

**NORTH COAST HEALTH INFORMATION NETWORK
HIE PARTICIPATION AGREEMENT**

PARTICIPANT

HEALTH INFORMATION EXCHANGE

[Address] _____

[Address] _____

[City/State/Zip] _____

[City/State/Zip] _____

[Email] _____

[Email] _____

[Phone] _____

[Phone] _____

[Fax] _____

[Fax] _____

Background:

1. The North Coast Health Information Network ("HIE") is a nonprofit, California, corporation that operates an Internet-based system that provides for secure electronic health information exchange (the "Exchange").

2. Participants in the Exchange include Data Recipients (who may be Health Care Providers) that will access Data through the Exchange and Data Suppliers that will provide Data through the Exchange. A Participant may be both a Data Recipient and a Data Supplier. Participant is [check the applicable type]:

___ **BOTH.** Participant is both a Data Recipient and a Data Supplier.

___ **DATA RECIPIENT.** Participant is a Data Recipient that will participate in the Exchange to obtain health care information for a Permitted Use.

___ **DATA SUPPLIER.** Participant is a Data Supplier that makes or will make clinical Data available for access by Data Recipients (such as Health Care Providers and Authorized Users) for a Permitted Use.

Agreement:

1.0 HIE Activity. HIE will manage and administer the Exchange subject to the Terms and Conditions of this Agreement and applicable laws and regulations. HIE agrees to fulfill the obligations of Exchange as set forth in this Agreement, its Exhibits and Addenda.

2.0 Participant Activity. Participant, in its capacity as a Data Recipient and/or its capacity as a Data Supplier, as applicable, will participate in the transmission of Data through the Exchange ("Data Exchange") and the submission or use of such Data, as applicable, subject to this Agreement, its Exhibits, and Addenda.

3.0 Complete Agreement. This Agreement includes, and incorporates by reference:

- 3.1 Exhibit A (Terms and Conditions);
- 3.2 Exhibit B (Authorized User Consent to Terms);
- 3.3 Exhibit C (Security Requirements);
- 3.4 Exhibit D (Data Recipient System Requirements);
- 3.5 Exhibit E (Data Supplier—Data Submission and System Requirements);
- 3.6 Exhibit F (HIPAA Business Associate Agreement);
- 3.7 Exhibit G (HIE Fees)
- 3.8 Any Project Addenda attached to this Agreement and signed by the HIE and Participant; and
- 3.9 The HIE Policies and Standards found at <http://northcoasthin.org/Resources1.aspx>

4.0 Effective Date. The Effective Date for this Agreement is _____. The Agreement will continue until terminated as set forth in Exhibit A, Section 10.

PARTICIPANT

HEALTH INFORMATION EXCHANGE

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT A
TERMS AND CONDITIONS OF PARTICIPATION

1.0 DEFINITIONS

Authorized User means an individual authorized by HIE or by a Data Recipient under this Agreement to use the Exchange to access Data for a Permitted Use and who has signed an Authorized User Consent to Terms in the form set forth in Exhibit B.

Data means protected health information, or information that identifies a patient, provided to HIE by Data Suppliers. For the purposes of this Agreement, protected health information is defined by the Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E, and the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C, both as amended from time to time.

Data Exchange means electronically providing or accessing Data through the Exchange.

Data Recipient means an individual or entity that has entered into an HIE Participation Agreement and whose Authorized Users will receive Data using the HIE.

Data Supplier means an organization, such as a hospital, physician, clinical laboratory, pharmacy claims aggregation company, governmental agency or other entity that makes Data available for access through the Exchange and has entered into an HIE Participation Agreement. A Data Supplier also may be a Data Recipient.

Health Care Provider means a physician, group practice, hospital or health system, or other health care organization or professional that provides treatment to Patients and has entered into an HIE Participation Agreement. A Health Care Provider also may be a Data Supplier, a Data Recipient, and an Authorized User.

Patient means an individual who has received or will receive treatment or health care services from a Health Care Provider.

Participant means a Data Recipient and/or Data Supplier that has entered into a HIE Participation Agreement, including the Participant named as a party to this Agreement.

Permitted Use is the reason or reasons for which Participants and Authorized Users may access Data in the Exchange. For the purpose of this Agreement, Permitted Use is defined in the Project Addenda.

Project Addendum means an exhibit to this Agreement, signed by the HIE and Participant, that describes a specific project for use of the Exchange, the Permitted Use,

applicable standards and safeguards, and related terms. Future projects, phases or expanded use of the Exchange also will be set forth in Project Addenda signed by HIE and Participant.

2.0 HIE OBLIGATIONS

2.1 Services Provided by HIE.

(a) Exchange Operation. HIE will maintain and operate the Exchange. HIE may contract with subcontractors to maintain and operate the Exchange or to provide support services. HIE will require that its subcontractors comply with the applicable terms and conditions of this Agreement, applicable laws and regulations.

(b) Access to Exchange for Permitted Use. HIE will make the Exchange available to Participants, including: (i) Data Recipients and their Authorized Users, who may access Data through the Exchange only for a Permitted Use; and (ii) Data Suppliers that provide Data for access by Data Recipients through the Exchange. HIE may establish arrangements with other health information exchanges to allow Data Recipients access to additional Data for a Permitted Use. Any change to a Permitted Use must be documented in an Addendum and signed by the HIE and Participant.

