Florida Health Information Exchange Participation Agreement

This Participation Agreement is a multi-party agreement by and between the undersigned vendor, CRISP Shared Services, Inc.("Vendor"), under contract with the Agency for Health Care Administration ("AHCA") for statewide health information exchange services and the other undersigned party (hereinafter referred to individually as "Participant") acting as a data source or recipient of data and other Participants who have executed the same Participant Agreement to subscribe to the Services. The Florida Health Information Exchange General Participation Terms and Conditions attached hereto are hereby incorporated by reference (hereinafter "General Terms and Conditions"). This Participation Agreement, any exhibits, attachments, or amendments thereto, and the incorporated General Terms and Conditions, are hereinafter referred to as either "Participation Agreement" or "Agreement."

WITNESSETH:

WHEREAS, AHCA has engaged Vendor to provide administration, management, oversight, and support of statewide health information exchange services through the Florida Health Information Exchange (Florida HIE);

WHEREAS, AHCA will provide governance, guidance, and approval of said administration, management, oversight, and support, including defining Permitted Purposes, Participants, fees, and general Florida HIE policies and procedures; and

WHEREAS, Vendor will provide, maintain, and make available all Data hosting and related services necessary for operation and maintenance of the Central Data Service to support coordination of care activities;

WHEREAS, Participant desires to participate in and utilize the Services offered by Vendor, and Vendor agrees to provide such Service;

NOW THEREFORE, for and in consideration of the mutual covenants contained below and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto mutually agree to the following additional terms:

1. **Definitions**: All definitions in the General Terms and Conditions, listed in ***Attachment D*** hereto, apply to this Participation Agreement.

2. **Permitted Purposes for the Services**: In addition to the Permitted Purposes set forth in the General Terms and Conditions, the following shall be the Permitted Purposes for which Participant is authorized, and for which Participant hereby authorizes Vendor, to use and disclose Health Data:

   a. Treatment. Treatment of the Individual who is the subject of the Protected Health Information (PHI) received by the Participant or Participant User.

   b. Health Care Operations. Health Care Operations as defined in 45 Code of Federal Regulations (CFR) 164.501 and provided that the Participant or Participant User is receiving the PHI for their own use. Participant shall only use the Minimum Necessary

PHI for such Health Care Operations purposes.

c. Public Health. Public Health activities and reporting to the extent permitted by Applicable Law.

d. Payment. Payment as defined in 45 CFR 164.501 and permitted by Applicable Law.

e. Other. Any release or use of Health Data permitted by Applicable Law and consistent with any limitations set forth in the General Terms and Conditions.

3. **Responsibilities of Participants:**

a. **Compliance with General Terms and Conditions**. Participant agrees to comply with the General Terms and Conditions. Failure to comply with the General Terms and Conditions shall be grounds for suspension or termination of this Participation Agreement.

b. **Network Operating Policies and Technical Requirements.** All Participants agree and are required to meet and comply with the Network Operating Policies and Technical Requirements for this Participation Agreement listed in ***Attachment A*** hereto.

4. **Vendor Responsibilities:**

a. Vendor will make available to Participant during the term of this Agreement, the HIE and the Services, and the related operational, administrative and support staff functions and technical infrastructure.

b. Vendor will provide the Service Levels for availability of help desk response times as set forth in ***Attachment C***.

c. Unless required by law, Vendor will not disclose to any third-party audit trail data which will collectively and individually be considered a trade secret in accordance with Section 812.081, Florida Statutes. Vendor will retain the audit trail data of transactions for a terminated Participant for eight (8) years from termination or as required by Vendor's document retention policies. For the avoidance of doubt, if allowed by Applicable Law, this section does not preclude Vendor from providing an Accounting of Disclosures to an individual at that individual's, or their dually authorized representative's, request.

d. Vendor will maintain the confidentiality of the Panels received from Participants, and will not use the Panel for any purpose not expressly permitted by this Participation Agreement or the Participant.

e. Vendor will maintain the confidentiality of the Health Data received from Participants consistent with the terms of this Participation Agreement and applicable law.

f. Vendor's role is to facilitate the exchange of Health Data through the operation of the Network, in accordance with this Participation Agreement for the Permitted Purposes. Vendor has no role in verifying the accuracy of Health Data received from Participants or verifying whether a Participant, Participant User, or other individuals designated by Participant to receive Health Data are authorized to send, receive, use or disclose particular information and/or Health Data. Vendor will not collect information from the content of the Health Data unless otherwise allowed by this Participation Agreement.

