



Legal and Policy Team Charter

Team Charter

Patients and consumers must have confidence that their personal health data is secure and that their privacy is protected. They deserve to know that the information will be used appropriately by whoever accesses it. In the sharing of health information, data must be protected from exposure to accidental or inappropriate disclosure, unauthorized access, modification, removal or destruction. In order to meet these goals, the Legal and policy team will assist in the development of legal forms and documents, make policy recommendations and advise GeHC on various privacy and security issues.

Primary Work Activities

- Identify appropriate privacy and security standards
- Adopt policies for authorization, authentication, access, audit, accountability, consent as well as the use and reuse of data
- Create various legal documents required for the operation of the GeHII
- Define and agree upon accountability for protecting privacy and security
- Coordinate with the Technical Architecture and Business Foundation teams

Expected Outcomes

- Various documents prepared, reviewed and approved including:
 - End user license agreement
 - GeHII Participation agreement
 - Patient consent
 - Provider directories
- Privacy and security policies written and adopted
- Privacy and security roles and responsibilities documented
- Approved policies dealing with the 5 As
 - Authorization
 - Authentication
 - Access
 - Audit
 - Accountability

Required Team Skills

Team members:

- Familiarity with various legal and policy issues, specifically HIPAA and territory statutes and policies
- Understanding of technical architecture approaches and their impact on security and privacy
- Ability to collaborate to develop privacy and security accountability processes and penalties for non-compliance
- Understanding of privacy and security issues across the full healthcare stakeholder spectrum

Team leader

- All above plus
- Understanding of the interrelationship and interdependencies between and among the Business and Financial Team, Legal and Policy team, and Technical Architecture team
- Familiar with industry thought leadership and discussions regarding privacy and security at the national, state, and consumer level
- Willingness and ability to be an internally and externally visible representative of the project, with the ability to articulate persuasively externally and influence internally
- Expertise in health care privacy and security

Roles and Responsibilities

Team Chair

- Convene meetings
- Direct the work of the team
- Enable timely decisions
- Communicate team activities and reports to GeHC

Team members

- Attend all meetings
- Provide expert advice on all matters
- Complete work assignments in a timely manner

Time Commitment

It is anticipated that the average time commitment for the Legal and Policy team is approximately twelve hours per quarter. This includes three hours for the quarterly team meeting, one hour per month for con calls and six hours for completion of various assignments.

Attachment 2 - NeHII DATA SHARING PARTICIPATION AGREEMENT

1. Grant of Right to Use Services 1

2. Access to the System 2

3. Making Information Available through the System 6

4. Business Associate Provisions and Audit 8

5. Computer Systems..... 8

6. Policies and Procedures 9

7. Training Costs 9

8. Fees and Charges 9

9. Confidential Information 10

10. Warranty, Disclaimer and Limitation of Liability 10

11. Insurance 13

12. Term; Modification; Suspension; Termination 13

13. Dispute Resolution 14

14. Applicable Law 15

15. Legal Compliance 15

16. No Assignment..... 15

17. Supervening Circumstances 15

18. Severability 15

19. Notices 15

20. Waiver 15

21. Complete Understanding 16

22. Intended Third-Party Beneficiaries..... 16

23. Advice of Counsel 16

24. Signature Authority..... 16

25. No Medicare Exclusion..... 16

26. Definitions 16

27. Rules of Construction 18

Attachment 1: Services 20

Attachment 2: Description of System 21

Attachment 3: Service Fees 23

Attachment 4: Business Associate Amendment 24

DATA SHARING PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into by and between NeHII, Inc., a Nebraska non-profit corporation ("NeHII"), and the undersigned participant ("Participant") (collectively, the "Parties"), as of the Effective Date set forth below.

RECITALS

NeHII is organized to improve the quality, safety and timeliness of health services, reduce medical and prescription errors and reduce health care costs by facilitating the sharing of health information in a manner that complies with all applicable laws and regulations, including without limitation those protecting the privacy and security of personal health information. NeHII owns and operates an electronic communication network for use by health care providers and health care payers in delivering health care services to patients and by other persons to whom NeHII permits access in accordance with its policies and the law. The goal of the network is to support the public and charitable purposes of NeHII by improving public health and using technology to promote efficiency in the delivery of health care services. Participant desires to have access to

NeHII's network and services. In consideration of the mutual promises set forth in this Agreement, and other good and valuable consideration, the delivery and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. Grant of Right to Use Services.

- 1.1 Access. During the Term, NeHII grants to Participant and Participant accepts:
- (a) a non-exclusive, nontransferable (except as provided herein) right to have access to and to use the System, and
 - (b) a non-exclusive, nontransferable (except as provided herein) license to use any computer software furnished by NeHII. Such access and use is subject to Participant's compliance with the terms and conditions set forth in this Agreement and with the Policies and Procedures.
- 1.2 Restrictions. Participant shall not: (a) use the System for time-sharing, rental or service bureau purposes; (b) make the System or Services, in whole or in part, available to any other person entity or business other than as set forth in this Agreement; (c) copy, reverse engineer, decompile or disassemble the System, in whole or in part, or otherwise attempt to discover the source code to the software used in the System; or (d) modify the System or combine the System with any other software or services not provided or approved by NeHII. Participant shall obtain no rights to the System except for the limited rights to use the System expressly granted by this Agreement.
- 1.3 Change and Termination. NeHII reserves the right to change the Services or the System, or to cease operating the System or any or all of the Services, at any time. Unless circumstances beyond NeHII's control require it, changes to the System or the Services that reduce or limit the functionality or levels of service provided shall not be made without the prior approval of NeHII's Board of Directors and not on less than thirty (30) days prior notice to Participant.
- 1.4 Third-Party Software. The System includes certain Third-Party Software and Services, which may require that Participant enter into separate subscription or licensing agreements with thirdparty vendors, or which may be open-source, as a condition of Participant's use of the System. If NeHII, Inc. Participant elects not to execute agreements with such third-party vendors or determines it is unable to comply with the terms of any license or other agreement held by NeHII Participant may elect to terminate this Agreement. This Agreement shall not be construed to limit any use of open-source software in accordance with the applicable free software license.
- 1.5 Support. NeHII shall provide reasonable support and assistance to Participant in using the System and the Services, in accordance with the Policies and Procedures.

2. Access to the System.

- 2.1 Permitted Uses. Subject to the terms of this Agreement, NeHII authorizes Participant to access the System and to use the Services only as expressly authorized in the Policies and Procedures.
- 2.2 Prohibited Uses. Participant agrees not to access the System or use the Services for any other purpose other than as set forth in Section 2.1 above. In particular:
- (a) Participant shall not knowingly reproduce, publish or distribute content in connection with the System that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy or other personal or proprietary right;
 - (b) Participant shall be responsible for its own compliance with all applicable laws, including laws relating to maintenance of privacy, security and confidentiality of patient and other health information and the prohibition on the use of

- telecommunications facilities to transmit illegal, obscene, threatening, libelous, harassing or offensive messages, or otherwise unlawful material;
- (c) Participant shall not knowingly: (i) abuse or misuse the System or the Services, including gaining or attempting to gain unauthorized access to the System or altering or destroying information in the System, except in accordance with accepted practices; (ii) use the System or Services in such a manner that interferes with other users' use of the System; (iii) permit the introduction into the System of any program, routine or data (such as viruses or worms) that does or may disrupt or in any way impede the operation of the System, or alter or destroy any data within it.
 - (d) Participant shall not use the System or Services for the purpose of exploiting the data of other participants for Participant's own commercial purposes, including aggregating data from other participants for commercial use or exploitation by third parties.
 - (e) Participant shall not use the System or the Services in violation of the Policies and Procedures or any applicable laws of the United States of America.

2.3 Participant's Own Systems.

- (a) Participant shall be solely responsible for own compliance with any applicable regulatory requirements related to the preservation, privacy and security of its own records, including (without limitation) data backup, disaster recovery, and emergency mode operation and acknowledges that NeHII does not undertake to provide such services.
- (b) Participant may access and use the electronic health information as permitted in this Agreement and may merge relevant parts of such electronic health information into its own, in which case such merged data become the property of the Participant to the extent thus incorporated into its record.
- (c) Subpoenas and Aggregation:
 - (i) Participant shall not use the System to create, produce or compile records or data of another participant for the purpose of furnishing copies of aggregated records to third parties, except as may be medically useful to healthcare providers in the provision of medical care or treatment to an individual patient of the provider or as is otherwise permissible under this Agreement or as required by law.
 - (ii) If Participant is subpoenaed or otherwise ordered to use the System for the purpose of compiling the data of other participants that are not already contained in Participant's records, Participant shall immediately notify NeHII so that NeHII and such other interested parties as it may determine, might have an opportunity to appear or intervene and protect their respective interests.
 - (iii) Participant shall not be required to contest any such subpoena or order nor incur any expense in connection with legal proceedings or processes, whether initiated by NeHII or any other interested party, with respect thereto.

2.4 Other Participants.

- (a) NeHII shall initially limit participation to the following types of health care providers and health plans:
 - (i) Physician or medical group;
 - (ii) Hospital;
 - (iii) Independent laboratory;
 - (iv) Independent radiology supplier;
 - (v) Chain pharmacy;
 - (vi) Independent pharmacy;

- (vii) Long-term care facility;
 - (viii) Home health care program;
 - (ix) Public health department;
 - (x) Health Insurer or health plan; or
 - (xi) Health plans acting as third-party administrators of covered group health plans.
- (b) This list of eligible participant types may be modified by the Board of Directors of NeHII upon reasonable notice to Participant.
- (c) Other Participants having access to the System shall be required to sign a participation agreement containing an obligation, on terms substantially similar to those contained in this Agreement, to comply with the Policies and Procedures and to be responsible for any business associate, contractor or workforce member who accesses and uses the System or Services as Authorized Users on its behalf.

2.5 Safeguards.

- (a) Participant and NeHII shall implement and maintain reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of electronic health information accessible through the System, to protect it against reasonably anticipated threats or hazards, and to prevent its use or disclosure otherwise than as permitted by this Agreement or required by law.
- (b) Such safeguards shall comply with HIPAA (whether or not Participant is otherwise subject to HIPAA), all applicable federal, state, and local requirements and with the Policies and Procedures.
- (c) Participant and NeHII shall each maintain reasonable and appropriate security practices with regard to all personnel, systems, and administrative processes used by each party to transmit, store and process electronic health information through the use of the System. Participant and NeHII each shall be responsible for establishing and maintaining their respective security management procedures, security incident procedures, contingency plans, audit procedures, facility access controls, workstation use controls and security, device and media controls, authentication procedures, and security policies and procedures to protect electronic health information accessible through the System.
- (d) Participant shall promptly notify NeHII of any Security Incident relating to the System of which Participant becomes aware, or any unauthorized use or disclosure of information within or obtained from the System, and shall cooperate with NeHII in investigating the incident and shall take such action to mitigate any breach or suspected breach. NeHII shall promptly notify Participant of any Security Incident relating to the Participant's Shared Information of which NeHII becomes aware, or any unauthorized use or disclosure of Participant's Shared Information within or obtained from the System, and shall cooperate with Participant in investigating the incident and shall take such action to mitigate any breach or suspected breach.

2.6 Compliance. Participant and NeHII, respectively, are responsible for their own compliance with the terms of this Agreement, HIPAA, the Policies and Procedures, and any applicable laws and regulations. Participant shall be solely responsible for the use of the System by Participant and Participant's workforce, and shall indemnify NeHII and hold it harmless from any third party claim, cost or liability arising from use that is in violation of this Agreement or applicable law, including reasonable attorneys' fees, in accordance with the indemnification procedures set forth in Section 10.10(a).

2.7 Authorized Use.

- (a) NeHII authorizes Participant and Participant's Authorized Users to use the

Participant IDs assigned to them by NeHII or by a responsible agency or authority designated by NeHII, which may include Participant. Participant acquires no ownership rights in any Participant ID, and Participant IDs may be revoked or changed upon as much notice as possible only for security reasons in NeHII's sole discretion. Participant shall adopt and maintain reasonable security precautions for Participant IDs to prevent their disclosure to and use by unauthorized persons. Each Authorized User shall have and use a unique identifier. Participant shall use reasonable efforts to ensure that no member of its workforce uses a Participant ID assigned to another person.

- (b) Participant may permit Participant's Authorized User to use the System and the Services on behalf of Participant, subject to the terms of this Agreement. Participant shall:
- (i) Conduct a reasonable credentialing process to determine that granting an individual access to the System as an Authorized User is appropriate. Such credentialing shall be in accordance with the Policies and Procedures.
 - (ii) Obtain a unique Participant ID from NeHII for each Authorized User and take efforts to ensure that each such person has access to the System only under his or her assigned Participant ID;
 - (iii) Train all Authorized Users regarding the confidentiality requirements of this Agreement and the Policies and Procedures relating to their access to and use of the System and the Services, and be responsible for their compliance with such requirements;
 - (iv) Take such disciplinary action as it may deem appropriate against any Authorized User who violates the confidentiality provisions of this Agreement or the Policies and Procedures;
 - (v) Report to NeHII violations of the confidentiality requirements set forth in this Agreement by Participant's Authorized Users;
 - (vi) Promptly notify NeHII of the termination of employment of any Authorized User (or if the individual is not an employee, of the termination of the relationship with Participant which granted the individual access to the System);
 - (vii) Promptly notify NeHII of the termination, revocation or restriction of any right of an Authorized User to access the System; and
 - (viii) Take prompt steps to assure that any Authorized User whose access has been revoked or restricted by NeHII or the Participant shall have no further access to protected health information through the System consistent with the revocation or restriction.