(c) Exchange Availability. HIE will make all reasonable efforts to make the Exchange available to Participants 24 hours a day, 7 days a week; however, the Exchange availability may be temporarily suspended for maintenance or unscheduled interruptions. HIE will use its best efforts to provide reasonable advance notice of any such suspension or interruptions of Exchange availability and to restore Exchange availability. Data Recipients who are Health Care Providers are responsible for acquiring patient health information through other means during any periods when the Exchange is not available.

(d) Support Services. During the term of this Agreement, HIE will provide support services to assist Participant in the installation, implementation, and maintenance and use of the Exchange and may establish a fee schedule for these services which will be posted at <http://northcoasthin.org/Resources1.aspx>. Exchange technical support will be available during business hours. All support services will be subject to the HIE fees set forth in **Section 6 and posted at <http://northcoasthin.org/Resources1.aspx>**.

2.2 HIE Records; Use of Data.

(a) HIE Records. HIE will maintain records relating to the operation of the HIE, including records of the date, time and records accessed by a Data Recipient in each Data Exchange as set forth in its Policies and Standards described in Section 2.3.

(b) HIE Use and Disclosure of Information. HIE will not disclose Data or information relating to Data Exchanges to third parties except: (i) as provided by this

Agreement; (ii) as required by law or subpoena; or (iii) as directed in writing by the originating party or intended recipient. HIE may access Data and information relating to Data Exchanges only for the operation of the Exchange, testing, performance verification, and investigations and actions relating to compliance with this Agreement, HIE Policies and Standards and applicable laws and regulations.

2.3 Policies and Standards. HIE will establish policies and standards (respectively, "Policies and Standards") that will govern HIE's and Participant's activity on the Exchange, and these Policies and Standards will be available at <http://northcoasthin.org/Resources1.aspx>. HIE encourages Participant to provide input in the development of Policies and Standards through HIE working groups and committees. These Policies and Standards govern HIE and Participant use of the Exchange and the use, submission, transfer, access, privacy and security of Data.

(a) Changes to Policies and Standards. HIE may change or amend the Policies and Standards from time to time at its discretion and will post notice of proposed and final changes at <http://northcoasthin.org/Resources1.aspx>. HIE will provide Participants notice of such changes to Policies and Standards by electronic mail. Any changes will be effective 60 days following adoption by HIE, unless HIE determines that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of Data or an emergency situation. HIE also may postpone the effective date of a change if the HIE determines, in its sole discretion, that additional implementation time is required. Participant will have no ownership or other property rights in the Policies and Standards or other materials or services provided by HIE.

(b) Security. HIE will implement Policies and Standards that are reasonable and appropriate to provide that all Data Exchanges are authorized, to protect Data from improper access, tampering or unauthorized disclosure and to secure compliance with applicable laws and regulations. Such Policies and Standards will include administrative procedures, physical security measures, and technical security services that are reasonably necessary to secure the Data. HIE and Participant will comply with the security Policies and Standards established by HIE, including the requirements set forth in Exhibit C.

(c) Investigations, Corrections, Reports. HIE will adopt Policies and Standards for the investigation, resolution and reporting of Patient complaints, security breaches or other concerns relating to compliance with this Agreement, HIE Policies and Standards and applicable laws and regulations ("Compliance Concerns"). HIE will provide notice to Participants, pursuant to HIE policy and as required by law or regulation, of any Compliance Concern related to Participant's Authorized Users' use of the Exchange, and Participant will cooperate with HIE in its investigation of any Compliance Concern and corrective action.

2.4 Obligations to Comply with Law. HIE will comply with all federal, state and local laws applicable to HIE. This includes Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 17921-17954, and

regulations issued by HHS to implement the HITECH Act, which are applicable to business associates, as of the date by which business associates are required to comply with such referenced statutes and HHS regulations.

3.0 DATA RECIPIENT OBLIGATIONS.

The obligations of this Section 3.0 apply to Participant if either the "Both" or the "Data Recipient" line is checked on summary page of the Agreement. These obligations do not apply to Participants who have only checked the "Data Supplier" line on the summary page of the Agreement, as those Participants will not have access to the Data in the Exchange.

3.1 Data Exchange. By engaging in Data Exchange, Data Recipient agrees that its participation in any Data Exchange, and use of the Exchange by Data Recipient and its Authorized Users, will comply with the terms of this Agreement and applicable laws and regulations. Data Recipient also agrees that Data Recipient has secured any required Patient permission to access the Data Exchange as set forth in Section 3.4.

3.2 Permitted Use. Data Recipient and its Authorized Users will use the Exchange only for a Permitted Use. Data Recipient and its Authorized Users will comply with this Agreement and all applicable laws and regulations governing the use, privacy, and security of Data received through the Exchange. Data Recipient will decide in its discretion whether to use the Exchange, and to what extent.

3.3 Authorized Users. Data Recipient will identify and authenticate its Authorized Users, in accord with HIE's Policies and Standards, who may use the Exchange for the Permitted Use on behalf of Data Recipient and will require each Authorized User to execute an Authorized User Consent to Terms set forth in Exhibit B. Authorized Users will include only those individuals who require access to the Exchange to facilitate Data Recipient's use of the Data for a Permitted Use. Participant is responsible for Authorized Users complying with the terms and conditions of this Agreement and applicable laws and regulations.