5. **Fees**: Participant recipients are charged an annual fee by Vendor which may be billed quarterly as determined by Vendor. The fee may be changed upon ninety (90) days written notice to Participants except for a fee reduction which can go into effect immediately. The fee schedule is displayed as ***Attachment B***.

6. **Term and Termination:** This Agreement will continue until and unless Vendor or Participant terminates this Agreement. Such termination may be effected as provided for in the General Terms and Conditions, or additionally, Vendor may terminate this Agreement without cause by providing the Participant with at least thirty (30) days prior written notice.

7. **Miscellaneous**: If a provision of this Participation Agreement conflicts with a provision in the General Terms and Conditions, the provision of this Participation Agreement controls. Notices under this Agreement shall be given to the parties' respective email or physical address listed in this Participation Agreement.

8. **Effective Date of this Participation Agreement**: This Participation Agreement and the General Terms and Conditions become effective when fully executed. This Agreement supersedes any former agreement for the Services.

9. **Attachments.** The following Attachments are incorporated into this Agreement:

Attachment A: Network Operating Policies and Technical Requirements for the Encounter Notification Service
Attachment B: Service Fee Schedule
Attachment C: Service Level Agreement
Attachment D: Florida Health Information Exchange General Participation Terms & Conditions
Attachment E: Entities Covered by This Agreement
Attachment F: Participation Agreement Business Associate Agreement
Attachment G: Qualified Service Organization Agreement

IN WITNESS WHEREOF, this Participation Agreement has been entered into and executed by officials duly authorized to bind their respective parties.

Participant*	Vendor
Signed: _____	**Signed:** _____
Printed Name: _____	**Printed Name:** _____
Title: _____	**Title:** _____
Date: _____	**Date:** _____

Participant Organization Legal Name: _____

Participant Organization DBA: _____

Organization Address: _____

Organization NPI: _____

Organization has a single location and organizational NPI (if checked, Exhibit G not required): ☐

Participant's Designated Contact*

Name: _____

Telephone: _____

Email: _____

Participant's Privacy and Security Officer*	Vendor Privacy and Security Officer
Name: _____	**Name:** _____
Telephone: _____	**Telephone:** _____
Email: _____	**Email:** _____

* For purposes of notices under the Agreement. The Designated Contact must have an active email address. The Designated Contact may be changed from time-to-time by written notice to Vendor.

Internal Review:

_____

Signature

_____

Printed Name

_____

Date

Attachment A

Network Operating Policies and Technical Requirements for the Services

In addition to the other provisions in this Participation Agreement (including the General Terms and Conditions), all Participants agree and are required to meet and comply at all times with the following Network Operating Policies and Technical Requirements for this Participation Agreement:

1. Delivery of Data. Participants acting as a Health data source will cooperate with Vendor to establish a mechanism by which Health data may be transmitted to Vendor. The Health data shall contain sufficient information to permit Vendor to match the patient with the Individuals listed in the Panels submitted by Participants. Participants acting as a Health data source shall filter restricted self-pay Encounter Data in compliance with 45 CFR § 164.522(a)(1)(vi) data and any other data not allowed to be transmitted under Applicable Law. All self-pay Encounter Data may be excluded by the data source.

2. Delivery of List of Patients or Members. Participant recipients of Health Data shall provide a list of members or patients, as applicable, to Vendor consistent with templates that Vendor shall provide to Participant ("Panel(s)"). Thereafter, the Participant will provide Vendor with updates to the Panel as appropriate.

3. Delivery of Alert Messages. Participants are responsible for identifying their Participant Users. Participant recipients are responsible for assuring that the Participant Users have patient authorization to access and use the Health Data required by Applicable Law.

4. Forwarding Alert Messages. Participant recipients that are health plans will forward required information to the appropriate primary care provider of a member as soon as reasonably practicable upon receipt in a manner consistent with Applicable Law.

5. Maintenance of Records. Participants are responsible for maintaining records for Accounting of Disclosures, public records, if applicable, records discovery, or any other purposes required by Applicable Law or the policies of the Participant. Any vendor support for the retrieval of records or other record handling requested or caused by the Participant may be subject to a fee to be paid by the Participant to Vendor.

