protected Health Information in a Designated Record Set for amendment and to incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule and at the direction of Covered Entity.
- c. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule.
- d. In the event an Individual makes a request under this Section IV directly to Business Associate, Business Associate will notify Covered Entity of such request within three (3) business days and shall cooperate with, and act only at the direction of, Covered Entity in responding to such request.

V. TERMINATION

This Agreement shall be effective as of the date first set forth above and shall terminate upon the earlier of (a) the termination of all agreements between, the parties and b) the

termination by Covered Entity for cause as provided herein. Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Participation Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Participation Agreement immediately.

VI. MISCELLANEOUS

Except as expressly stated herein or in the HIPAA Security and Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Participation Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without prior written consent of the other party. None of the provisions of this Agreement intended to create; nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of North Carolina. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information that are more restrictive than the provisions of this Agreement, the more restrictive provisions will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Security and Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary, to bring it into compliance. If, after such thirty-day period, a party believes in good faith that the Agreement fails to comply with the HIPAA Security and Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

BUSINESS ASSOCIATE:

NORTH CAROLINA HEALTH
INFORMATION EXCHANGE
AUTHORITY

By: _____
Title: _____
Date: _____

COVERED ENTITY:

By: _____
Title: _____
Date: _____

EXHIBIT G

N3CN/CCNC DATA ACCESS AND USE

North Carolina Community Care Networks, Inc. (N3CN) and its subsidiary, Community Care of North Carolina, (CCNC), has contracted with the N.C. Department of Health and Human Services and other Covered Entities to aggregate and analyze PHI from health care providers that participated in the former health information exchange. To provide a smooth transition to a state run HIE Network, NC HIEA may enter into a Data Use and Access Agreement and a Business Associate Agreement with N3CN/CCNC that would allow NC HIEA to send your “as is” or untransformed data to N3CN/CCNC for the time period outlined by the Data Use and Access Agreement. This will ensure that N3CN/CCNC can continue to fulfill its contractual obligations to legacy participants, Covered Entities, and the State of North Carolina. It is important to note that N3CN/CCNC is not permitted by law to use HIE Data for commercial purposes, which are purposes other than those listed in N.C.G.S. 90-414.2 and 90-414.4(a).

Please initial below if you do **not** want your “as is” untransformed data to be submitted to N3CN/CCNC

Initial: _____

EXHIBIT H

PERMISSION FOR ACCESS AND USE OF HISTORICAL DATA

The former Health Information Exchange was operated by a group of related corporations including North Carolina Health Information Exchange, North Carolina Community Care Networks, Inc. (N3CN), and Community Care of North Carolina (CCNC), (the HIE group). In order to achieve a smooth transition to the new HIE Network, NC HIEA requests that you grant access to all data you previously transmitted to the HIE group. This will entail your permission to access and obtain all of the backups of the original data transmissions that you submitted to the HIE group in the past and to your transformed data held by the HIE group.

Please initial below if you permit NC HIEA to access and use all of the backups of the original data transmissions that you submitted to the HIE group in the past and to your transformed data held by the HIE group. Please also review the enclosed form letter addressed to the HIE group requesting that they deliver your historical data to the new Health Information Exchange Authority's Network. Please send this letter to CCNC, for the HIE group, and keep a record that your request was sent.

Initial: _____