3.4 Patient Permission for Data Exchange and Treatment; Notice. The parties acknowledge that certain uses of Data, including without limitation Treatment, Payment and certain Health Care Operations (as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 164, Subpart E) do not require specific consent by a Patient under HIPAA. However, Data Recipient is responsible for securing any Patient consent or authorization to access to Patient's Data through the Exchange as required by HIE Policies and Standards, as identified in a Project Addendum, or as otherwise required by law.

3.5 System Operations. Data Recipient, at its own expense, will provide and maintain the equipment, software, services and testing necessary to effectively and reliably participate in the Exchange as set forth in Exhibit D, except for such software expressly provided by HIE pursuant to Section 8.

3.6 Documentation of Information for Patient Treatment; Record Retention, Storage and Backup. If Data Recipient is a Health Care Provider, it will maintain at its own expense records of Data accessed through the Exchange and used by Health Care Provider for Patient Treatment. Health Care Provider will maintain these records for all periods required by law. Health Care Provider will determine the form for such records, which may include incorporation of Data into Health Care Provider's medical record electronically, by hard copy or by other form of summary, notation, or documentation.

3.7 Privacy, Security, and Accuracy. Data Recipient will maintain sufficient safeguards and procedures, in compliance with Exhibit C, HIE Policies and Standards, and applicable laws and regulations, to maintain the security and privacy of Data received through the Exchange.

4.0 DATA PROVIDER OBLIGATIONS.

The obligations of this Section 4.0 apply to Participant if either the "Both" or the "Data Supplier" line is checked on the summary page of the Agreement. These obligations do not apply to Participants who have only checked the "Data Recipient" line on the summary page of the Agreement.

4.1 Data Exchange and Data Submission. By engaging in Data Exchange, Data Supplier agrees that: (a) its participation in any Data Exchange will comply with the terms of this Agreement and applicable laws and regulations; (b) the Data provided or transferred by Data Supplier can be related to and identified with source records maintained by Data Supplier; and (c) Data Supplier has secured all authorizations for the submission of Data as set forth in Section 4.3. Data Supplier will make Data available for the Exchange in accordance with the scope, format, and specifications set forth in **Exhibit E**.

4.2 Permitted Use. Data Supplier and its employees and agents will use the Exchange only to provide Data for a Permitted Use. Data Supplier, its employees and agents will comply with this Agreement and all applicable laws and regulations governing the use, privacy, and security of Data made available to the Exchange.

4.3 Patient Permission for Data Submission and Data Exchange. Data Supplier and HIE acknowledge that Data Supplier will make Data available for access through the Exchange only for a Permitted Use. The parties acknowledge that certain uses of Data, including without limitation Treatment, Payment and certain Health Care Operations (as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 164, Subpart E) do not require specific consent by a Patient under HIPAA or California Law for these purposes. However, Data Supplier is responsible for securing any consent to supply Patient's Data to the Exchange as required by HIE Policies and Standards, as identified in a Project Addendum, or as otherwise required by law.

4.4 Data Provided; System Operations.

(a) Systems Necessary to Participate in Exchange. Data Supplier will provide and maintain the equipment, software, services and testing necessary to effectively and reliably submit Data for access through the Exchange as set forth in Exhibit E, except for such software expressly provided by HIE pursuant to Section 8. The financial responsibility of Data Supplier and HIE in making such Data available and for providing and maintaining the equipment, software, services and testing are set forth in **Exhibit E**.

(b) Record Retention, Storage, and Backup. Data Supplier, at its own expense, will maintain Data backup and retention to maintain adequate records of Data submitted to the Exchange for access by Data Recipients.

(c) Privacy, Security, and Accuracy. Data Supplier will maintain sufficient safeguards and procedures, in compliance with the terms of this Agreement, HIE Policies and Standards, and applicable laws, to maintain the security, privacy and accuracy of Data. Data Supplier will promptly correct any errors discovered in Data it transmits to the Exchange and notify HIE of any such corrections pursuant to HIE Policies and Standards.

5.0 COMPLIANCE WITH LAWS; CONFIDENTIALITY

Both HIE and Participant, and their agents and employees, will comply with the federal and state laws and regulations applicable to this Agreement, including without limitation, laws on the use, security and privacy of Data, Patient consent for the use and transfer of Data and requirements for Data Exchanges. HIE and Participant, and their agents and employees, will maintain the confidentiality of Data as required by state and federal law. HIE's use of Data will be subject to this Agreement and the Business Associate Agreement set forth in **Exhibit F**.

6.0 FEES AND PAYMENT

Participant will pay HIE fees as set forth in **Exhibit G**.

7.0 PROPRIETARY INFORMATION

During the term of this Agreement, each party may have access to information about the other party that: (a) relates to past, present or future business activities, practices, protocols, products, services, information, content, and technical knowledge; and (b) has been identified as confidential (collectively, "Proprietary Information") by such party. For the purposes of this provision, Proprietary Information will not include Data.