Attachment B

Service Fee Schedule

There are no fees to Participants to act as a Health data Source. Participants acting as Recipients of Health data are charged as follows:

1. Health Plans
    a. $1.50 per-patient per-year for each of the initial 75,000 patients in a subscription and $0.35 per-patient per-year for each patient thereafter.
    b. The minimum annual fee for this participant type is $7,500.
2. Dental Health Plans participating in the Florida Medicaid Managed Care program
    a. $0.30 per-patient per-year for each of the initial 50,000 patients in a subscription and $0.15 per-patient per-year for each patient thereafter.
    b. The minimum annual fee for this participant type is $7,500.
3. Accountable Care Organizations
    a. $2.00 per-patient per-year for each of the initial 50,000 patients in a subscription and $0.25 per-patient per-year for each patient thereafter.
    b. The minimum annual fee for this participant type is $7,500.
4. Licensed Provider Organizations
    a. $0.30 per-patient per-year for each of the initial 50,000 patients and $0.15 per-patient per-year for each patient thereafter.
        - The minimum annual fee for this participant type is $2,000.
    b. The annual flat fee for panels with under 5,000 patients where Alert Messages are delivered according to Vendor specifications is $500.
    c. Applicable only to subscriptions comprised of patients who have received treatment from the Participant or its owned physician practices within the previous 12 months.
5. Licensed Provider Organizations Acting as Health Data Sources
    a. $0.22 per-patient per-year for each of the initial 50,000 patients in a subscription and $0.11 per-patient per-year for each patient thereafter.
    b. Panels with under 7,500 patients are assessed no annual fee.
        - The minimum annual fee for panels with 7,500 or more patients is $2,000.
    c. Applicable only to subscriptions comprised of patients who have received treatment from the Participant or its owned physician practices within the previous 12 months.

Attachment C

Service Level Agreement

1. **General Service Request Support:**
    a. Office Hours - 8:00 AM to 5:00 PM Eastern Time Monday-Friday for general service requests via telephone and/or email.
    b. General service requests received outside of office hours will be collected; however, no action will be guaranteed until the next working day.

2. **Production Issue Support:**
    a. Production issue support is available twenty-four hours a day, seven days a week, by phone.
    b. Email will route to Vendor team members for investigation.
    c. Production downtime issues will be responded to twenty-four hours a day, seven days a week. Vendor will respond to service-related incidents and/or requests submitted within the following time frames:

Priority	Operating Level Agreement (OLA) – Initial Response	Service Level Agreement (SLA) – Time to Resolution	Description
High	Within 60 minutes	4 hours (during business hours)	Issues that involve the production application being unavailable (e.g., "system down" scenarios)
Medium	Within 12 hours (8 AM – 5 PM / Weekdays)	Within 48 hours	Issues that involve the serious degradation of application performance or functionality
Low	Within 24 hours (8 AM – 5 PM / Weekdays)	Within 5 working days	Issues that involve immaterial problems not affecting application performance

3. **Planned Downtime.** Vendor will notify Participants about any planned maintenance or system downtimes that will disrupt data feeds and availability.

4. **Unplanned Downtime.** Vendor has monitoring in place capable of generating alerts for disruptions to data feeds, connectivity, and overall infrastructure uptime associated with the Services. Vendor will communicate openly about any downtime that disrupts the service for more than several hours and regularly until the downtime is resolved.

Attachment D

Florida Health Information Exchange
General Participation Terms and Conditions

The following Florida Health Information Exchange General Participation Terms and Conditions (hereinafter "General Terms and Conditions") apply to the use of Services offered as part of the Florida HIE program and are incorporated by reference into the Participation Agreements related thereto. Each Participation Agreement is a multi-party agreement and establishes the provisions and obligations to which all signatories ("parties") agree. These General Terms and Conditions, together with the Participation Agreement, set forth the provisions governing accessing Health Data through the Network.