2.8 Rights of Authorized Users. An Authorized User shall have no rights to access the System, or to use the Services or any electronic health information or other information made available therefrom, other than those granted to the Authorized User by NeHII or by the Participant. Any such rights of an Authorized User shall cease and terminate upon the removal of that Authorized User's access privileges for any reason.

2.9 Discipline and Termination of Authorized Users.

- (a) NeHII and Participant shall require that all of their respective Authorized Users, including NeHII employees and independent contractors, who use or have access to the System and the Services to do so only in accordance with applicable use restrictions and confidentiality obligations and the Policies and Procedures, including without limitation the provisions thereof governing the confidentiality, privacy and security of protected health information.

- (b) Participant and NeHII shall take appropriate disciplinary action, up to and including termination, against their respective Authorized Users, who violate their use restrictions, confidentiality obligations or the Policies and Procedures.
 - (c) NeHII does not, by virtue of the Participation Agreement or otherwise, obtain authority to discipline the Participant's Authorized Users. NeHII may, however, terminate System access of any Authorized User temporarily or on a permanent basis if such access needs to be terminated for security reasons. When terminating access of an Participant's Authorized User, NeHII shall notify Participant and explain the basis and support for its action.
- 2.10 Termination of a Participant. Following discussion with a Participant and a reasonable opportunity to cure (if such cure is possible), NeHII may terminate that Participant's access to the System on a temporary or permanent basis for privacy and security breaches or for failure to take reasonable remedial action when a breach is discovered, including, without limitation: (i) failure to cooperate in mitigating damages, (ii) failure to appropriately discipline an Authorized User or other person under the Participant's control for security or privacy violations, or (iii) other actions that undermine the confidence of other participants in the effectiveness of System safeguards. When terminating access, NeHII shall explain to Participant the basis and support for its action. A permanent termination of access shall be followed by termination of Participant's participation agreement.
- 2.11 Professional Responsibility. Participant shall be solely responsible for the medical, professional and technical services it provides. NeHII makes no representations concerning the completeness, accuracy or utility of any information in the System, or concerning the qualifications or competence of individuals who placed it there. NeHII has no liability for the consequences to Participant or Participant's patients of Participant's use of the System or the Services.
- 2.12 Cooperation. Participant shall reasonably cooperate with NeHII in the administration of the System, including providing reasonable assistance in evaluating the System and collecting and reporting data reasonably requested by NeHII for purposes of administering the System.

3. Making Information Available through the System.

- 3.1 Purpose of System. The purpose of the System is to facilitate the sharing of patient health information among All Participants.
- 3.2 Sharing of Data. NeHII shall from time to time issue Policies and Procedures for the sharing of data through the System, including standards for:
- (a) The kinds of data to be shared and the required format for such data;
 - (b) Ensuring that data made available through the System is complete, or for indicating if data is incomplete;
 - (c) Ensuring that data is made available through the System in a timely manner;
 - (d) Ensuring that, if the availability of data shared through the System is controlled by the Participant, it is available to other users at all times.
- 3.3 Accuracy and Format of Data. Participant shall use reasonable efforts to ensure that Participant's Shared Information:
- (a) Is current, accurate and (subject to any restrictions imposed by law or this Agreement, including Section 3.8) complete, or if it is incomplete that the record contains an appropriate indication to that effect;
 - (b) Complies with any requirements of the Policies and Procedures as to format or content.
- 3.4 Sharing of Participant's Shared Information. Participant authorizes NeHII to use and disclose Participant's Shared Information to Other Participants as follows:
- (a) NeHII may permit access to Participant's Shared Information by Other

- Participants that are Health Care Providers for purposes of treatment and obtaining payment for treatment.
- (b) NeHII may permit access to Participant's Shared Information by Other Participants that are public health authorities for public health activities, as permitted by applicable law.
 - (c) NeHII may permit access to Participant's Shared Information by Other Participants that are Health Care Payers for purposes of payment.
 - (d) NeHII may permit access to Participant's Shared Information by Other Participants that are acting as third-party administrators for covered group health plans for purposes of payment.
 - (e) NeHII may permit access to Participant's Shared Information by the business associates of Other Participants that are Health Care Providers or Health Care Payers for the purposes set forth in sections (a), (b) and (c), respectively.
 - (f) NeHII may use and disclose Participant's Shared Information for the proper management and administration of NeHII and the System, and to carry out NeHII's legal responsibilities. NeHII may also disclose Participant's Shared Information for such purposes if the disclosure is require by law. Without limiting the foregoing, NeHII may permit access to the System by NeHII's Authorized Personnel.

3.5 Disclosures.

- (a) Participant agrees that any disclosure through the System pursuant to Sections 3.4(a)-3.4(e) is a disclosure made by a Participant and not NeHII.
- (b) NeHII agrees that any disclosure through the System pursuant to Section 3.4(f) is a disclosure made by NeHII and not the Participant.

3.6 Reliance on Representations. Participant acknowledges that in granting access to the System for the purposes as set forth in this Agreement, NeHII will rely on the assurances of the Other Participants as to (i) their identity and credentials, (ii) the purposes for which they are accessing the system, and (iii) the nature and extent of the information to which they will have access. Participant acknowledges that, while the System will contain certain technical safeguards against misuse of the System, it will rely to a substantial extent on the representations and undertakings of Other Participants and their Authorized Users. Participant agrees that NeHII shall not be responsible for any unlawful access to or use of Participant's Shared Information by any Other Participants resulting from misrepresentation to NeHII, breach of agreement, or violation of the Policies and Procedures

3.7 Compliance with Privacy Rule. NeHII applies the standards of the Privacy Rule in permitting access to the System. Participant acknowledges that other federal and state laws impose additional restrictions on the use and disclosure of certain types of health information, or health information pertaining to certain classes of individuals. Participant is solely responsible for ensuring that Participant's Shared Information may properly be disclosed for the purposes set forth in this Agreement. In particular, Participant shall:

- (a) Not make available through the System any information subject to any restriction on use or disclosure (whether arising from Participant's agreement with the individual or under law), other than the general restrictions contained in the Privacy Rule;
- (b) If any relevant information is not made available through the System, place a notation in the System, in the manner provided by the Policies and Procedures, to the effect that additional information which is not available through the System may be available from Participant;
- (c) Obtain any necessary consents, authorizations or releases from individuals required for making their health information available through the System; and
- (d) Include such statements (if any) in Participant's notice of privacy practices as

- may be required in connection with Participant's use of the System.
- 3.8 Individuals' Rights. Participant shall be solely responsible for affording individuals their rights with respect to Participant's Shared Information, such as the rights of access and amendment, or requests for special restrictions on the use or disclosure of health information. NeHII shall not accept or process any requests from individuals for the exercise of such rights. Participant shall not undertake to afford an individual any rights with respect to any information in the System other than Participant's Shared Information.
 - 3.9 Rights in Data. As between NeHII and Participant, all Authorized User Data shall be deemed to be the exclusive property of Participant. In no event shall NeHII claim any rights with respect to the Authorized User Data, use or authorize any third-party to use such data, or take any action with respect to such data that is inconsistent with this Agreement. NeHII hereby waives any and all statutory or common law liens it may now or hereafter have with respect to such Authorized User Data. Participant may retrieve, transport and deliver to third parties the Authorized User Data, and all manipulations of such data associated with the System and Services and the Authorized User Data contained in NeHII's archived data files.
- 4. Business Associate Provisions and Audit.**
- 4.1 Compliance with Privacy and Security Rules. In using, disclosing and affording access to Participant's Shared Information in accordance with this Agreement, NeHII shall comply with the Privacy Rule and the Security Rule.
 - 4.2 Business Associate Agreement. NeHII and Participant agree to the terms and conditions of the HIPAA Business Associate Agreement.
 - 4.3 Annual Audit. Participant, at its sole expense and upon at least 20 days notice, may audit NeHII's performance, including the performance of the NeHII subcontractors, in connection with this Agreement once per calendar year. NeHII shall make available to Participant all pertinent books and records, and any other necessary information, including information in the possession or control of it, such that Participant can properly evaluate the performance of NeHII with respect to this Agreement. This right shall include the right to audit hosting backup procedures and security measures. NeHII shall not be obligated by this Agreement to disclose to Participant or other person or entity any information which is not necessary to conduct such an audit, nor shall NeHII be obligated to divulge any trade secrets or proprietary information of NeHII or any third party except to the extent necessary to satisfy the purpose of the audit contemplated by this Section (and all such trade secrets or proprietary information shall be subject to the confidentiality provisions of Section 9) and in no event shall NeHII be obligated to divulge any trade secrets or proprietary information to any competitor, or affiliate of a competitor, of NeHII. NeHII shall bill Participant at NeHII's then current commercial billing rates for any services in connection with any such audit. Any audit will be performed on a non-interference basis to the maximum extent possible.
 - 4.4 Records Retention. Until four (4) years after the termination or expiration of this Agreement, NeHII shall make available to the Secretary of Health and Human Services and the Comptroller General of the General Accounting Office, and their duly authorized representatives, and to Participant and its duly authorized representatives, this Agreement all pertinent books, documents and records necessary to certify the nature and extent of the costs of the System and Services provided by NeHII under this Agreement. This Section does not obligate NeHII to maintain records in any particular format. No attorney-client, accountant-client or other legal or equitable privilege shall be deemed to have been waived by the Parties by virtue of this Section.
 - 4.5 Subcontract Audit Provision. If NeHII carries out the duties of this Agreement through a subcontract worth \$10,000 or more over a twelve (12) month period with a related organization, the subcontract shall contain clauses substantially identical to Sections 4.3

and 4.4 of this Agreement to permit access to the related organization's books and records by Participant, as its respective interests may appear, and the Secretary of Health and Human Services, the Comptroller General of the General Accounting Office and their representatives.

5. Computer Systems. (Participant's "Implementation")

5.1 Participant's Systems.

- (a) In order to use the System, Participant acknowledges that it may be necessary for it to acquire, install, configure and maintain the hardware, software and communications systems necessary to access the System (the "Equipment") listed or described in the Technical Requirements. If Participant elects to implement its use of the System, Participant shall comply with the specifications set forth in the Technical Requirements. If NeHII notifies Participant that its Equipment for the implementation and use of the System is incompatible with the System and not in accordance with the Technical Requirements, Participant shall either eliminate the incompatibility or terminate this Agreement and NeHII may suspend Services to Participant until Participant does so.

- 5.2 NeHII Assistance. From time-to-time, NeHII may separately contract with Participant for the provision of goods or services in connection with Participant's implementation or use of the System; provided, however, such goods or services contracts shall not (and shall not be deemed or construed to) alter or amend any provisions of this Agreement.

6. Policies and Procedures.

- 6.1 NeHII is solely responsible for the development of the Policies and Procedures. NeHII shall notify Participant of any changes in the Policies and Procedures at least ninety (90) days prior to the implementation of the change. However, if the change is required in order for NeHII or Participant to comply with applicable laws or regulations or if the Board of Directors directs, NeHII may implement the change and provide notice to Participant within a shorter period of time that NeHII determines is appropriate under the circumstances. If Participant is unable or unwilling to comply with or implement such Policies and Procedures, Participant may elect to suspend its use of the System or terminate this Agreement and be released from all further obligations and liabilities pertaining to this Agreement.

- 6.2 The Policies and Procedures, as amended from time to time, are incorporated herein by reference and made a part of this Agreement.

7. **Training Costs.** Participant shall be solely responsible for the participation and costs of training Participant's personnel related to the System and its use. The training required by NeHII is described in the Technical Requirements. If Participant contracts with NeHII for such training, NeHII shall be responsible for providing the appropriate training sessions, instructors, study materials needed to participate and scheduling training sessions at times and places reasonably acceptable to Participant.

8. Fees and Charges.

- 8.1 **Service Fees.** Participant shall pay to NeHII the Service Fee set forth in Attachment 3 during the Term and continuation of this Agreement. If Participant separately contracts with NeHII for goods or services related to the System, such contracts shall use and be based upon the rates specified on Attachment 3 ("Miscellaneous Charges"). NeHII may change its Service Fee and Miscellaneous Charges upon thirty (30) days' notice to Participant.

- 8.2 **Payment.** The Service Fee and any Miscellaneous Charges shall be due and payable to NeHII within forty-five (45) days following Participant's receipt of invoice at the address specified below for billing purposes.