7.1 Non-disclosure. The parties will: (a) hold Proprietary Information in strict confidence; (b) not make the Proprietary Information available for any purpose other than as

specified in the Agreement or as required by law or subpoena; and (c) take reasonable steps to ensure that the Proprietary Information is not disclosed or distributed by employees, agents or consultants (who will have access to the same only on a "need-to-know basis) to third parties in violation of this Agreement. If HIE or Participant receives a request for Proprietary Information, the party receiving the request will provide the other party notice of the request and an opportunity to seek a protective order limiting the nature and scope of the information to be disclosed, and the disclosing party is only permitted to disclose Proprietary Information to the extent required by law.

7.2 Exclusions. Proprietary Information will not include information that: (a) at the time of disclosure, is known or becomes known or available to general public through no act or omission of the receiving party; (b) was in the receiving party's lawful possession before it was provided to the receiving party by the disclosing party; (c) is disclosed to the receiving party by a third party having the right to make such disclosure; or (d) is independently developed by the receiving party without reference to the disclosing party's Proprietary Information.

7.3 Equitable Remedies. The parties agree that a breach of this Section will cause the disclosing party substantial and continuing damage, the value of which will be difficult or impossible to ascertain, and other irreparable harm for which the payment of damages alone will be inadequate. Therefore, in addition to any other remedy that the disclosing party may have under this Agreement, at law or in equity, in the event of such a breach or threatened breach by the receiving part of the terms of this Section, the disclosing party will be entitled, after notifying the receiving party in writing of the breach or threatened breach, to seek both temporary and permanent injunctive relief without the need to prove damage or post bond.

8.0 SOFTWARE LICENSE

8.1 Right to Use. HIE grants to Participant for the term of this Agreement a royalty-free, non-exclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to use the Internet application known as IRIS (a web-based patient referral system provided by Proximare Health) and other software or internet applications provided by or through HIE (such as "IRIS Scan") and identified by HIE in its technical operation Standards for the sole purpose of participating in the Exchange under the terms and conditions of this Agreement.

THE INTERNET APPLICATIONS SHALL NOT BE USED FOR ANY OTHER PURPOSE WHATSOEVER, AND SHALL NOT OTHERWISE BE COPIED OR INCORPORATED INTO ANY OTHER COMPUTER PROGRAM, HARDWARE, FIRMWARE, OR PRODUCT. THE INTERNET APPLICATION(S) ARE OFFERED "AS IS" AND HIE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE.

Participant acknowledges that some internet application(s) are licensed to HIE by third parties, and that the license granted under this Agreement is subject in every respect to HIE's grant of license from such third parties. As additional software is developed by or for HIE for the Exchange, it shall become subject to this Agreement upon written notice to Participant, and such notice shall constitute an amendment to this Agreement and any the applicable Project Addendum and shall be binding upon the parties and subject to all terms and conditions of this Agreement. This Section 8.0 applies only to Software that is provided by HIE to Participant and not to any other software that Participant may use in providing treatment to Patients or for Participant's business operations.

8.2 No Transfer or Modification. Participant will not sell, rent, sublicense, or otherwise share its right to use the internet application. Participant will not modify, reverse engineer, decompile, disassemble, or otherwise attempt to learn the source code, structure, or ideas upon which Software is based.

9.0 ELECTRONIC SIGNATURES

9.1 Signatures and Signed Documents. Participant, at HIE's request, will implement for its Authorized Users an electronic identification consisting of symbols or codes that are to be affixed to or contained in a Data Exchange made by the Participant ("Signatures"). Participant agrees that any Signature of such party affixed to or contained in any Data Exchange will be sufficient to verify that the party originated such Data Exchange. Any properly transmitted Data Exchange made pursuant to this Agreement shall be considered a "writing" or "in writing" and any such Data Exchange when containing, or to which there is affixed, a Signature ("Signed Documents") shall be deemed for all purposes: (a) to have been "signed;" and (b) to constitute an original when printed from electronic files or records established and maintained in the normal course of business.

9.2 Validity of Signed Documents. Participant will not contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings will be admissible as between the parties to the same extent and under the same condition as other business records originated and maintained in paper form.

10.0 TERM AND TERMINATION

10.1 Term and Termination. The term of this Agreement will begin on the Effective Date and will continue until terminated as set forth in this Section 10. This Agreement will terminate under any of the following circumstances:

(a) Violation of Law or Regulation. If either HIE or Participant determines that its continued participation in this Agreement would cause it to violate any law or regulation

applicable to it, or would place it at material risk of suffering any sanction, penalty, or liability, then that party may terminate its participation in this Agreement immediately upon written notice to the other party.

(b) For Cause. If HIE or Participant determines that the other party or any of its employees, agents or contractors have breached this Agreement, then that party may terminate its participation in this Agreement on 30 days' advance written notice to the other party, provided that such notice identifies such area of non-compliance, and such non-compliance is not cured within 15 days of receipt of the notice of non-compliance. HIE may immediately terminate this Agreement upon written notice to Participant if HIE determines that Participant or its Authorized Users, employees or agents have used Data or the Exchange for any purpose other than the Permitted Use or in violation of security or privacy provisions under this Agreement or applicable laws and regulations.

(c) Without Cause. HIE or Participant may terminate this Agreement without cause upon 30 days' advance written notice of termination to the other party.