1. **Definitions.**

For the purposes of this Agreement, the following terms shall have the meaning ascribed to them below. All defined terms are capitalized throughout this Agreement.

a. **Administrative Data** means information identifying and pertaining to Participant and its Users, such as User contact information, but which does not contain Protected Health Information or Participant's Proprietary Information, which Vendor uses to manage and administer the Services and provide support to Participant and its Users.

b. **Agreement** shall mean a Participation Agreement together with these General Terms and Conditions, which are incorporated into each Participation Agreement by reference.

c. **AHCA** shall mean the Agency for Health Care Administration, a State of Florida agency.

d. **Applicable Law** shall mean all applicable statutes, rules and regulations of Florida, as well as all applicable federal statutes, rules, and regulations.

e. **Audit** shall mean a review and examination of records (including log or other records generated by or available through an information system), and/or activities to ensure compliance with the Agreement as to the HIE. The audit process can be manual, automated or a combination of both.

f. **Breach** shall mean the unauthorized acquisition, access, use or disclosure under the Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) that compromises the security or privacy of the protected health information. Breach excludes:

(i) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority

and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

(ii) Any inadvertent disclosure by a person who is authorized to access protected health information at a covered entity or business associate to another person authorized to access PHI at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.

(iii) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Except as provided in (i) through (iii) above of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:

(i) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

(ii) The unauthorized person who used the PHI or to whom the disclosure was made;

(iii) Whether the PHI was actually acquired or viewed; and

(iv) The extent to which the risk to the PHI has been mitigated.

g. **Business Associate** shall mean Vendor when it, pursuant to this Agreement:

   i. on behalf of a Covered Entity Participant, but other than in the capacity of a member of the workforce of such Covered Entity, performs, or assists in the performance of:

      1. a function or activity involving the use or disclosure of PHI, or

      2. any other function or activity regulated by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, or

   ii. provides, other than in the capacity of a member of the workforce of a Covered Entity Participant, consulting, data aggregation (as defined in 45 CFR § 164.501), management, administrative, or other services to or for a Covered Entity Participant, where the provision of the service involves the disclosure of PHI from such Covered Entity Participant, or from another business associate of the Covered Entity Participant to the Business Associate.

h. **Central Data Service** shall mean a single database that is provided and

maintained by Vendor and associated with each Participant's System, which will hold a copy of Data of Participant that is available through the HIE and will be used for providing the Services. The Central Data Services will contain metadata that will link Data with a specific Participant for purposes of access, use and disclosures of an Individual's information in the HIE System and that will allow each Participant to have control over its own Data in the Central Data Service and effectively retain custody and control over its own Data maintained in the Central Data Service.

i. **Common Network Resource** shall mean software, utilities and automated tools made available for use in connection with the Network and which have been designated as a "Common Network Resource" by Vendor.

j. **Covered Entity** shall mean a Participant that is a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR Parts 160, 162, or 164; or a health plan as that term is defined at 45 CFR Part 160.103.

k. **Designated Record Set** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

l. **Discloser** shall mean Vendor or a Participant that discloses Proprietary Information to a Receiving Party.

m. **Dispute** shall mean any controversy, dispute, or disagreement arising out of or relating to this Agreement.

n. **Health Care Operations** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

o. **Health Data** shall mean that information which is requested, disclosed, stored on, made available on, or sent by a Participant, or requested or sent by Vendor (only for operational purposes) through the Network. This includes, but is not limited to, PHI, individually identifiable health information, de-identified data, or limited data sets (as defined in the HIPAA Regulations), pseudonymized data, metadata, and schema.

p. **HHS Secretary** shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

q. **HIPAA Regulations** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160, 162 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) of the American Recovery and Reinvestment Act of 2009, as in effect on the date of this Agreement and as may be amended, modified, or renumbered.

r. **HITECH** shall mean the Health Information Technology for Economic and Clinical Health Act of 2009 (which is part of the American Recovery and Reinvestment Act of 2009 (ARRA)), and any of its implementing regulations.

s. **Individual** shall mean a person who is the subject of PHI, and shall have the same meaning as the term "individual" as defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

t. **Individually Identifiable Health Information** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.

u. **Material** shall mean, for the purposes of Section 4 (Network Operating Policies and Technical Requirements) only, the implementation of, or change to, a Network Operating Policy or Technical Requirement that will: (i) have a significant adverse operational or financial impact on at least 20% of Participants; (ii) require at least 20% of Participants to materially modify their existing agreements with or policies or procedures that govern Participant Users or Participant's subcontractors.

v. **Minimum Necessary** shall refer to the standard set forth at 45 CFR § 164.502(b) and 164.514(d) of the HIPAA Regulations.

w. **Network** shall mean the network operated by Vendor that allows for the exchange of Health Data and/or information between and among Participants and Participant Users, as specifically described in this Agreement.