- 8.3 Taxes. All charges and fees shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and Participant agrees to pay any tax (excluding taxes on NeHII's net income) that NeHII may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services purchased under this Agreement.
- 8.4 Other Charges. Participant is responsible for any charges Participant incurs to use the System, such as telephone and equipment charges, and fees charged by third-party vendors of products and services. NeHII shall be solely responsible for all costs and expenses related to its hardware, software, telecommunications connections, data storage, data security and any third-party licenses required to provide the System and Services and fulfill NeHII's obligations under this Agreement. Participant is not responsible for any portion of NeHII's obligations and it is not a guarantor or surety of NeHII's debts or financial dealings.
- 8.5 No Payment for Protected Health Information.
- (a) All fees charged, paid or collected by or on behalf of NeHII related to the System and the data contained therein shall be for the rights of participants to access and use of the System and Services as described in this Agreement. NeHII, including its Subcontractors, shall not make Participant's Shared Information or any individual's protected health information provided to NeHII by Participant available to any third party for any purpose not expressly authorized by this Agreement. Neither NeHII nor its Subcontractors shall offer or pay or solicit or receive any remuneration, directly or indirectly, in return for protected health information obtained through the System.
- 9. Confidential Information.**
- 9.1 Neither party shall disclose the Confidential Information of the other party to any other person and shall not use any Confidential Information of the other party except for the purpose of this Agreement, or as required by applicable statute, regulation or subpoena (judicial and administrative). Except as otherwise provided in this Agreement, neither party shall, without the other party's prior written consent, at any time, during or after the Term of this Agreement, directly or indirectly, divulge or disclose Confidential Information of the other party for any purpose or use Confidential Information for its own benefit or for the purposes or benefit of any other person. Participant and NeHII agree to hold all Confidential Information of the other party in strict confidence and shall take all measures necessary to prevent unauthorized copying, use, or disclosure of Confidential Information of the other party, and to keep the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of Confidential Information. Participant and NeHII will disclose Confidential Information of the other party only to individuals who have a need to use the Confidential Information for the purpose of this Agreement. Participant and NeHII shall inform all such recipients of the confidential nature of Confidential Information. All such recipients shall either be subject to employment agreements or instructions, professional oaths or written agreements containing confidentiality restrictions no less restrictive than those set forth in this Agreement. Participant and NeHII shall promptly advise the other party in writing of any improper disclosure, misappropriation, or misuse of the other party's Confidential Information by any person, which may come to Participant's or NeHII's attention.
- 9.2 Participant and NeHII agree that each party respectively will suffer irreparable harm if other party fails to comply with its obligations set forth in this Section 9, and further agrees that monetary damages will be inadequate to compensate Participant or NeHII for any such breach. Accordingly, Participant and NeHII agree that Participant and NeHII will, in addition to any other remedies available to it at law or in equity, be entitled to the issuance

of injunctive relief to enforce the provisions hereof, immediately and without the necessity of posting a bond.

9.3 This Section 9 will survive the termination or expiration of this Agreement for any reason.

10. Warranty, Disclaimer and Limitation of Liability.

10.1 Warranty. NeHII represents and warrants the following:

- (a) That the Services shall conform to this Agreement.
- (b) NeHII has the right to grant the licenses set forth in Section 1 without violating or infringing upon any rights of any third party and without breach of any third-party license and to the best of NeHII's knowledge, there is currently no actual or threatened suit by any third party based on an alleged violation, infringement or breach by NeHII.
- (c) Each of NeHII's employees, subcontractors or agents assigned to perform NeHII's obligations hereunder have the proper skill, training and background required to perform in a diligent, competent, workmanlike and professional manner and all work will be so performed.

10.2 Pass-Through Warranty. NeHII hereby assigns to Participant all of its rights pursuant to warranties provided regarding Third-Party Software and Services provided or utilized hereunder and hereby authorizes Participant to enforce in NeHII's name, but at Participant's expense, all warranties, agreements or representations, if any, which may have been made to NeHII. NeHII shall assist Participant in making any warranty claims relating to such third-party software.

10.3 Carrier Lines. Participant acknowledges that access to the System will be provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, "Carrier Lines") owned, maintained, and serviced by third-party carriers, utilities, internet service providers, all of which are beyond NeHII's control. NeHII assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the Carrier Lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the Carrier Lines. Use of the Carrier Lines is solely at Participant's risk and is subject to all applicable local, state, national, and international laws.

10.4 No Warranties. OTHER THAN AS SET FORTH IN THIS SECTION OR THE AGREEMENT, THE SYSTEM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NeHII DISCLAIMS ANY AND ALL RESPONSIBILITIES FOR ANY ACT OR OMISSION TAKEN OR MADE BY PARTICIPANT IN RELIANCE ON THE SYSTEM OR THE INFORMATION IN THE SYSTEM, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. EXCEPT FOR NeHII'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY OBLIGATIONS HEREUNDER, EITHER PARTY'S BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR VIOLATION OF APPLICABLE LAW, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. NeHII DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS

- OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE SYSTEM.
- 10.5 Other Participants. PARTICIPANT ACKNOWLEDGES THAT OTHER PARTICIPANTS HAVE ACCESS TO THE SYSTEM AND ARE RECEIVING NEHII'S SERVICES. SUCH OTHER PARTICIPANTS HAVE COMMITTED TO COMPLY WITH THE POLICIES AND PROCEDURES CONCERNING USE OF THE SYSTEM; HOWEVER, THE ACTIONS OF SUCH OTHER PARTICIPANTS ARE BEYOND NEHII'S CONTROL. ACCORDINGLY, NeHII DOES NOT ASSUME ANY LIABILITY FOR OR RELATING TO ANY IMPAIRMENT OF THE PRIVACY, SECURITY, CONFIDENTIALITY, INTEGRITY, AVAILABILITY, OR RESTRICTED USE OF ANY INFORMATION ON THE SYSTEM RESULTING FROM ANY PARTICIPANT'S ACTIONS OR FAILURES TO ACT.
- 10.6 Participant's Actions. PARTICIPANT WILL BE RESPONSIBLE FOR ANY DAMAGE TO NEHII'S COMPUTER SYSTEM, LOSS OF DATA, AND ANY DAMAGE TO THE SYSTEM CAUSED SOLELY BY THE NEGLIGENCE OF A MEMBER OF PARTICIPANT'S WORKFORCE.
- 10.7 Unauthorized Access; Lost or Corrupt Data. EXCEPT AS CAUSED BY OR RESULTING FROM NeHII'S NEGLIGENCE OR MISCONDUCT, NEHII IS NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO PARTICIPANT'S TRANSMISSION FACILITIES OR EQUIPMENT BY INDIVIDUALS OR ENTITIES USING THE SYSTEM OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT, OR DESTRUCTION OF PARTICIPANT'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SYSTEM. PARTICIPANT IS SOLELY RESPONSIBLE FOR VALIDATING THE ACCURACY OF ALL OUTPUT AND REPORTS OBTAINED THROUGH USE OF THE SYSTEM AND IS RESPONSIBLE FOR MAKING REASONABLE EFFORTS TO PROTECT PARTICIPANT'S OWN DATA AND PROGRAMS FROM LOSS BY IMPLEMENTING APPROPRIATE SECURITY MEASURES, INCLUDING ROUTINE BACKUP PROCEDURES. EXCEPT AS CAUSED BY THE SYSTEM OR SERVICES NOT OPERATING IN ACCORDANCE WITH ITS DOCUMENTATION OR NEHII'S NEGLIGENCE OR MISCONDUCT, PARTICIPANT HEREBY WAIVES ANY DAMAGES OCCASIONED BY LOST OR CORRUPT DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM PROGRAMMING ERROR, OPERATOR ERROR, EQUIPMENT OR SOFTWARE MALFUNCTION. NeHII IS NOT RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH NeHII'S PROVISION OF THE SERVICES.
- 10.8 Limitation of Liability. EXCEPT FOR NEHII'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY OBLIGATIONS HEREUNDER, EITHER PARTY'S BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR VIOLATIONS OF APPLICABLE LAW, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEHII'S AND PARTICIPANT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO THE AGGREGATE FEES ACTUALLY PAID BY PARTICIPANT UNDER THIS AGREEMENT FOR THE SIX (6) MONTH PERIOD PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM.
- 10.9 Patient Care. Participant shall be solely responsible for all patient care decisions resulting from or involving the use of the System or the Services. Neither Participant nor any other person shall have any claim or cause of action against NeHII as a result of patient care rendered or withheld in connection with the use of the System or the Services. Notwithstanding the foregoing, this provision shall not exculpate NeHII from liability for breach of its warranties or representations made under this Agreement.
- 10.10 Indemnification.
- (a) Intellectual Property Indemnity. NeHII shall indemnify, defend and hold harmless

Participant, its affiliates, and their respective directors, officers, employees and agents (each, an "IP Indemnitee") from and against any and all claims, losses, liabilities, judgments, awards and costs (including costs of investigation and legal fees and expenses) arising out of or related to any claim that the Services infringe, misappropriate or allegedly infringe or misappropriate any patent, trademark, copyright, trade secret right, or other intellectual property right of any third party, including any damages finally awarded attributable to such claim and any reasonable expense incurred by IP Indemnitee in assisting NeHII in defending against such claim. IP Indemnitee shall give NeHII: (x) written notice within a reasonable time after IP Indemnitee is served with legal process in an action asserting such claims, provided that the failure or delay to notify NeHII shall not relieve NeHII from any liability that it may have to IP Indemnitee hereunder so long as the failure or delay shall not prejudice the defense of such claim; (y) reasonable assistance in defending the claim; and (z) sole authority to settle such claim. NeHII will cooperate with IP Indemnitee to pass through to IP Indemnitee any applicable indemnity received from a vendor of third party software included in the System or Services. The foregoing indemnification rights in this Section shall be the exclusive remedy of such IP Indemnitee with respect to the claims to which such indemnification relates if NeHII fully complies with the obligations set forth in this Section; provided, that such IP Indemnitee shall in any event retain the right to seek injunctive or other non-monetary equitable remedies with respect to such claims.

- (b) Additional Remedies. In the event that the Service, or any portion thereof, is held by a court of competent jurisdiction to infringe or constitute the wrongful use of any third party's proprietary rights and Authorized Users' right to use the Services is enjoined, or if NeHII in the reasonable exercise of its discretion instructs an Authorized User to cease using the Service in order to mitigate potential damages arising from a third party's claim of infringement or misappropriation, the Authorized User shall cease using the Services. In addition to NeHII's obligations under Section 10.10(a), upon Participant's request, NeHII shall immediately perform one of the following as selected by NeHII:
- (i) replace the Services, with equally suitable and functionally equivalent non-infringing Services;
 - (ii) modify the Services so that they are equally suitable and functionally equivalent to the alleged infringing Service and its use by Authorized Users ceases to be infringing or wrongful; or (iii) procure for Authorized Users the right to continue using the Services. In the event the foregoing remedies are not commercially feasible, promptly following written notice thereof given by Participant, NeHII shall refund to Participant all fees pre-paid by Participant related to the infringing Services.
- (c) Limitation. Notwithstanding the terms of Section 10.10(a) and Section 10.10(b), NeHII will have no liability for an infringement or misappropriation claim to the extent that it is proximately caused by: (i) modifications to the Services or System made by a party other than NeHII, if a claim would not have occurred but for such modifications and such modifications were not authorized by this Agreement; (ii) the combination, operation or use of the Services or System with equipment, devices, software or data not supplied or recommended by NeHII, if a claim would not have occurred but for such combination, operation or use; or (iii) Authorized Users' use of the Services or System other than in accordance with this Agreement and the Documentation.
- (d) Exclusive Remedy. SECTION 10.10 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF NeHII, AND PARTICIPANT'S EXCLUSIVE REMEDY AGAINST NeHII, WITH RESPECT TO ANY INTELLECTUAL PROPERTY INFRINGEMENT.

- 11. Insurance.** Participant shall obtain and maintain such policies of general liability, errors and omissions, and professional liability insurance with reputable insurance companies as is usually carried by persons engaged in Participant's business covering the Term of this Agreement, and as required by the Policies and Procedures. Such insurance shall be in amounts no less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in annual aggregate.
- 12. Term; Modification; Suspension; Termination.**
- 12.1 Term. The initial term of this Agreement shall commence on the Effective Date and continue for a period of one (1) year, and thereafter shall renew for successive one-year renewal terms until terminated as provided in this Section.
- 12.2 Termination upon Notice. In addition to the provisions of Section 1.2, NeHII or Participant may terminate this Agreement at any time without cause upon ninety (90) days prior written notice to the other party.
- 12.3 Termination for Cause. Either party may terminate this Agreement in the event of a material breach of this Agreement which is not cured to the reasonable satisfaction of the other party within thirty (30) days of delivery of notice of the breach; provided that, if the breach is capable of cure but not within thirty (30) days, this Agreement shall not be terminated as long as the party in breach commences to cure the breach within thirty (30) days, and diligently pursues the cure to completion.
- 12.4 Modification. NeHII may change the terms under which the Services and System are provided to Participant (including terms set forth in this Agreement) by providing Participant not less than thirty (30) days notice. Upon receipt of such a notice, Participant may terminate this Agreement by giving written notice to NeHII on or before the effective date of the change. Participant agrees that Participant's failure to give notice of termination prior to the effective date of the change constitutes acceptance of the change, which shall thereupon become part of this Agreement.
- 12.5 Termination, Suspension or Amendment as a Result of Government Regulation. Notwithstanding anything to the contrary in this Agreement, either party may, on notice to the other, immediately terminate or suspend this Agreement without liability: (a) to comply with any order issued or proposed to be issued by any governmental agency; (b) to comply with any provision of law, any standard of participation in any reimbursement program, or any accreditation standard; or (c) if performance of any term of this Agreement by either party would cause it to be in violation of law, or would jeopardize its tax-exempt status. In the event that the above listed reasons require the parties to amend this Agreement, the parties shall work in good faith to mutually agree to an amendment.
- 12.6 Judicial or Administrative Procedures. Either party may terminate this Agreement immediately upon notice to the other if: (a) the other party is named as a defendant in a criminal proceeding for a violation of federal or state law; (b) a finding or stipulation that the other party has violated any standard or requirement of federal or state law relating to the privacy or security of health information is made in any administrative or civil proceeding; or (c) the other party is excluded from participation in a federal or state health care program.
- 12.7 Obligations After Termination.
- (a) Upon termination of this Agreement, Participant shall cease to use the System and NeHII may terminate Participant's access to the System. Participant shall pay to NeHII the fees for the balance of the Term upon termination. Upon termination for any reason, Participant shall remove all software provided under this Agreement from its computer systems, shall cease to have access to the System, and shall return to NeHII all hardware, software and documentation provided by or on behalf of NeHII.