10.2 Termination Process and Access to Exchange and Data. Upon the effective date of termination of this Agreement, HIE will cease providing access to the Exchange for the Participant and its Authorized Users, and Participant and its Authorized Users will stop using the Exchange.

10.3 Effect of Termination.

(a) Rights and Duties. Any termination will not alter the rights or duties of the parties with respect to Signed Documents transmitted before the effective date of the termination or with respect to fees outstanding and payable under this Agreement. Upon termination of this Agreement, Exhibit A, Sections 7.0, 8.0, 10.2, 10.3(b), 11, 12, Exhibit E and any other obligations that by their nature extend beyond termination, cancellation or expiration of this Agreement, will survive such termination, cancellation or expiration and remain in effect.

(b) Return of Proprietary Information; Software; Fees. Within 30 days of the effective date of termination, each party will return to the other all Proprietary Information belonging to the other or certify the destruction of such Proprietary Information if agreed to by the party who originated the Proprietary Information. Within 30 days of the effective date of termination, Participant will de-install and return to HIE all software provided by HIE to Participant under this Agreement. If Participant has prepaid any Fees or Expenses as of the effective date of termination, Participant will be entitled to a pro rata refund of such advance payment. No Data will be returned to a Data Supplier upon termination of this Agreement.

11.0 LIMITED WARRANTIES AND DISCLAIMERS

11.1 Limited Warranty and Disclaimer of Other Warranties. HIE will use its best efforts to correctly transmit Data Exchanges between Participants on a timely basis. HIE MAKES NO REPRESENTATION OR WARRANTY THAT THE DATA DELIVERED TO THE PARTICIPANT WILL BE TIMELY, CORRECT OR COMPLETE. HIE MAKES NO WARRANTY OR REPRESENTATION REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION TECHNOLOGY SYSTEM USED FOR THE EXCHANGE. HIE DISCLAIMS ALL WARRANTIES REGARDING ANY PRODUCT, SERVICES, OR RESOURCES PROVIDED BY IT, OR DATA EXCHANGES TRANSMITTED, PURSUANT TO THIS AGREEMENT INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12.0 LIMITATION OF LIABILITY; INDEMNIFICATION

12.1 Limitation of Liability. Neither HIE nor Participant will be liable to the other for lost profits or Data, or any special, incidental, exemplary, indirect, consequential or punitive damages (including loss of use or lost profits) arising from any delay, omission or error in a Data Exchange or receipt of Data, or arising out of or in connection with this Agreement, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), product liability or otherwise, and whether or not either party has been advised of the possibility of such loss or damage.

12.2 Release of Liability. Participant releases HIE from any claim arising out of any inaccuracy or incompleteness of Data or any delay in the delivery of Data or failure to deliver a Data Exchange when requested except for those arising out of HIE's gross negligence.

12.3 Indemnification.

(a) HIE Indemnification for Infringement. HIE will indemnify and hold harmless Participant, its employees and agents from any damages, expenses and costs, including reasonable attorneys fees, arising out of claims by third parties that the use of the Exchange and any Software provided by HIE infringes any patents, copyrights or trademarks or is a misappropriation of trade secrets, provided that Participant notifies HIE in writing promptly upon discovery of any such claim and gives HIE complete authority and control of, and full cooperation with, the defense and settlement of such claim.

(b) Indemnification for Breach of Agreement. Participant will indemnify and hold harmless HIE, its employees and agents from any damages, expenses and costs, including reasonable attorneys fees, from claims by third parties arising from claims arising from Participant's or its Authorized Users' breach of this Agreement, including the unauthorized or improper use of the Exchange or Participant's or its Authorized Users' use or disclosure of Data for any purpose other than a Permitted Use. HIE will indemnify and hold harmless Participant,

its employees and agents from any damages, expenses and costs, including reasonable attorneys fees, from claims by third parties arising from claims arising from HIE's breach of this Agreement, including the unauthorized or improper use of the Exchange or HIE's use or disclosure of Data for any purpose other than a Permitted Use or as otherwise allowed under this Agreement.

12.4 Not a Medical Service. The Exchange does not make clinical, medical, or other decisions and is not a substitute for professional medical judgment applied by Participant or its Authorized Users. Participant and its Authorized Users are solely responsible for confirming the accuracy of all Data and making all medical and diagnostic decisions.

13.0 GENERAL PROVISIONS

13.1 No Exclusion. HIE represents and warrants to Participant, and Participant represents and warrants to HIE, that neither party nor their respective employees or agents have been placed on the sanctions list issued by the office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. 1320a(7), have been excluded from government contracts by the General Services Administration or have been convicted of a felony or any crime relating to health care. HIE and Participant will provide one another immediate written notice of any such placement on the sanctions list, exclusion, or conviction.

13.2 Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

13.3 Entire Agreement. This Agreement constitutes the complete agreement of the parties relating to the matters specified in this Agreement and supersedes all earlier representations or agreements with respect to the subject matter of this Agreement, whether oral or written with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement is binding on either party.

13.4 No Assignment. Neither HIE nor Participant may assign its rights or obligations under this Agreement without the advance written consent of the other party, except for a transfer or assignment to a parent, subsidiary, or affiliate wholly owned by the party.