x. **Network Operating Policies and Technical Requirements** shall mean the policies and procedures that Participant must have in place and the technical requirements that must be met by a Participant for participating in the Network and sending and/or receiving Health Data (as applicable) for the Services, which Network Operating Policies and Technical Requirements are set forth for each service and as are amended from time to time in accordance with Section 4 (Network Operating Policies and Technical Requirements).

y. **Notice** or **Notify** shall mean a written communication, unless otherwise specified in this Agreement, sent to the appropriate party's representative at the address listed in the Participation Agreement in compliance with Section 18 of the General Terms and Conditions.

z. **Participant** shall mean any organization that (i) meets the requirements for participation in the Network as contained in the applicable Network Operating Policies and Technical Requirements, (ii) is accepted by Vendor for participation, and (iii) is a signatory to this Agreement.

aa. **Participant Users** shall mean those persons who have been authorized by Participant

to access Health Data through the Network and in a manner defined by the respective Participant, in compliance with the terms and conditions of this Agreement and Applicable Law. "Participant Users" may include, but are not limited to, health care providers and employees, contractors, or agents of a Participant.

bb. **Payment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

cc. **Permitted Purposes** shall mean the reasons for which Participant Users may legitimately exchange or use Health Data through the Network as defined in Section 3.

dd. **Proprietary Information**, for the purposes of this Agreement, shall mean proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such or that is commonly understood to be proprietary information. Proprietary Information includes, but is not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, processes and security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Discloser; and (iii) information or reports provided by a Discloser to a Receiving Party pursuant to this Agreement. Notwithstanding any label to the contrary, Proprietary Information does not include Health Data; any information which is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it; is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party's written records; or, is independently developed by Receiving Party without reference to, reliance on, or use of, Discloser's Proprietary Information.

ee. **Protected Health Information** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations, and may also be referred to as PHI.

ff. **Psychotherapy Notes** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

gg. **Qualified Service Organization** shall have the same meaning as 42 CFR § 2.11, and may also be referred to as a QSO.

hh. **Receiving Party** shall mean a Participant that receives Proprietary Information from a Discloser.

ii. **Recipient** shall mean the person(s) or organization(s) that receives Health Data through the Network for a Permitted Purpose. "Recipients" may include, but are not limited to, Participants, Participant Users, and Vendor.

jj. **Required By Law** shall have the meaning set forth at 45 CFR § 164.103 of the HIPAA Regulations.

kk. **Services** shall mean any services provided by the Vendor to access Health Data in the Central Data Service through the Network or through any other means provided for in this Agreement.

ll. **System** shall mean software, portal, platform, or other electronic medium controlled by a Participant through which the Participant sends, receives, discloses or uses Health Data through or from the Network. For the purposes of this definition, it shall not matter whether the Participant controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.

mm. **Transaction Data**" means information and statistics about Participant's interactions with and usage of the Services, but which does not contain PHI, Administrative Data, or Participant's Proprietary Information.

nn. **Treatment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

2. **Administration of the Network.**

a. **Vendor Role**. The parties acknowledge that Vendor has no control over the content of the Health Data available through the Network, or the activities of the Participants and Participant Users. The accuracy of any Health Data, as well as the authority of any Participant Users to access or disclose Health Data are the responsibility of the Participants and not Vendor. Participant acknowledges that Vendor's obligations are limited to implementing and maintaining the technical infrastructure of the Network in addition to other activities specified in this Agreement, as well as the following administrative activities:

i. New Participants. Vendor will review, evaluate and act upon requests submitted by organizations that want to become a Participant to a particular service on the Network, and determine whether such organizations meet the policy, technical, and operational requirements established by Vendor to become new Participants, and execute one or more Participation Agreements with any such new Participants, when appropriate. No further action or approval is required by other Participants for the addition of new Participants pursuant to this section.

ii. Vendor Responsibilities and Subcontractors. Vendor may delegate responsibilities related to the Network administration to one or more subcontractors. Vendor shall ensure that any subcontractor executes an agreement that only specifically authorized representatives of its subcontractor shall be granted access to the Network in connection with subcontractor's responsibilities, that the subcontractor will comply with the Business Associate provisions of this Agreement and the Qualified Service Organization provisions of this Agreement, as applicable, and will comply with the confidentiality provisions of this Agreement and Applicable Law.