- (b) All the provisions of Section 9, Confidential Information; Section 10, Warranty, Disclaimer and Limitation of Liability; and Section 12.7, Obligations after Termination and any other term that by its nature provides for survival shall survive after termination. In addition, where the terms of this Agreement specify that certain provisions will survive termination under certain conditions, those provisions shall survive under the applicable conditions.

13. Dispute Resolution.

- 13.1 NeHII and Participant understand and agree that the implementation of this Agreement will be enhanced by the timely and open resolution of any disputes or disagreements between such Parties.
- 13.2 Each party hereto agrees to use its best efforts to cause any disputes or disagreements between such Parties to be considered, negotiated in good faith, and resolved as soon as possible.
- 13.3 In the event that any dispute or disagreement between the Parties cannot be resolved to the satisfaction of NeHII's project manager and Participant's project manager within ten (10) days after either such project manager has notified the other in writing of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred in writing to the Vice-President of Participant and the Executive Vice-President of NeHII (or their respective successors) for consideration. In the event that such officers of Participant and NeHII cannot resolve such dispute or disagreement to their mutual satisfaction within ten (10) days after the latter person has received written notice of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred to in writing to the President of Participant and the Chief Executive Officer of NeHII (or their respective successors) for consideration.
- 13.4 No resolution or attempted resolution of any dispute or disagreement pursuant to this Article shall be deemed to be a waiver of any term or provision of this Agreement or consent to any breach or default unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Further, nothing in this Section 13 shall be deemed to limit a party's access to the court system to pursue a remedy that is limited to injunctive relief.
- 14. Applicable Law.** The interpretation of this Agreement and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of Nebraska. If any action or other proceeding is brought on or in connection with this Agreement, the venue of such action shall be exclusively in Douglas County, Nebraska.
- 15. Legal Compliance.** The Parties acknowledge that nothing in this Agreement obligates Participant to refer patients or business to any other participant in the System, and Participant's participation in the System shall not be affected by the value or volume of referrals or other business, if any, between Participant and any other participant in the System.
- 16. No Assignment.** This Agreement may not be assigned or transferred by the Participant without the prior written consent of NeHII. This Agreement shall inure to the benefit of and bind successors and permitted assigns of Participant and NeHII. In no event shall consent to assignment be conditioned upon the payment of any fee; however, if Participant assigns or transfers its rights and obligations under this Agreement it must be to an entity who meets the eligibility requirements set forth in Section 2.4.

- 17. **Supervening Circumstances.** No party to this Agreement shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. The occurrence of a force majeure event does not limit or otherwise affect NeHII’s obligation to implement its disaster recovery and business continuation plans.

- 18. **Severability.** Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.

- 19. **Notices.** All notices required or permitted under this Agreement shall be in writing and sent to the other party at the address specified below or to such other address as either party may substitute from time to time by written notice to the other and shall be deemed given upon receipt of such notice whether by certified mail, postage prepaid, or personal or courier delivery as follows:
 - (i) If to NeHII: 6825 Pine Street
Suite 354, MS C6
Omaha, NE 68106

 - _____
 - Attn: Chris Henkenius
 - (ii) If to Participant: _____

 - _____
 - _____
 - Attn: _____
 - with a copy to: _____

 - _____
 - _____
 - Attn: _____

- 20. **Waiver.** No term of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

- 21. **Complete Understanding.** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement, and there are no other written or oral understandings or promises between the Parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement.
- 21.2 All modifications or amendments to this Agreement shall be in writing, contained in a document whose sole purpose is to amend or modify this Agreement, and signed by authorized representatives of the respective Parties.

- 22. **Intended Third-Party Beneficiaries.** It is the explicit intention of the parties hereto that all Other Participants and their respective successors and assigns are third-party beneficiaries of this Agreement and shall be entitled to bring any action to enforce any provision of this Agreement against Participant.

- 23. Advice of Counsel.** Each party acknowledges having: (a) fully read this Agreement in its entirety; (b) had full opportunity to study and review this Agreement; (c) been advised that counsel for NeHII has acted solely on NeHII's behalf in connection with the negotiation, preparation, and execution of this Agreement; (d) been advised that all Parties have the right to consult and should consult independent counsel respecting their rights and duties under this Agreement; and (e) had access to all such information as has been requested.
- 24. Signature Authority.** The individuals executing this represent and warrant that they are competent and capable of entering into a binding contract, and that they are authorized to execute this Agreement on behalf of the Parties. Notwithstanding the foregoing, the signatory for Participant must be one of its corporate officers.
- 25. No Medicare Exclusion.** Participant hereby represents and warrants that it is not and at no time has been excluded from participation in any federally-funded health care program, including Medicare and Medicaid. Participant hereby agrees to immediately notify NeHII of any threatened, proposed, or actual exclusion from any federally-funded program, including Medicare or Medicaid. In the event that Participant is excluded from any federally-funded health care program during the term of this Agreement, or if at any time after the Effective Date of this Agreement, it is determined that Participant is in breach of this section, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate. NeHII shall screen all of its current and prospective owners, legal entities, officers, directors, employees, contractors, and agents ("Screened Persons") against (a) the United States Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities (available through the Internet at <http://www.oig.hhs.gov> <<http://www.oig.hhs.gov/>), and (b) the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://www.epls.gov> <<http://www.epls.gov/>) (collectively, the "Exclusion Lists") to ensure that none of the Screened Persons (y) are currently excluded, debarred, suspended, or otherwise ineligible to participate in Federal healthcare programs or in Federal procurement or nonprocurement programs, or (z) have been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but have not yet been excluded, debarred, suspended, or otherwise declared ineligible (each, an "Ineligible Person"). If, at any time during the term of this Agreement any Screened Person becomes an Ineligible Person or proposed to be an Ineligible Person, NeHII shall immediately notify Participant of the same. Screened Persons shall not include any employee, contractor or agent who is not providing Services under this Agreement.
- 26. Definitions.** For the purposes of this Agreement, the terms set forth in this section shall have the meanings assigned to them below. Terms not defined below (whether or not capitalized) shall have the definitions given them in HIPAA, unless the context requires otherwise.

"All Participants" means the Participant and all Other Participants.

"Authorized User Data" shall mean Participant's Shared Information, Participant's Confidential Information, and any other data and information provided to NeHII by Authorized Users at the System, Services or otherwise.

"Authorized Users" means those members of Participant's Workforce (including employees, volunteers, members of its medical staff, its designated outsource provider and any other persons having access to the System by virtue of their relationship with Participant) who are individually authorized by Participant to have access to the System to

assist Participant in providing treatment and obtaining payment for treatment, and to whom NeHII has assigned a unique identifier for access to the System.

"Confidential Information" means any information provided hereunder or in connection herewith regardless of the format or manner in which it is transmitted concerning either party's business, financial affairs, current or future products or technology, trade secrets, workforce, customers, identity of patients, the content of any medical records, information regarding Medicare, Medicaid and any other third party payor claims submission and reimbursements or any other information that is treated or designated by such Party as confidential or proprietary, or would reasonably be viewed as confidential or as having value to a competitor of such Party. Confidential Information shall not include information that becomes publicly available or that becomes known to the general public other than as a result of a breach of an agreement of confidentiality.

"Documentation" means the written specifications and user and technical manuals provided by NeHII regarding the functionality and operation of the System.

"Health Care Payer" means a health insurer, health plan or other entity that pays the cost of health care and is subject to HIPAA.

"Health Care Provider" means a person or organization that is a health care provider under HIPAA and is licensed or otherwise permitted to provide health care items and services under applicable state law.

"HIPAA" means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act, and the regulations promulgated thereunder, including the Privacy Rule and the Security Rule.

"HIPAA Business Associate Agreement" means the agreement set forth in Attachment 4, which may be amended from time to time by [HIE] and the Participant.

"HITECH Act" means Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).

"Miscellaneous Charges" means the miscellaneous charges set forth in Attachment 3, which may be changed in accordance with this Agreement. "NeHII's Authorized Personnel" means NeHII's employees and independent contractors under confidentiality obligations on terms substantially similar with the confidentiality provisions contained in this Agreement.

"Other Participant" means other entities that have signed have access to the System and have signed a participation agreement containing an obligation, on terms substantially similar to those contained in this Agreement, to comply with the Policies and Procedures and to be responsible for any business associate, contractor or workforce member who accesses and uses the System or Services as Authorized Users on its behalf.

"Participant ID" means a unique user identification assigned to an individual.

"Participant's Shared Information" means health information relating to Participant's patients or enrollees that Participant makes available to other users of the System.

"Policies and Procedures" means NeHII's rules, regulations, policies and procedures for access to and use of the System, as from time to time posted electronically on the System or otherwise furnished to Participant.

"Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

"Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

"Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, subparts A and C.

"Service Fee" means the service fees set forth in Attachment 3, which may be changed in accordance with this Agreement.

"Services" means the services and access listed in Attachment 1 to this Agreement.

"Subcontractor" means any third party engaged by NeHII to assist in the in the design or operation of the System or in the performance of NeHII's obligations under this Agreement.

"System" means the electronic communication network operated by NeHII, including all hardware provided by NeHII, all software used or provided by NeHII, and all documentation provided by NeHII in connection with the System, paper or electronic, all as more specifically described on Attachment 2 to this Agreement.

"Technical Requirements" means the hardware, software and communications systems necessary to use the System. The Technical Requirements may be changed from time to time by NeHII in accordance with this Agreement.

"Term" means the initial term and all renewal terms of this Agreement.

"Third Party Software and Services" means the software and services that are part of the System and provided by third parties. The Third Party Software and Services as of the Effective Date are set forth on Attachment 2.

27. Rules of Construction.

- 27.1 Words used herein, regardless of the number and gender used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires, and, as used herein, unless the context requires otherwise, the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 27.2 A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted.
- 27.3 The term "including" shall be deemed to mean "including without limitation."
- 27.4 Article and section headings used in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 27.5 This Agreement is among sophisticated and knowledgeable Parties and is entered into by the Parties in reliance upon the economic and legal bargains contained herein and shall be interpreted and construed in a fair and impartial manner without regard to such factors

as the party who prepared, or caused the preparation of, this Agreement or the relative bargaining power of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate original as of the date(s) indicated below:

Effective Date: _____.

Participant: _____

Signature: _____

Printed Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

Date Signed: _____

NeHII: NeHII, Inc.

Signature: _____

Printed Name: _____

Title: President, NeHII Board of Directors

Address: 6825 Pine Street

Suite 354, MS C6

Omaha, NE 68106

Phone: 402.346.1505

Fax: 402.346.6454

E-mail: _____

Date Signed: _____

Attachment 1: Services

NeHII will provide the following to Participant and/or Users:

- Access to the Elysium Exchange Product Components as set forth in this Agreement
- A training session for each User that will be offered multiple times to keep disruption to a minimum
- Help desk for application questions
- Work with vendor to resolve/mitigate identified issues
- Regular communication updates to Participant and Authorized Users
- Facilitate process changes and workflow updates
- Progress reports for Participant and Authorized Users on issues and resolutions

Attachment 2: Description of System

Elysium Exchange Product Components:

Elysium Exchange is the HIE framework that clinically networks legacy and EMR systems while managing patient identity, security, and the other requirements of a HIE.

- Elysium Patient Index (MPI) is the basis of a Patient Identity and Record Locator Service (RLS), which is able to find patient-related data across multiple sources. Reliable patient identification provides users with the ability to query for a patient's complete Virtual Health Record (VHR) when parts of the continuum of care record are scattered across the community.

- Elysium Directory manages user identities; authenticates and authorizes entities, users and their corresponding access privileges in the Health Information Exchange. Elysium Directory also provides for administration of user accounts, complete auditing and reporting of entity and user activities.
- Security is enforced at many levels including: VPNs and SSL to protect private health information as it is exchanged between health care partners, a robust role-based security system with configurable access controls; and enhanced reporting to ensure users meet the requirements of HIPAA and their local privacy regulations.

Elysium EdgeServer works with legacy systems, preserving current IT infrastructure investments. Using data feeds from the existing interface engine or other data source, EdgeServer is a single gateway to ambulatory care, avoiding the need for expensive and time intensive point-to-point connections to physicians. Data is automatically pushed to EMRs and made available to queries from the hospital, regional, state or National Health Information Network (NHIN). EdgeServers protect and isolate existing facility systems from queries, while maintaining data ownership.

Elysium Interoperability Hub (I-HUB™) builds a clinical network from disparate certified EMRs and legacy systems enabling complete interoperability and full collaboration on patient care. Physician practices are immediately able to exchange data such as referrals, and can also provide specific data for query by community-wide physicians; providing the entire community, regional, state or national HIES with a complete picture of health for a patient.

Elysium Virtual Health Record (VHR) retrieves and displays patient data from a variety of source systems. All available patient data from across the continuum of care is pulled together virtually, to create a complete electronic health record - accessible with a single click by any authorized physician.

Elysium EMR is the most popular HIE-interoperable EMR in the country. This web based solution immediately connects physicians not already electronic and provides them with secure exchange and EMR capabilities - all for less than \$100 a month.