13.5 Governing Laws. This Agreement shall be construed under the laws of the State of California. Any dispute arising hereunder or relating to the Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure sections 394 and 395.

13.6 Force Majeure. No party is liable for any failure to perform its obligations under this Agreement, where such failure results from any act of God or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure).

13.7 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement will be in writing. A notice, request, demand, or other communication will be deemed to have been duly given, made and received: (a) when personally delivered; (b) on the day specified for delivery when deposited with a courier service such as Federal Express for delivery to the intended addressee; or (c) three business days following the day when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below on the first page of the Agreement. Nothing in this section will prevent the parties from communicating via electronic mail, telephone, facsimile, or other forms of communication for the routine administration of the Exchange.

13.8 No Agency. HIE provides the Exchange services to Participant but does not act as Participant's agent. Participant will not be deemed an agent of another Participant as a result of participation in this Agreement.

13.9 No Relationship between Participants; No Third Party Rights. Nothing in this Agreement confers any rights or remedies under this Agreement on any persons other than HIE and Participant, and nothing in this Agreement is intended to create a contractual relationship or otherwise affect the rights and obligations among Participants. Nothing in this Agreement will give any third party, including other Participants, any right of subrogation or action against any party to this Agreement.

END OF EXHIBIT A

EXHIBIT B
AUTHORIZED USERS

1. HIE delegates enrollment and responsibility for the conduct of Authorized Users to Participant. The Authorized User Agreement to Terms of Access to Data through HIE defines the duties and responsibilities of an authorized user.
2. Authorized Users will adhere to the HIE Policies and Standards including Category 600, Workforce, Agents, and Contractors.
3. HIE will periodically verify with Participant the current roster of Authorized Users for Participant.
4. The *Authorized User Agreement to Terms of Access to Data through HIE* is provided for use by Participant.

AUTHORIZED USER AGREEMENT TO TERMS OF ACCESS TO DATA THROUGH HIE

Humboldt Del Norte Foundation for Medical Care (North Coast Health Information Network) (HIE) facilitates the electronic availability of protected health information (Data) through a Health Information Exchange (the Exchange) to individuals and organizations contracting with the HIE in order to assist Health Care Providers in providing treatment to Patients. Participant (defined below) has entered into a Participation Agreement with HIE in order to facilitate this exchange of Data for these purposes.

You have been identified by Participant as an Authorized User of Data through the HIE. The HIE will agree to provide access to Data to you through the Exchange, only if you agree to the terms and conditions of this Agreement.

1.0 Compliance with Agreement.

THIS IS A BINDING AGREEMENT. By signing below, you agree to comply with all terms and conditions for access to Data under this Agreement, the Participant's Participation Agreement, and all HIE policies and procedures. Failure to comply with these terms and conditions may be grounds for discipline, including without limitation, denial of your privileges to access Data through the HIE and termination of your employment or agency by Participant.

2.0 Permitted Use and Restrictions on Use.

2.1 Participant is a Health Care Provider who provides Treatment to Patients, as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E. As Participant's Authorized user, you may access the Exchange only to obtain Data to provide Treatment for Participant's Patients. You may not use the Exchange, or any hardware or software relating to use of the Exchange, for purposes that are outside the scope of your duties with Participant to provide Treatment to Patients.

2.2 This Consent grants you a nonexclusive, nontransferable right to use the HIE Exchange. This right is subject to the following restrictions:

(a) This right is specific to you. You may not share, sell, or sublicense this right with anyone else.

(b) You may not change, reverse engineer, disassemble or otherwise try to learn the source code, structure, or ideas underlying the Exchange's software or introduce a virus to the Exchange. You may not connect or install unauthorized or uncertified equipment, hardware, or software or improperly use the hardware or software relating to use of the Exchange.

3.0 Protection of Data.

3.1 Scope of Access. As an Authorized User, You may have access to Data that includes protected health information that is subject to confidentiality, privacy, and security requirements under state and federal law and regulations. You agree that you will only access Data consistent with your access privileges, and pursuant to all requirements under this Agreement, the Participant's Participation Agreement, HIE policies and procedures, and applicable laws and regulations.

3.2 Protection of Data. As an Authorized User, you have an obligation to maintain the confidentiality, privacy, and security of the Data.

- (a) You will not disclose Data except as required for your job with Participant and subject to all terms of this Agreement.
- (b) You will not access or view any information other than what is required for you to do your job.
- (c) You will not make any unauthorized copies of Data. You will not save Confidential Information to portable media devices.
- (d) You will not email any Data.
- (e) You will not release your authentication code or device or password to any other person, including any employee or person acting on your behalf. You will not to allow anyone else to access the Exchange under your authentication code or device or password. You agree not to use or release anyone else's authentication code or device or password. You agree to notify HIE and Participant immediately if you become aware or suspect that another person has access to your authentication code or device or password.
- (f) You agree not to allow your family, friends, or other persons to see the Data on your computer screen while you are accessing the Exchange. You agree to log out of the Exchange before leaving your workstation to prevent others from accessing the Exchange.
- (g) You agree never to access Data for "curiosity viewing". This includes viewing Data of your children, other family members, friends, or coworkers, unless access is necessary to provide services to a Patient with whom you or the physician(s) with whom you work have a treatment relationship with that Patient.
- (h) You will protect the accuracy of the Data submitted or received through the Exchange and will not insert information that you know is not accurate.