- **Clinical Messaging®** is the foundation of Axolotl's HIE based Elysium EMR. Physicians and staff are electronically connected, communicating patient encounters, memos, referrals, authorization requests and much more - to recipients within their practice, with Elysium or EMR users in another practice, and for those physicians not electronic, to a fax.
- **Inbox Management** allows physicians and staff to easily manage all incoming data - like secure email, on steroids.
- **Workflow Management** options provide automation and one click buttons to automatically route and process documents based on type, patient or result.
- **Continuity of Care Records** displays patient information from the continuum of care.
- **Clinical Decision Support**
- **Referrals and Consults** can be delivered electronically, directly to the specialist - no more faxing, waiting or incomplete information.
- **e-Prescribing** capabilities help physicians meet all incentive and reimbursement opportunities. Connected through Surescripts to the National Pharmacy Health Information Network, Elysium displays a patient's aggregated medication history, eligibility, and formulary data. Prescribers are automatically notified of interactions, dosage issues and duplicate prescriptions and refills are practically automated.
- **e-Signature** allows physicians to approve transcribed reports from anywhere, routing approved reports directly to medical records.
- **Patient Summaries** are complete, aggregated from all source systems.
- **E-Ordering** allows for electronic exchange and central management of referrals, radiology, lab

and other orders.

- • **Encounter Recording**
- • **Disease Reporting** is automated as abnormal results are delivered directly from the labs to public health.
- • **Health Alerts** arrive electronically, immediately from public health.
- • **Auto Print and Processing** for reports, results, etc. that still need to be filed in paper charts.

Attachment 3: Service Fees

NeHII will provide a state-wide integration engine to connect Electronic Medical Record (“EMR”) gateways throughout Nebraska. In addition, NeHII will provide user licenses to physicians across the state to access clinical information at the point of patient care. The costs for these gateway and physician licenses are below:

Hospital Size (# of beds) Cost per month Annual fee

1-25 beds	\$1,500	\$18,000
26-50 beds	\$2,000	\$24,000
51-150 beds	\$2,500	\$30,000
150-300 beds	\$4,000	\$48,000
301-500 Beds	\$8,000	\$96,000
> 500 beds	\$12,000	\$144,000

In addition, participating Health Plans with access to the system will be required to pay license fees of

\$25,000 per year, plus \$1.00 per member per year.

Physician License costs are as follows:

License Costs - Per Month Physician

Physician Connection	\$10
VHR License	\$10
eRx Only	\$10
EMR	\$20
EMR w/ eRx	\$31.66

Attachment 4: Business Associate Amendment

THIS BUSINESS ASSOCIATE AGREEMENT ("Amendment") amends and is made a part of the NeHII Data Sharing Participation Agreement ("Participation Agreement") between [Participant Full Name] ("Covered Entity") and NeHII, Inc. ("Business Associate").

1. **Definitions.** Terms used but not otherwise defined in this Amendment shall have the meaning ascribed in section 160.103, 164.501, or elsewhere, in the Regulations.
 - a. "**ePHI**" means PHI that is maintained or transmitted in electronic media.
 - b. "**Breach**" means, with respect to PHI, the impermissible acquisition, access, use or disclosure of Unsecured PHI which compromises the security or privacy of the PHI.
 - c. "**Business Associate Functions**" means all functions performed by Business Associate under the Participation Agreement on behalf of Covered Entity which involve the creation of, access to, use or disclosure of PHI by Business Associate or its agents or subcontractors.

- d. **"HIPAA"** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d to 1320d-7, and future amendment thereto and the Regulations issued thereunder.
 - e. **"PHI"** means protected health information as defined in the Regulations, which is created, obtained or used by Business Associate in the performance of one or more Business Associate Functions for Covered Entity.
 - f. **"Regulations"** means the final Regulations implementing the privacy and security provisions of HIPAA as amended from time to time. The Regulations are presently codified at 45 C.F.R. Parts 160, 162 and 164.
 - g. **"Security Incident"** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
 - h. **"Unsecured PHI"** means PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals by one or more of the methods outlined by the Department of Health and Human Services in 74 Fed. Reg. 70 (2009) (to be codified at 45 C.F.R. §160 and §164).
2. **Purpose.** [Participant Full Name] is a Covered Entity under HIPAA and NeHII, Inc. is its Business Associate. HIPAA requires Covered Entity to obtain satisfactory written contractual assurances from its business associates before furnishing them with PHI or permitting them to obtain or create PHI to perform business associate functions. This Amendment is entered into to provide Covered Entity with the contractual assurances required under HIPAA.
3. **Permitted Uses and Disclosures of PHI.** Business Associate shall only use and disclose PHI for the following purposes:
- a. To perform Business Associate Functions.
 - b. As needed for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
4. **Special Conditions on Disclosure for Business Associate's Purposes.** Before Business Associate may *disclose* PHI to another party for a reason described in subparagraph 3b, one of the following two conditions must be met; either -
- a. the disclosure must be *required by law*, or
 - b. Business Associate must obtain *reasonable assurances* from the person to whom the PHI is disclosed that such person will safeguard the PHI and further use and disclose it only as required by law or for the purpose for which Business Associate disclosed it to such person; and such person must agree in writing to notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
5. **Assurances of Business Associate.** As an express condition of performing Business Associate Functions, Business Associate agrees to:
- a. Comply with the requirements of Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 17921-17954, which are applicable to Business Associate, and comply with all regulations issued by the Department of Health and Human Services (HHS) to implement HITECH, as of the date by which Business Associate is required to comply with HITECH and the related regulations. Such requirements are hereby incorporated by reference into this Business Associate Amendment.
 - b. Use and disclose PHI only as permitted or required by this Amendment, or as otherwise required by law. Business Associate shall not use or disclose

- information in a manner that would violate any applicable law if done by Covered Entity.
- c. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Amendment.
 - d. Report to Covered Entity's designated privacy official, without unreasonable delay but in no event more than five (5) business days of discovery by Business Associate, any acquisition, access, use or disclosure of PHI not provided for in this Amendment or not permitted under the Regulations, including any impermissible access, acquisition, use or disclosure that is a Breach of Unsecured PHI, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall conduct a risk assessment with respect to any impermissible access, acquisition, use or disclosure to determine if there is a significant risk of financial, reputational or other harm to the individual whose PHI was impermissibly acquired, accessed, used or disclosed. Business Associate shall notify Covered Entity of any such impermissible access, acquisition, use or disclosure, including the following information in such notice:
 - i. A brief description of how the impermissible access, acquisition, use or disclosure occurred and how and when it was discovered.
 - ii. A description of whether Unsecured PHI was involved in the impermissible access, acquisition, use or disclosure, and the results of Business Associate's risk assessment.
 - iii. The steps Business Associate is taking to further investigate the impermissible access, acquisition, use or disclosure, to mitigate losses, and to protect against further impermissible access, acquisition, use or disclosure. Business Associate shall cooperate with Covered Entity in mitigating any harmful effects of any such impermissible access, acquisition, use or disclosure, and in making any required notification to individuals in the case of a Breach as determined by Covered Entity. Business Associate shall pay for the costs of such mitigation and notification if the Breach was due to a violation of this Amendment, or the negligent or intentional actions of Business Associate.
 - e. Provide individuals with access to and copies of PHI maintained by Business Associate in designated record sets, and limit fees for access and copying, all in accordance with Covered Entity's obligations to individuals under 45 C.F.R. § 164.524.
 - f. Notify Covered Entity within three (3) business days of any request by individuals to amend PHI maintained by Business Associate in designated record sets, direct the requesting individual to Covered Entity for handling of such request, cooperate with Covered Entity in the handling of such request, and incorporate any amendment accepted by Covered Entity in accordance with §164.526 of the Regulations. Business Associate is not authorized to independently agree to any amendment of PHI.
 - g. Maintain a record of those disclosures of PHI by Business Associate or its agents or subcontractors which are subject to the individual's right to an accounting under § 164.528 of the Regulations and report such disclosures to Covered Entity within five (5) business days of request by Covered Entity in a form permitting Covered Entity to respond to an individual's request for an accounting.

- h. Make its internal practices, books and records relating to the use and/or disclosure of PHI available to the Secretary of HHS or his or her designees for purposes of determining Covered Entity's compliance with the Regulations.
 - i. Return to Covered Entity or destroy (and not retain a copy) all PHI in its possession, upon the termination of the Participation Agreement or as soon as such PHI is no longer needed by Business Associate to perform its responsibilities hereunder, whichever comes first, and require its agents and subcontractors to do likewise. To the extent that return or destruction is not feasible, the protections of this Amendment shall remain in effect for so long as Business Associate or its agents or subcontractors have possession of or access to such PHI, and Business Associate agrees to limit further uses and disclosures of the PHI to those purpose which make return or destruction infeasible.
 - j. Ensure that all agents and subcontractors who will create, receive, use or disclose PHI to perform a Business Associate Function under this Amendment agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate.
 - k. Ensure that all other agents and contractors of Business Associate who have access to PHI to perform other services (other than Business Associate Functions) to Business Associate agree in writing to take reasonable steps to safeguard the privacy of PHI.
 - l. Comply with any voluntary restriction on use or disclosure of PHI accepted by Covered Entity under § 164.522(a) of the Regulations which is properly communicated to Business Associate.
 - m. Comply with any reasonable requests by individuals under § 164.522(b) of the Regulations to receive communications of PHI by alternative means or at alternate locations when communicated to Business Associate by Covered Entity or directly by the individual.
 - n. Limit the use and disclosure of PHI for purposes described in this Amendment to the minimum necessary to perform the required function. Business Associate shall comply with any additional requirements for the determination of minimum necessary as are required from time to time by the Regulations, as amended.
6. **Security Assurances of Business Associate.** If Business Associate will create, receive, maintain or transmit ePHI on behalf of Covered Entity, it further agrees to:
- a. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI.
 - b. Ensure that any agent, including a subcontractor, to whom it provides ePHI, or with whom it contracts to create, receive, maintain or transmit ePHI, agrees to implement reasonable and appropriate safeguards to protect such ePHI.
 - c. Report to Covered Entity any Security Incident of which Business Associate becomes aware.
 - d. Comply with any other required provision of the Regulations, as amended by the HITECH Act.
7. **Responsibilities of Covered Entity.** Covered Entity agrees to:
- a. Notify Business Associate promptly if Covered Entity agrees to any voluntary restrictions on the use or disclosure of PHI which will affect Business Associate's use or disclosure of PHI under the Participation Agreement.
 - b. Notify Business Associate of any reasonable requests by individuals under §164.522(b) of the Regulations to receive communications of PHI by alternative means or at alternative locations, if such requests will affect Business Associate's services.

- c. Provide Business Associate with a copy of any amendment to PHI which is accepted by Covered Entity under §164.526 of the Regulations which Covered Entity believes will apply to PHI maintained by Business Associate in designated record sets.
8. **Supervening Law.** Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Business Associate, amend this Amendment in such manner as it determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty (30) days of Covered Entity's notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either party may terminate the Participation Agreement on not less than thirty (30) days' written notice to the other. If not so terminated, the amendment or amendments proposed by Covered Entity shall become effective.
9. **Term and Termination.**
 - a. **Term.** This Amendment shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, including return or destruction of all PHI in Business Associate's possession (or in the possession of Business Associate's agents and subcontractors), unless sooner terminated as provided herein. It is expressly agreed that the terms and conditions of this Amendment designed to safeguard PHI shall survive expiration or other termination of the Participation Agreement and shall continue in effect until Business Associate had performed all obligations under this Amendment.
 - b. **Termination by Covered Entity.** Covered Entity may immediately terminate the Participation Agreements, if Covered Entity makes the determination that Business Associate has breached a material term of this Amendment. Alternatively, Covered Entity may choose to provide Business Associate with written notice of the existence of an alleged material breach, and afford Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure to take reasonable steps to cure the breach is grounds for the immediate termination of this Amendment.
 - c. **Termination by Business Associate.** If Business Associate determines that Covered Entity has breached a material term of this Amendment, Business Associate shall notify Covered Entity and provide Covered Entity an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure of Covered Entity to take reasonable steps to cure the breach is grounds for the immediate termination of this Amendment.
 - d. **Return/Destruction infeasible.** In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Amendment to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
10. **Miscellaneous.**
 - a. **Covered Entity.** For purposes of this Amendment, and as applicable to the Business Associate Functions of Business Associate under all Service

Amendments covered by this Amendment, references to Covered Entity shall include the named Covered Entity and all other entities covered by a joint Notice of Privacy Practices with Covered Entity, whether as part of an affiliated covered entity or an organized health care arrangement.

- b. **Survival.** The respective rights and obligations of Business Associate and Covered Entity hereunder shall survive termination of this Amendment according to the terms hereof and the obligations imposed on Covered Entity under HIPAA.
- c. **Interpretation; Amendment.** This Amendment shall be interpreted and applied in a manner consistent with Covered Entity’s obligations under HIPAA. Except as provided in Section 8 of this Amendment, all amendments shall be in writing and signed by both parties, except that this Amendment shall attach to additional Participation Agreements entered into between the parties in the future without the necessity of amending this Amendment each time. This Amendment is intended to cover the entire Business Associate *relationship* between the parties, as amended, from time to time, through Participation Agreements or other means.
- d. **Waiver.** A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Amendment is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies or obligations.

This Amendment is effective 20_ .

IN WITNESS WHEREOF, each of the undersigned has caused this Amendment to be duly executed in its name and on its behalf.

Covered Entity: [Participant Full Name]

Signature: _____

Printed Name: _____

Title: _____

Date Signed: _____

Business Associate: NeHII, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date Signed: _____

Attachment 3 - REDWOOD MEDNET, INC.

ELECTRONIC HEALTH INFORMATION EXCHANGE PARTICIPATION AGREEMENT

Table of Contents

1. Definitions.....1

2. Amendments to Agreement and Policies and Procedures.....2

2.1 Amendments Required by Law.2

2.2 Other Amendments.2

2.3 Termination Based on Objection to Change.....2

3. Term and Termination.3

3.1 Term. 3

3.2 Termination Upon Cessation of Business..... 3

3.3 Termination Upon Anniversary. 3

3.4 Termination Upon Material Breach. 3

3.5 Effect of Termination..... 3

3.6 Survival of Provisions..... 3

4. Authorized Users.3

4.1 Identification of Authorized Users..... 3

4.2 Certification of Authorized Users..... 3

4.3 Passwords and Other Security Mechanisms. 4

4.4 Responsibility for Conduct of Participant and Authorized Users..... 4

4.5 Termination of Authorized Users. 4

5. Data Recipient’s Rights and Obligations.....4

5.1 Grant of Rights..... 4

5.2 Permitted Uses. 5

5.3 Prohibited Uses. 5

6. Data Provider’s Rights and Obligations.5

6.1 Grant of Rights..... 5

6.2 Provision of Data. 5

6.3 Measures to Assure Accuracy of Data..... 5

6.4 License. 5

6.5 Limitations on Use of Patient Data..... 6

7. Technology License Agreement.6

8. Protected Health Information.....6

8.1 Compliance with Policies and Procedures..... 6

8.2 Legal Requirements. 6

8.3 Reporting of Serious Breaches..... 6

9. Other Obligations of the Participant.6

9.1 Compliance with Laws and Regulations..... 6

9.2 System Security. 6

9.3 Participant’s Equipment..... 6

9.4 Malicious Software, Viruses, and Other Threats. 7

9.5 Training..... 7

10. Redwood MedNet’s Operations and Responsibilities.7
 10.1 Compliance with Terms and Conditions..... 7
 10.2 Maintenance of System..... 7
 10.3 Operations Committee. 7
 10.3.1 Organization.....7
 10.3.2 Powers.....8
 11. Fees and Other Charges.8
 11.1 Service Fees. 8
 11.2 Other Charges. 8
 11.3 Payment..... 8
 11.4 Late Charges. 8
 11.5 Suspension of Service. 8
 11.6 Taxes. 8
 11.7 Other Charges and Expenses. 9
 12. Proprietary Information.9
 12.1 Scope of Proprietary Information. 9
 12.2 Nondisclosure of Proprietary Information. 9
 12.3 Equitable Remedies.9
 12.4 Notice of Disclosure. 10
 13. Disclaimers, Exclusions of Warranties and Limitations of Liability.....10
 13.1 Carrier Lines. 10
 13.2 No Warranties. 10
 13.3 Other Participants..... 10
 13.4 Participant’s Actions..... 11
 13.5 Unauthorized Access; Lost or Corrupt Data..... 11
 13.6 Inaccurate Data. 11
 13.7 Patient Care..... 11
 13.8 Limitation of Liability..... 11
 14. Insurance and Indemnification.....12
 14.1 Insurance. 12
 14.2 Indemnification. 12
 14.2.1 Indemnification, Generally.12
 14.2.2 Specific Indemnities.....12
 14.3 Rules for Indemnification. 12
 15. General Provisions.13
 15.1 Applicable Law..... 13
 15.2 Non-Assignability. 13
 15.3 Third-Party Beneficiaries..... 13
 15.4 Supervening Circumstances..... 13
 15.5 Severability. 13
 15.6 Notices. 13
 15.7 Waiver..... 13
 15.8 Complete Understanding. 13

REDWOOD MEDNET, INC.

ELECTRONIC HEALTH INFORMATION EXCHANGE PARTICIPATION AGREEMENT
THIS PARTICIPATION AGREEMENT (“Agreement”) is made and entered into as of the Effective Date set forth on the signature page hereof (“Effective Date”), by and between REDWOOD MEDNET, INC., a California nonprofit public benefit corporation (“Redwood MedNet”), and the participant named on the Signature Page (“Participant”), with reference to the following facts:

- A. Redwood MedNet is organized and operated for the purpose of facilitating the secure and appropriate sharing of electronic health files and clinical data among health care providers and other participants in Northern California for treatment, payment, operations, public health and research-related purposes, in an atmosphere of transparency and mutual trust. Redwood MedNet may in the future participate in other regional and national electronic health information exchanges, such as the National Health Information Network (“NHIN”).
- B. The Participant wishes to participate in the electronic health information exchange facilitated by Redwood MedNet, in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION of the recitals, covenants, conditions and promises herein contained, and for other valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Redwood MedNet and the Participant hereby agree as follows:

1. Definitions. The meanings of all terms used in this Agreement shall be consistent with the defined terms set forth in this Section 1 (Definitions).

“Authorized User” means an individual, *i.e.*, a natural person, who is authorized by a Participant to use the Services on behalf of that Participant, including without limitation, an employee of the Participant and/or a credentialed member of the Participant’s medical staff. If the Participant is an individual, *e.g.*, a physician, then that individual is both a Participant and an Authorized User.

“Data Provider” means a Participant that is registered to provide information electronically for use through the Services.

“Data Recipient” means a Participant that is registered to use the Services to obtain health information electronically.

“Effective Date” means the start of the Participation Agreement as defined on the signature page

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 CFR Parts 160 and 164, as amended by the American Recovery and Reinvestment Act, Public Law 111-5.

“Operations Committee” means the committee described in Section 10.3 (Operations Committee).

“Participant” means a party that has entered into a Participation Agreement with Redwood MedNet to act as a Data Provider and/or as a Data Recipient.

“Participation Agreement” means a legally binding written agreement pursuant to which a Participant has agreed to act as a Data Provider and/or as a Data Recipient in accordance with terms and conditions that are not inconsistent with the terms and conditions of this Agreement. This Agreement is a Participation Agreement.

“Patient Data” means electronic health, demographic and related information provided by a Data Provider to Data Recipients pursuant to Section 6.2 (Provision of Data).

“Policies and Procedures” means those policies and procedures adopted by Redwood MedNet to describe in detail the Services and the System and the terms and conditions pursuant to which they shall be operated.

“Services” means the Redwood MedNet electronic health information delivery and aggregation services and/or software described in the Policies and Procedures.

“System” means Redwood MedNet’s electronic health information exchange infrastructure, as described in the Policies and Procedures.

2. Amendments to Agreement and Policies and Procedures.
 - 2.1 Amendments Required by Law. Redwood MedNet may amend, or repeal and replace, this Agreement or the Policies and Procedures upon notice to the Participant at any time that Redwood MedNet determines that such change is required to comply with applicable laws and regulations.
 - 2.2 Other Amendments. Redwood MedNet may amend, or repeal and replace, this Agreement or the Policies and Procedures at any time that Redwood MedNet determines it is desirable to do so; provided, that Redwood MedNet shall notify the Participant of any material changes to this Agreement or the Policies and Procedures at least forty five (45) days prior to the implementation of the change.
 - 2.3 Termination Based on Objection to Change. If a change to this Agreement or the Policies and Procedures, other than a change made pursuant to Section 2.1 (Amendments Required by Law) affects a material right or obligation of the Participant, and the Participant objects to that change, the Participant may terminate this Agreement by giving Redwood MedNet written notice within fifteen (15) days following Redwood MedNet’s notice of the change. Such termination of this Agreement shall be effective as of the effective date of the change to which the Participant objects; provided, however, that following receipt of the Participant’s notice of its objection to the change, Redwood MedNet may decide in its discretion to refrain from implementing the change to which the Participant has objected, in which event this Agreement shall not be terminated and shall continue in force and effect.
3. Term and Termination.
 - 3.1 Term. The term of this Agreement (the “Term”) shall commence on the date on which Redwood MedNet gives notice thereof to the Participant (the “Effective Date”), and shall continue through and until the termination of this Agreement pursuant to this Section 3 (Term and Termination).
 - 3.2 Termination Upon Cessation of Business. Redwood MedNet may terminate this Agreement by notice to the Participant at any time that Redwood MedNet ceases to provide the Services.
 - 3.3 Termination Upon Anniversary. Either Redwood MedNet or the Participant may terminate this Agreement at any time without cause effective as of the next anniversary of the Effective Date, by giving not less than forty five (45) days prior notice to the other.
 - 3.4 Termination Upon Material Breach. Either Redwood MedNet or the Participant (the “Terminating Party”) may terminate this Agreement upon the failure of the other party (the “Breaching Party”) to perform a material responsibility arising out of this Agreement, and that failure continues uncured for a period of sixty (60) days after the Terminating Party has given the Breaching Party notice of that failure and requested that the Breaching Party cure that failure. Without limiting the generality of the foregoing, either party may terminate this Agreement upon a failure by the other party to correct a Serious Breach of Confidentiality or Security within sixty (60) days following notice thereof from the other.

- 3.5 Effect of Termination. Upon any termination of this Agreement, the Participant shall cease to be a Participant in Redwood MedNet's health information exchange and thereupon and thereafter neither the Participant nor its Authorized Users shall have any rights to use the System or the Services. Certain provisions of this Agreement shall continue to apply to the former Participant and its Authorized Users following that termination, as described in Section
- 3.6 (Survival of Provisions).
- 3.6 Survival of Provisions. The following provisions of this Agreement shall survive any termination hereof: Section 4.4 (Responsibility for Conduct of Participant and Authorized Users), Section 8 (Protected Health Information), Section 12 (Proprietary Information), Section 13.8 (Limitation on Liability) and Section 14.2 (Indemnification).
4. Authorized Users.
- 4.1 Identification of Authorized Users. The Participant shall provide Redwood MedNet with a list identifying all that Participant's Authorized Users, in accordance with the requirements described in the Policies and Procedures. The Participant shall restrict access to the System and, if applicable, use of the Services, only to the Authorized Users that the Participant has so identified to Redwood MedNet. The Participant shall inform Redwood MedNet in writing within two (2) business days whenever an Authorized User is added or removed.
- 4.2 Certification of Authorized Users. The Participant shall certify to Redwood MedNet that each of the Participant's Authorized Users:
- a) Has completed a training program conducted by the Participant as described in the Policies and Procedures;
 - b) Will be permitted by the Participant to use the Services and the System only as reasonably necessary for the performance of the Participant's activities as described in the Policies and Procedures;
 - c) Has agreed not to disclose to any other person any passwords and/or other security measures issued to the Authorized User pursuant to Section 4.3 (Passwords and Other Security Mechanisms); and
 - d) Has acknowledged in writing that the Authorized User's failure to comply with this Agreement and the Policies and Procedures may result in the withdrawal of privileges to use the Services and the System and may constitute cause for disciplinary action by Participant.
- 4.3 Passwords and Other Security Mechanisms. Redwood MedNet shall issue a user name and password and/or other security measures, as described in the Policies and Procedures, to each Authorized User that shall permit the Authorized User to access the System and use the Services. Redwood MedNet shall provide each such user name and password and/or other security measures to the Participant and the Participant shall be responsible to communicate that information to the appropriate Authorized User. When the Participant informs Redwood MedNet of the removal of any Authorized User, Redwood MedNet shall de-activate the user name and password and/or other security measures of such individual.
- 4.4 Responsibility for Conduct of Participant and Authorized Users. The Participant shall be solely responsible for all acts and omissions of the Participant and/or the Participant's Authorized Users, and all other individuals who access the System and/or use the Services either through that Participant or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from that Participant or any of that Participant's Authorized Users, with respect to the System, the Services and/or any confidential and/or other information accessed in connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of that Participant.
- 4.5 Termination of Authorized Users. The Participant shall require that all of its

Authorized Users use the System and the Services only in accordance with this Agreement and the Policies and Procedures, including without limitation the provisions thereof governing the confidentiality, privacy and security of protected health information. The Participant shall discipline appropriately any of its Authorized Users who fail to act in accordance with this Agreement or the Policies and Procedures in accordance with that Participant's disciplinary policies and procedures.

5. Data Recipient's Rights and Obligations. If the Participant is registered with Redwood MedNet to act as a Data Recipient, the terms of this Section 5 (Data Recipient's Rights and Obligations) shall apply.
 - 5.1 Grant of Rights. A Data Recipient may use the System and the Services for the permitted uses described in Section 5.2 (Permitted Uses), subject to the Data Recipient's full compliance with this Agreement and the Policies and Procedures. Redwood MedNet retains all ownership and other rights to the System, the Services and all the components thereof. A Data Recipient shall not obtain any rights to the System except for the limited rights to use the System expressly granted by this Agreement.
 - 5.2 Permitted Uses. A Data Recipient may use the System and the Services for which that Data Recipient has registered only for the permitted purposes described in the Policies and Procedures.
 - 5.3 Prohibited Uses. A Data Recipient shall not use or permit the use of the System or the Services for any prohibited use described in the Policies and Procedures. Without limiting the foregoing, a Data Recipient shall not use the System or the Services for any purpose or in any manner that is prohibited by applicable federal and state laws and regulations.