4.0 Audit and Review.

HIE and Participant have the right at all times and without notice to access the Exchange and software relating to the Exchange to review and audit your use of the Exchange and compliance with the terms of this Agreement.

5.0 Sanctions.

You understand that failure to comply with the terms of this Agreement may result in disciplinary action against you, which may include loss of access to the Exchange as an Authorized User or termination of your employment or contract with Participant.

6.0 Duration.

This Agreement will be in effect from the time it is signed until HIE or Participant terminates your status as an Authorized User or until you violate the terms of this Agreement. Any terms of this Agreement necessary to protect the Exchange and Data will survive the termination of this Agreement.

Agreed to by:

Authorized User Signature

Authorized User Printed Name

Date: _____

Participant: _____

END OF EXHIBIT B

EXHIBIT C
PARTICIPANT SECURITY REQUIREMENTS

In addition to any obligations set forth in the Agreement and HIE Policies and Standards, Participant will observe the following requirements. HIE may amend or supplement these requirements on written notice to Participant.

1. Each of Participant's servers connecting to the HIE gateway will comply with HIE's authentication requirements.
2. Participant will authenticate each Authorized User at the point of access and will implement password policies, both based on applicable laws and regulations and HIE Policies and Standards. Participant may elect to implement stronger authentication mechanisms at its discretion. Participant will review and update its list of Authorized Users as required under HIE Policies and Standards.
3. Participant will limit access of each Authorized User to a Permitted Use and according to Role Based Access principles. Participant will impose appropriate sanctions for its employees or agents who violate applicable security Policies and Standards or the Authorized User Terms of Consent or make improper use of the Exchange, including revocation of an Authorized User's authorization to access the Exchange as may be appropriate under the circumstances.
4. Participant will implement firewalls and intrusion detection per HIE Policies and Standards.
5. Participant will implement other safeguards to protect servers based on information security best practices, such as the SANS Institute (www.nist.gov).

END OF EXHIBIT C

EXHIBIT D
DATA RECIPIENT—SYSTEM REQUIREMENTS

1. System Requirements.

HIE will provide a secure viewer application to Data Recipients to retrieve and view Data for their Patients. The secure viewer application is web-based and requires a secure system with an Internet connection and an Internet browser. HIE requires the following minimum system configuration options for running the HIE viewer on a browser.

Internet Explorer 6.0 or above.

END OF EXHIBIT D

EXHIBIT E
DATA SUPPLIER—DATA SUBMISSION, SYSTEM REQUIREMENTS

1. Data Provided.

Data Supplier will submit Data as set forth in the Addenda.

Data submitted shall be mapped to HIE standard terminologies and code systems according to the message specifications where applicable. HIE may provide message specifications and terminology standards as a reference when creating data maps. HIE and Data Supplier will cooperate with each other to mutually validate the data maps created.

2. System Requirements.

Internet Explorer 6.0 or above.

Recommendation: TWAIN compliant scanner.

END OF EXHIBIT E

EXHIBIT F
HIPAA BUSINESS ASSOCIATE AGREEMENT

Recitals:

A. PARTICIPANT, as a “Covered Entity” (defined below) wishes to disclose certain information to Humboldt del Norte Foundation for Medical Care, hereafter known as the “BUSINESS ASSOCIATE” (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. PARTICIPANT and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires PARTICIPANT to enter into an Agreement containing specific requirements with BUSINESS ASSOCIATE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations (“C.F.R”) and contained in this Agreement.

The parties agree as follows:

1. Definitions

a. Breach shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].

b. Business Associate shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

c. Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

d. Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501

e. Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.

f. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

g. Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

h. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

i. Protected Health Information or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

j. Protected Information shall mean PHI provided by PARTICIPANT to BUSINESS ASSOCIATE or created or received by BUSINESS ASSOCIATE on PARTICIPANT's behalf.

k. Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

l. Unsecured PHI shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. Obligations of Business Associate

a. Permitted Uses. BUSINESS ASSOCIATE shall not use Protected Information except for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement as permitted under the Agreement. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by PARTICIPANT. However, BUSINESS ASSOCIATE may use Protected Information (i) for the proper management and administration of Business Associate, or (ii) to carry out the legal responsibilities of Business Associate [45 C.F.R. Sections 164.504(e)(2)(i), 164.501(e)(2)(ii)(A) and 164.504(e)(4)(i)].

b. Permitted Disclosures. BUSINESS ASSOCIATE shall not disclose Protected Information except for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted under the Agreement. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by PARTICIPANT. If BUSINESS ASSOCIATE discloses Protected Information to a third party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BUSINESS ASSOCIATE of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

c. Prohibited Uses and Disclosures. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS

ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of PARTICIPANT and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however this prohibition shall not affect payment by PARTICIPANT to BUSINESS ASSOCIATE for services provided pursuant to the Agreement

d. Appropriate Safeguards. BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312 [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].

e. Reporting of Improper Access, Use, or Disclosure. BUSINESS ASSOCIATE shall report to PARTICIPANT *in writing* of any access, use or disclosure of Protected Information not permitted by the Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than two (2) business days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

f. Business Associate's Agents. BUSINESS ASSOCIATE shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree *in writing* to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation [45 C.F.R. Sections 164.530(f) and 164.530(e)(1)].