6. Data Provider's Rights and Obligations.
 - 6.1 Grant of Rights. A Data Provider may use the System for the purposes of complying with the obligations described in this Section 6 (Data Provider's Rights and Obligations), subject to the Data Provider's full compliance with this Agreement and the Policies and Procedures. Redwood MedNet retains all ownership and other rights to the System, the Services and all the components thereof. A Data Provider shall not obtain any rights to the System except for the limited rights to use the System expressly granted by this Agreement.
 - 6.2 Provision of Data. A Data Provider shall provide through the System the patient data that the Data Provider has registered with Redwood MedNet to provide. Without limiting Section 9.1 (Compliance with Laws and Regulations), a Data Provider shall not use the system to make any disclosure of patient data through the System that is unauthorized or unlawful.
 - 6.3 Measures to Assure Accuracy of Data. A Data Provider shall, in accordance with the Policies and Procedures, use reasonable and appropriate efforts to assure that all data it provides to the System is accurate, free from serious error, reasonably complete, and provided in a timely manner.
 - 6.4 License. Subject to Section 6.5 (Limitations on Use of Patient Data), a Data Provider grants to Redwood MedNet a perpetual, fully-paid, worldwide, non-exclusive, royalty free right and license (i) to license and/or otherwise permit others to access through the System and/or the NHIN and use all Patient Data provided by the Data Provider in accordance with the terms and conditions of this Agreement and the Policies and Procedures, and (ii) to use such Patient Data to carry out Redwood MedNet's duties under Participation Agreements and the Policies and Procedures, including without limitation system administration, testing, problem identification and resolution, management of the System, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as

Redwood MedNet determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations. Subject to the foregoing, a Data Provider retains all other ownership rights it has to the Patient Data it provides pursuant to this Agreement.

- 6.5 Limitations on Use of Patient Data. Notwithstanding Section 6.4 (License), Patient Data provided by a Data Provider shall not be used for any of purpose that is prohibited by applicable laws and regulations.
7. Technology License Agreement. If Redwood MedNet determines that it is necessary in order to obtain and or use the software and/or hardware required to use the System, the Participant shall enter into one or more Technology License Agreement(s) in such form(s) as Redwood MedNet requires.
8. Protected Health Information.
 - 8.1 Compliance with Policies and Procedures. Redwood MedNet and the Participant shall comply with the standards for the confidentiality, security, and use of patient health information, including without limitation protected health information described in HIPAA, as provided in the Policies and Procedures. The Participant shall comply with such standards regardless of whether or not the Participant is a “covered entity” under HIPAA.
 - 8.2 Legal Requirements. Without limiting Section 8.1 (Compliance with Policies and Procedures), Redwood MedNet and the Participant shall comply with the requirements for the privacy, security, and use of patient health information imposed under HIPAA and under the laws of the State of California.
 - 8.3 Reporting of Serious Breaches. Redwood MedNet and the Participant shall report to the other any serious use or disclosure of Protected Health Information not provided for by this Agreement or the Policies and Procedures of which Redwood MedNet or that Participant becomes aware, and any security incident concerning electronic Protected Health Information (in either event, a “Serious Breach of Confidentiality or Security”). A “Serious Breach of Confidentiality or Security” is one that adversely affects (a) the viability of the System or the Services, (b) Redwood MedNet’s program of electronic health information exchange; (c) the trust among Participants or (d) Redwood MedNet’s or other Participants’ legal liability.
9. Other Obligations of the Participant.
 - 9.1 Compliance with Laws and Regulations. Without limiting any other provision of this Agreement requiring compliance with applicable laws and regulations, the Participant shall perform its roles and responsibilities hereunder in all respects in compliance with applicable federal, state, and local laws, ordinances and regulations.
 - 9.2 System Security. The Participant shall implement reasonable and appropriate security measures to limit unauthorized use of equipment through which access to the System and the Services may be gained, and to prevent unauthorized use or disclosure of Protected Health Information and other Patient Data.
 - 9.3 Participant’s Equipment. Except to the extent provided by the Technology License Agreement, the Participant shall be responsible for procuring all equipment and software necessary for it to access the System, use the Services, and provide to Redwood MedNet all information required to be provided by the Participant (“Participant’s Required Hardware and Software”). The Participant’s Required Hardware and Software shall conform to Redwood MedNet’s then-current specifications, as set forth in the Policies and Procedures. As part of the Participant’s obligation to provide Participant’s Required Hardware and Software, the Participant shall be responsible for ensuring that all that Participant’s computers to be used to interface with the System are properly configured, including but not limited to the operating system, web browser, and Internet connectivity.

- 9.4 Malicious Software, Viruses, and Other Threats. The Participant shall use reasonable efforts to ensure that its connection to and use of the System, including without limitation the medium containing any data or other information provided to the System, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or “malware,” viruses, worms, and Trojan Horses) which will disrupt the proper operation of the System or any part thereof or any hardware or software used by Redwood MedNet or other Participants in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the System or any part thereof or any hardware, software or data used by Redwood MedNet or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.
- 9.5 Training. The Participant shall provide appropriate and adequate training to all of the Participant’s personnel, including without limitation Authorized Users, in the use of the System and the Services, the requirements of this Agreement and the Policies and Procedures, the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including without limitation requirements imposed under HIPAA.
10. Redwood MedNet’s Operations and Responsibilities.
- 10.1 Compliance with Terms and Conditions. Redwood MedNet shall require that access to the System and the Services shall be limited to Participants and their Authorized Users, and that each Participant shall enter into a Participation Agreement with Redwood MedNet that provides with respect to that Participant as is provided in the following provisions of this Agreement: Section 3.4 (Termination Upon Material Breach), Section 3.6 (Survival of Provisions), Section 4 (Authorized Users), Section 5 (Data Recipient’s Rights and Obligations), Section 6 (Data Provider’s Rights and Obligations), Section 8 (Protected Health Information), Section 9 (Other Obligations of the Participant), Section 13 (Disclaimers, Exclusions of Warranties and Limitations of Liability), Section 14 (Insurance and Indemnification).
- 10.2 Maintenance of System. Redwood MedNet shall maintain the functionality of the System and the Services as described in the Policies and Procedures, and shall provide such service, security, and other updates as Redwood MedNet determines are appropriate from time to time.
- 10.3 Operations Committee.
- 10.3.1 Organization. Redwood MedNet shall form and maintain the Operations Committee, which shall act, as more specifically described in the Policies and Procedures, as a resource to Redwood MedNet and its Board of Directors in the administration of Redwood MedNet’s program of electronic health information exchange, including the development of the Policies and Procedures and the amendment, repeal or replacement of Participation Agreements and/or the Policies and Procedures.
- 10.3.2 Powers. The powers of the Operations Committee shall be advisory only, and no action considered by the Operations Committee shall be taken or not taken except with the approval of Redwood MedNet, acting either through its Board of Directors, management or staff.
- 10.4 Compliance with Laws and Regulations. Without limiting any other provision of this Agreement requiring compliance with applicable laws and regulations, Redwood MedNet shall perform its roles and responsibilities hereunder in all respects in compliance with applicable federal, state, and local laws, ordinances and regulations, including without limitation those provisions of HIPAA and the American Recovery and Reinvestment Act, Public Law 111-5 applicable to business associates.

11. Fees and Other Charges.
 - 11.1 Service Fees. As payment for use of the System and the Services, the Participant shall pay to Redwood MedNet Service Fees as described in the Policies and Procedures.
 - 11.2 Other Charges. The Participant also shall pay Redwood MedNet's charges for all goods or services that Redwood MedNet provides at the Participant's request that are not specified in the Policies and Procedures in accordance with Redwood MedNet's then-current Fee Schedule ("Miscellaneous Charges"). The Fee Schedule is subject to change at any time.
 - 11.3 Payment. The Participant shall pay all Service Fees and any Miscellaneous Charges within thirty (30) days following the date of invoice by Redwood MedNet sent to that Participant's address as shown in Redwood MedNet's records or e-mailed in accordance with the Participant's instructions.
 - 11.4 Late Charges. Service Fees and Miscellaneous Charges not paid to Redwood MedNet on or before the due date for those fees and charges are subject to a late charge of five percent (5%) of the amount owing and interest thereafter at the rate of one and one-half percent (1 1/2%) per month on the outstanding balance, or the highest amount permitted by law, whichever is lower.
 - 11.5 Suspension of Service. Failure to pay Service Fees and Miscellaneous Charges within thirty (30) days following the due date for those fees and charges may result in termination of the Participant's access to the System and/or use of the Services on ten (10) days prior notice. A reconnection fee may be assessed to re-establish connection after termination due to non-payment, in accordance with Redwood MedNet's then-current Fee Schedule.
 - 11.6 Taxes. All Service Fees and Miscellaneous Charges shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and the Participant shall pay any tax (excluding taxes on Redwood MedNet's net income) that Redwood MedNet may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services provided under this Agreement.
 - 11.7 Other Charges and Expenses. The Participant shall be solely responsible for any other charges or expenses the Participant may incur to access the System and use the Services, including without limitation, telephone and equipment charges, and fees charged by third-party vendors of products and services.
12. Proprietary Information.
 - 12.1 Scope of Proprietary Information. In the performance of their respective responsibilities pursuant to this Agreement, Redwood MedNet and Participants may come into possession of certain Proprietary Information of the others. For the purposes hereof, "Proprietary Information" means all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements, whether written or verbal, that are confidential in nature; provided, however, that "Proprietary Information" does not include Patient Data or any information that:
 - (a) Is in the public domain;
 - (b) Is already known or obtained by any other party other than in the course of the other party's performance pursuant to this Agreement;
 - (c) Is independently developed by any other party; and/or
 - (d) Becomes known from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without

breach of this Agreement, or any other confidentiality or nondisclosure agreement by such other party.

- 12.2 Nondisclosure of Proprietary Information. Redwood MedNet and the Participant each (i) shall keep and maintain in strict confidence all Proprietary Information received from the other, or from any of the other's employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under this Agreement; (ii) shall not use, reproduce, distribute or disclose any such Proprietary Information except as permitted by this Agreement; and (iii) shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure.
- 12.3 Equitable Remedies. All Proprietary Information represents a unique intellectual product of the party disclosing such Proprietary Information (the "Disclosing Party"). The unauthorized disclosure of said Proprietary Information would have a detrimental impact on the Disclosing Party. The damages resulting from said detrimental impact would be difficult to ascertain but would result in irreparable loss. It would require a multiplicity of actions at law and in equity in order to seek redress against the receiving party in the event of such an unauthorized disclosure. The Disclosing Party shall be entitled to equitable relief in preventing a breach of this Section 12 (Proprietary Information) and such equitable relief is in addition to any other rights or remedies available to the Disclosing Party.
- 12.4 Notice of Disclosure. Notwithstanding any other provision hereof, nothing in this Section 12 (Proprietary Information) shall prohibit or be deemed to prohibit a party hereto from disclosing any Proprietary Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that such party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction, and such disclosures are expressly permitted hereunder; provided, however, that a party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction shall provide the other party with notice thereof within five (5) calendar days, or, if sooner, at least three (3) business days before such disclosure will be made so that the other party may seek a protective order or other appropriate remedy. In no event shall a party be deemed to be liable hereunder for compliance with any such subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction.
13. Disclaimers, Exclusions of Warranties and Limitations of Liability.
- 13.1 Carrier Lines. By using the System and the Services, the Participant acknowledges that access to the System is to be provided over various facilities and communications lines, and information will be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which are beyond Redwood MedNet's control. Redwood MedNet assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the Participant's risk and is subject to all applicable local, state, national, and international laws.
- 13.2 No Warranties. Access to the System, use of the Services, and the information obtained by a Data Recipient pursuant to the use of those services are provided "as is" and "as available" without any warranty of any kind, expressed or implied, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and

non-infringement. The Participant is solely responsible for any and all acts or omissions taken or made in reliance on the System or the information in the System, including inaccurate or incomplete information. It is expressly agreed that in no event shall Redwood MedNet be liable for any special, indirect, consequential, or exemplary damages, including but not limited to, loss of profits or revenues, loss of use, or loss of information or data, whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if Redwood MedNet has been apprised of the possibility or likelihood of such damages occurring. Redwood MedNet disclaims any and all liability for erroneous transmissions and loss of service resulting from communication failures by telecommunication service providers or the System.

- 13.3 Other Participants. By using the System and the Services, the Participant acknowledges that other Participants have access to the System and Services. Such other Participants shall have agreed to comply with the terms and conditions of this Agreement and the Policies and Procedures concerning use of the information made available through the System and the Services; however, the actions of such other parties are beyond the control of Redwood MedNet. Accordingly, Redwood MedNet does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the System resulting from any Participant's actions or failures to act.
- 13.4 Participant's Actions. The Participant shall be solely responsible for any damage to a computer system, loss of data, and any damage to the System caused by that Participant or any person using a user ID assigned to the Participant or a member of the Participant's workforce.
- 13.5 Unauthorized Access; Lost or Corrupt Data. Redwood MedNet is not responsible for unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft, or destruction of the participant's data files, programs, procedures, or information through the System, whether by accident, fraudulent means or devices, or any other method. The Participant is solely responsible for validating the accuracy of all output and reports and protecting that Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. The Participant waives any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, or the use of third-party software. Redwood MedNet is not responsible for the content of any information transmitted or received through the System or the Services. The Data Provider is solely responsible for the content of all Patient Data that the Data Provider makes available pursuant to this Agreement.
- 13.6 Inaccurate Data. All data to which access is made through the System and/or the Services originates from Data Providers, and not from Redwood MedNet. All such data is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. Without limiting any other provision of this Agreement, Redwood MedNet shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content, or delivery of any data either provided by a Data Provider, or used by a Data Recipient.
- 13.7 Patient Care. Without limiting any other provision hereof, the Participant and that 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 for their respective patients and clients resulting from or in any way related to the use of the System or the Services or the data made available thereby. Neither the Participant nor any Authorized User shall have any recourse against, and shall waive, any claims against

Redwood MedNet for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the System and/or the Services or the data made available thereby.

13.8 Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of Redwood MedNet, and Redwood MedNet's officers, directors, employees, and other agents, to the Participant and the Participant's Authorized Users, regardless of theory of liability, shall be limited to the aggregate of Service Fees actually paid by that Participant in accordance with this Agreement for the six (6) month period preceding the event first giving rise to the claim.

14. Insurance and Indemnification.

14.1 Insurance. The Participant shall obtain and maintain insurance coverage for general and professional liability with coverage limits that are reasonable and customary for a party engaged in the activities of the Participant in Northern California, and as may be described more specifically in the Policies and Procedures. If any policy of such insurance is issued on a "claims made" basis, then upon the termination of any such policy, the Participant shall procure extended reporting ("tail") coverage for such policy for the longest extended reporting period that is commercially available.

14.2 Indemnification.

14.2.1 Indemnification, Generally. Redwood MedNet and the Participant (each, an "Indemnifying Party") each shall indemnify and hold the other and, if the Participant is the Indemnifying Party, the other Participants (each, the "Indemnified Party"), free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, members, agents, staff, or employees, including the Indemnifying Party's failure to comply with or perform its obligations under this Agreement.

14.2.2 Specific Indemnities. Without limiting the generality of Section 14.2.1 (Indemnification, Generally), acts or omissions giving rise to the obligation to indemnify and hold harmless pursuant to Section 14.2.1 (Indemnification, Generally) shall include, but not be limited to, (a) acts or omissions that result in a Serious Breach of Confidentiality or Security or (b) a Data Provider's provision of any Patient Data through the Services or System that is inaccurate, incomplete or defamatory.

14.3 Rules for Indemnification. Any indemnification made pursuant to this Agreement shall include payment of all costs associated with defending the claim or cause of action involved, whether or not such claims or causes of action are meritorious, including reasonable attorneys' fees and any settlement by or judgment against the party to be indemnified. A party seeking to be indemnified pursuant to this Section 14.2 (Indemnification) shall make a demand for indemnification upon the Indemnifying Party promptly and within a period of time within which the Indemnifying Party is not prejudiced by lack of notice. Upon receipt of such notice, the Indemnifying Party shall, at its sole cost and expense, retain legal counsel and defend the party to be indemnified. The Indemnifying Party shall be responsible for, and have control of, such claim and any litigation arising therefrom, but may not settle such litigation without the express consent of the party(ies) to be indemnified, which consent shall not be unreasonably withheld, conditioned or delayed. The indemnification obligations of the parties shall not, as to third parties, be a waiver of any defense or immunity otherwise available, and the indemnifying party, in indemnifying the indemnified party, shall be entitled to assert in any action every defense or immunity that the indemnified party could assert on its own behalf.

15. General Provisions.

15.1 Applicable Law. The interpretation of Participation Agreements and the

resolution of any disputes arising under Participation Agreements shall be governed by the laws of the State of California. If any action or other proceeding is brought on or in connection with this Agreement, the venue of such action shall be exclusively in Mendocino County, in the State of California.

- 15.2 Non-Assignability. No rights of the Participant under this Agreement may be assigned or transferred by the Participant, either voluntarily or by operation of law, without the prior written consent of Redwood MedNet, which it may withhold in its sole discretion.
- 15.3 Third-Party Beneficiaries. There shall be no third-party beneficiaries of any Participation Agreement.
- 15.4 Supervening Circumstances. Neither the Participant nor Redwood MedNet shall be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. This Section 15.4 (Supervening Circumstances) shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.
- 15.5 Severability. Any provision of a Participation Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of that Agreement, and such other provisions shall remain in full force and effect.
- 15.6 Notices. Any and all notices required or permitted under this Agreement shall be sent by United States mail, overnight delivery service, or facsimile transmission to the address(es) set forth below; provided, that either party may change its address for purposes of notice by giving notice of that address change to the other in compliance with this Section 15.6 (Notices). If the Participant has supplied Redwood MedNet with an electronic mail address, Redwood MedNet may give notice by email message addressed to such address; provided that if Redwood MedNet receives notice that the email message was not delivered, it shall give the notice by United States mail, overnight delivery service, or facsimile.
- 15.7 Waiver. No provision of the terms and conditions of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.
- 15.8 Complete Understanding. This Agreement contains the entire understanding of the parties, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement. All modifications or amendments to this Agreement shall be in writing and signed by all parties.

REDWOOD MEDNET
ELECTRONIC HEALTH INFORMATION EXCHANGE
PARTICIPATION AGREEMENT

Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date set forth below.

Effective Date: , 200_

“Redwood MedNet”

REDWOOD MEDNET, INC., a California
nonprofit public benefit corporation



By:

Name:

Title:

“Participant”

[Insert name of Participant]

By:

Name:

Title:

Address for purposes of notice:

216 Perkins Street, #206

Ukiah, CA 95482

Address for purposes of notice:

Attachment 4 - Mississippi Coastal HIE

End User License Agreement

This is a Mississippi Coastal Health Information Exchange (MSCHIE) computer system. MSCHIE is operated by Mississippi Foundation for Medical Care, Inc. d/b/a Information and Quality Healthcare (IQH). This system, (the "Utility") including all related hardware and software, peripheral equipment, network devices, and network services (including Internet access) are provided only for the use of authorized MSCHIE/IQH participants and members. Activities performed on the Utility may be monitored at any time to facilitate protection against unauthorized access and to verify security procedures, survivability, and operational security. Monitoring includes activities by authorized MSCHIE/IQH entities to test or verify the security of the Utility. Individuals using the Utility without authority, or in excess of their authority, are subject to having all of their activities on the Utility monitored and recorded by the Utility personnel. In the course of monitoring individuals improperly using the Utility, or in the course of the Utility maintenance, the activities of authorized users may also be monitored. During monitoring, information may be examined, recorded, copied and used for authorized purposes. All information, including personal information, placed or sent over the Utility may be monitored. Use of the Utility constitutes consent to monitoring and each user is advised that if such monitoring reveals possible evidence of criminal activity, the Utility personnel may provide that evidence to law enforcement officials and may subject the user to criminal prosecution. Evidence of unauthorized activities may also be used for administrative action. Anyone using the Utility expressly consents to such monitoring.

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS OF USE ("TERMS") CAREFULLY BEFORE USING THE UTILITY. THESE TERMS GOVERN YOUR USE OF THE UTILITY.

Your Permission to use the MSCHIE/IQH Network Utility

MSCHIE/IQH hereby gives you permission to use the Utility, subject to the conditions and limitations set forth in these Terms. You may only use or download patient information contained on the Utility for the following purposes and only to the extent permissible under all applicable laws regarding the privacy of patient information: (i) for treatment of those patients under your care; (ii) to collect payment for the services you provide to your patients; (iii) to conduct your business operations; and (iv) to comply with the laws that govern health care. All patient information viewed through the Utility is strictly confidential and is subject to the protections of the Health Insurance Portability and Accountability Act of 1996, as amended by Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009 (collectively, "HIPAA") and the privacy and security regulations promulgated pursuant to HIPAA, including, but not limited to, 45 C.F.R. Parts 160 and 164, as may be amended from time to time.

You may not:

- Use, reproduce or copy all or part of the content of the Utility except as expressly permitted by these terms or applicable law;
- Change or delete any proprietary notices from materials downloaded or printed out from the Utility;
- Except as contemplated by these Terms, use the content of the Utility for the benefit of a third party;
- Except as specifically provided by these Terms, transmit or provide any data or other content from the Utility to a third party;
- Incorporate any data or other content from the Utility in a product designed, developed, marketed, sold or licensed by you or on your behalf; or
- Use the Utility in a manner contrary to any applicable law.

MSCHIE/IQH may terminate your access to the Utility, or may require you to terminate the access of any employee or agent to the Utility, at any time, with or without cause, upon ten (10) days prior notice.

MSCHIE/IQH may terminate your access to the Utility immediately if you breach these Terms. In addition, MSCHIE/IQH may terminate your access to the Utility if you have not used the Utility at all for a period of six (6) months. Nothing in this agreement shall be read to prohibit MSCHIE/IQH from pursuing any other remedies available to MSCHIE/IQH for breach or suspected breach of this agreement, including recovery of damages from you. MSCHIE/IQH is the owner or licensee of all rights in the Utility, its content, software, and services. You have no rights to such content, software or services except as expressly granted in these Terms. "Mississippi Coastal Health Information Exchange", "MSCHIE", "IQH" and the logos or other proprietary marks of MSCHIE/IQH's licensors and partners are trademarks of MSCHIE/IQH or its licensors and partners. No right, title or interest in those trademarks is granted to you in these Terms.

Release of Liability, Indemnification

You agree to be solely responsible for your use of this Utility and for maintaining the confidentiality of your unique username and password. You agree that any use of the Utility by your employees or agents is subject to the Terms, and that you will inform your employees and agents of such Terms and their obligations to abide them. You agree to be responsible for the use of the Utility by your employees and agents. The Utility provides access to general medical information; you understand and agree that such information is not to be used as a substitute for the medical judgment of a qualified health care professional. In consideration for MSCHIE/IQH permitting you to use the Utility, you expressly release and hold harmless MSCHIE/IQH, their trustees, officers, directors, employees, agents and affiliates from any and all claims, liabilities, demands, causes of action, costs, expenses, and damages of every kind and nature, in law, equity, or otherwise, arising out of or in any way related to your use of the Utility, whether arising from any acts or omissions by MSCHIE/IQH. In addition, you will indemnify and hold harmless MSCHIE/IQH, their trustees, officers, directors, agents, affiliates, and employees, against all actual and direct losses, liabilities, damages, claims, costs or expenses (including reasonable attorney's fees) they may suffer as the result of third party claims, demands, actions, investigations, settlements or judgments against them arising from or in connection with any breach of these Terms, or from any claim of any nature or any wrongful acts or omissions, by you or your employees, officers or agents. The provisions of this section entitled "Release of Liability, Indemnification" shall survive termination of this agreement.

MSCHIE is Not Responsible For Any Links To or From Other Sites

This Utility may contain links to other Web sites, and other Web sites may provide links to this Utility. These links are provided for your convenience only. MSCHIE/IQH does not control these other sites and assumes no liability or responsibility for them, including any content or services provided to you by such sites. You should not consider any link to or from another site as an endorsement of that site by MSCHIE/IQH.

You Agree that MSCHIE/IQH May Use and Disclose Certain Information About You

You agree that, should you elect to supply it, MSCHIE/IQH may use your name, email address, physical address, or other data to communicate with you. You may request to have this information modified or deleted from our records. MSCHIE/IQH may use this information as necessary to enforce these Terms. You further agree that MSCHIE/IQH may use the information for its internal business purposes and disclose the information to third parties who are performing services on its behalf. MSCHIE/IQH will not otherwise share this information with any other party.

This Agreement is Governed by Mississippi Law. Accordingly, these Terms shall be governed by and construed in accordance with the laws of the State of Mississippi, without regard to conflict of law principles. Any action against MSCHIE or IQH must be commenced in the State of Mississippi. You agree that the courts located in or serving the State of Mississippi, shall have exclusive jurisdiction and venue over any action arising out of or relating to these Terms or your use of the Utility. You waive any defense that a court located in or serving Madison County, Mississippi, lacks personal jurisdiction over you, is an improper venue, or is an inconvenient forum.

Other Miscellaneous Provisions

These Terms constitute the entire and only understanding between you and MSCHIE/IQH regarding your use of this Utility. No modification or attempted modification of these Terms by you shall be binding on MSCHIE/IQH unless made in writing and physically signed by an authorized officer of MSCHIE/IQH. MSCHIE/IQH may modify these Terms at any time. Notices sent to you by MSCHIE/IQH in connection with these Terms or your use of the Utility may be delivered to you by electronic mail, a general notice on the Utility, or by written communication delivered by first class U. S. mail. You may give notice to MSCHIE/IQH at any time by letter delivered by first class postage prepaid U. S. mail or overnight courier to the following address:

Mississippi Coastal Health Information Exchange
c/o Mississippi Foundation for Medical Care, Inc.
Attention: President
385-B Highland Colony Parkway
Suite 504
Ridgeland, MS 39157

These Terms are severable to the extent any term is deemed invalid, illegal or unenforceable. MSCHIE/IQH's failure to enforce any provision of these Terms shall not be deemed a waiver of that or any other provision of these Terms. The parties to this agreement are independent contractors of one another; nothing herein shall be deemed to create any relationship of agency, partnership or joint venture between the parties. You may not assign any of your rights and obligations arising under these Terms without the prior written consent of MSCHIE/IQH; any attempted assignment not in compliance with this sentence shall be void.

Legal Disclaimer

SERVICES PROVIDED THROUGH AND INFORMATION CONTAINED ON THE SITE ARE PROVIDED "AS IS". MSCHIE/IQH MAKES NO, AND HEREBY DISCLAIMS ANY, WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE. FURTHER, MSCHIE/IQH DISCLAIMS ANY WARRANTY THAT THE UTILITY WILL BE AVAILABLE AT ALL TIMES OR WILL OPERATE WITHOUT INTERRUPTION OR ERROR. MSCHIE/IQH MAKES NO WARRANTY AS TO THE RELIABILITY, ACCURACY, TIMELINESS, USEFULNESS, ADEQUACY, COMPLETENESS OR SUITABILITY OF THE SERVICES OR INFORMATION PROVIDED THROUGH THE UTILITY.