g. Access to Protected Information. This provision applies only if the BUSINESS ASSOCIATE maintains a designated record set on behalf of the PARTICIPANT. BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to PARTICIPANT for inspection and copying within ten (10) days of a request by PARTICIPANT to enable PARTICIPANT to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BUSINESS ASSOCIATE maintains an Electronic Health Record, BUSINESS ASSOCIATE shall provide such information in electronic format to enable PARTICIPANT to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

h. Amendment of PHI. This provision applies only if the BUSINESS ASSOCIATE maintains a designated record set on behalf of the PARTICIPANT. Within ten (10) days of receipt of a request from PARTICIPANT for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE or its agents or subcontractors shall make such Protected Information available to PARTICIPANT

for amendment and incorporate any such amendment to enable PARTICIPANT to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526.

i. Accounting Rights. Within ten (10) days of notice by PARTICIPANT of a request for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents or subcontractors shall make available to PARTICIPANT the information required to provide an accounting of disclosures to enable PARTICIPANT to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including, but not limited to 42 U.S.C. Section 17935(c), as determined by PARTICIPANT. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BUSINESS ASSOCIATE maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of a request forward it to PARTICIPANT in writing. It shall be PARTICIPANT's responsibility to prepare and deliver any such accounting requested. BUSINESS ASSOCIATE shall not disclose any Protected Information except as set forth in Sections 2.b. of this Business Associate Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph i shall survive the termination of this Agreement.

j. Government Access to Records. BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to PARTICIPANT and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BUSINESS ASSOCIATE shall provide to PARTICIPANT a copy of any Protected Information that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.

k. Minimum Necessary. BUSINESS ASSOCIATE (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Part 164, 45 C.F.R. Section 164.514(d)(3)]. BUSINESS ASSOCIATE understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary of the United States Department of Health and Human Services with respect to what constitutes "minimum necessary".

l. Data Ownership. BUSINESS ASSOCIATE acknowledges that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.

m. Notification of Breach. During the term of the Agreement, BUSINESS ASSOCIATE shall notify PARTICIPANT without unreasonable delay and in no case later than

two (2) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BUSINESS ASSOCIATE becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Such notice shall include, but not be limited to, the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, or disclosed during such breach. BUSINESS ASSOCIATE shall provide PARTICIPANT with any other available information that the PARTICIPANT is required to include in notification to the individual under 45 C.F.R. Section 164.404(c) at the time of the notification required by this subparagraph m or promptly thereafter as information becomes available. [45 C.F.R. 164.410]. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

n. Breach Pattern or Practice by PARTICIPANT. Pursuant to 42 U.S.C. Section 17934(b), if the BUSINESS ASSOCIATE knows of a pattern of activity or practice of the PARTICIPANT that constitutes a material breach or violation of the PARTICIPANT's obligations under the Agreement, the BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of the United States Department of Health and Human Services. BUSINESS ASSOCIATE shall provide written notice to PARTICIPANT of any pattern of activity or practice of the PARTICIPANT that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the PARTICIPANT's obligations under the Agreement within five (5) days of discovery and shall meet with PARTICIPANT to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination

a. Material Breach. A breach by BUSINESS ASSOCIATE of any provision of this Business Associate Agreement, as determined by PARTICIPANT, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

b. Effect of Termination. Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall, at the option of PARTICIPANT, return or destroy all Protected Information that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by PARTICIPANT, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI feasible [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If PARTICIPANT elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to PARTICIPANT that such PHI has been destroyed.

4. Amendment to Comply with Law. PARTICIPANT and BUSINESS ASSOCIATE acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Business Associate Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that PARTICIPANT

must receive satisfactory written assurance from BUSINESS ASSOCIATE that BUSINESS ASSOCIATE will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the Business Associate Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. PARTICIPANT may terminate the Agreement upon thirty (30) days written notice in the event (i) BUSINESS ASSOCIATE does not promptly enter into negotiations to amend this Business Associate Agreement when requested by PARTICIPANT pursuant to this Section or (ii) BUSINESS ASSOCIATE does not enter into an amendment to this Business Associate Agreement providing assurances regarding the safeguarding of PHI that PARTICIPANT, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. Survival. The respective rights and obligations of Business Associate shall survive the termination of the Agreement.

6. Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule, and the Security Rule.

END OF EXHIBIT F

EXHIBIT G
HIE FEES AND PAYMENT

1. Program Fee. There are no program fees. HIE may modify the Fee from time to time, but such modification will not become effective until Participant has received at least 60 days advance written notice of such modification. Such notice will specify the effective date of the modified Fee.

2. Technical Support Service Fee: Participant will pay HIE for technical support services as follows: There are no technical support fees. HIE may modify the Fee from time to time, but such modification will not become effective until Participant has received at least 60 days advance written notice of such modification. Such notice will specify the effective date of the modified Fee.

3. Payment. The Fee shall be payable in advance on or before the fifth day of each quarter/month. After 15 days, such payments shall accrue interest at the lesser of 1% per month or the highest rate allowed by applicable law.

END OF EXHIBIT G