The Participants acknowledge and agree that access to Health Data, Proprietary Information (if necessary), and other relevant data (including aggregate data) shall be granted to Vendor for all of its functions and obligations under this Agreement and shall be granted to Vendor's subcontractors for the sole purpose of assisting Vendor in maintaining the technical operations of the Network. Vendor shall give notice to the Participants of who it is using as subcontractors for any work on the Network. Vendor and any of its subcontractors shall employ security mechanisms that are consistent with the Security Standards of the HIPAA Regulations to provide for the security of the information. Further, Vendor will not store, transmit, or access any Health Data outside of the United States of America, and Vendor will not permit any subcontractors to store, transmit, or access any Health Data outside of the United States of America.

b. **Business Associate of Covered Entity Participants**. Vendor is a Business Associate of each Participant who is considered a "Covered Entity" under HIPAA Regulations. The provisions governing this Business Associate relationship are provided in ***Attachment F***.

c. **Qualified Service Organization of Participants with 42 CFR Part 2 Program(s)**. Vendor is a Qualified Service Organization of Participants who are providing information covered by 42 C.F.R. Part 2 (certain federally-funded substance abuse treatment programs). The provisions governing this Qualified Service Organization relationship are in ***Attachment G***. If a Participant has not executed a QSOA with Vendor, Participant acknowledges it is representing it is not covered by 42 CFR Part2.

d. **Additional Sources of Health Data**. Vendor may enter into agreements with other entities who can serve as sources of PHI or other data for the Network (e.g., private lab test results, prescription history from a pharmacy benefit manager, immunization registry data) that would be beneficial to the Network and/or to Participants and make that available through the Network for certain services. If applicable to this Agreement, such agreements shall not be inconsistent with the provisions of this Agreement, and Participant shall treat such Health Data from such additional sources in the same manner as other Health Data on the Network. Advance notice of any new sources of Health Data shall be given by Vendor to the Participants that would have access to such additional data sources.

e. **Provision of Network Equipment and Software**. Vendor will provide the computer software necessary to allow Participants to access Health Data on the Network; however, Participants must also have the software and other infrastructure that meets the applicable Network Operating Policies and Technical Requirements for the particular service(s) Participant is subscribed to in order to interface with Vendor's system. Participants shall arrange for their own carrier lines, computer terminals or personal computers, printers, or other equipment for accessing the Network, and shall ensure that they are properly configured to access the Network including but not limited to the base workstation operating system, web browser and Internet connectivity. Any equipment, software, or intellectual property provided by Vendor

to Participants shall remain the property of Vendor, unless otherwise specified. Any equipment or communication lines supplied by individual Participants shall remain the sole property of the supplying Participant.

f. **Accounting of Disclosures**.

i. **At Request of Participant**. Upon Participant's written request, Vendor shall provide an accounting of disclosures of PHI made by Participant via the Network within ten (10) business days of such request, in order for Participant (or Participant's Users) to comply with HIPAA, HITECH and all Applicable Law.

ii. **At Request of Individual.** Vendor shall respond to direct inquiries from a Participant's, or a Participant User's, patient or their legal representative for an accounting of disclosures of the individual's PHI made through the Network. This accounting of disclosures will include (1) the type of PHI accessed or notification sent; (2) the Participant User accessing or receiving the PHI, if available; (3) the name of the Participant accessing or receiving the PHI; and (4) the date of access or receipt.

3. **Use of Health Data.**

a. **Participation Agreement**. Each Participant enters into a Participation Agreement with Vendor and allow its Health Data to be utilized for, and Participant's Health Data will only be used for those Permitted Purposes listed below and those specified in the Participation Agreement(s) for the particular service(s) to which Participant has subscribed by executing the Participation Agreement(s).

b. **Permitted Purposes**. The Network shall be used only for Permitted Purposes listed below. Each Participant shall require and ensure that its Participant Users only use the Network for the Permitted Purposes. Participants shall ensure that they have obtained any authorization and consents from Individuals that may be required under Applicable Law prior to requesting or accessing Health Data via the Network for particular Individuals.

i. Execution of Vendor's Duties under this Agreement. Vendor shall have access to the Health Data, but only for the express purposes of connecting the Participants, facilitating the delivery of the Health Data on behalf of such Participants, and as otherwise set forth in this Agreement. Vendor does not claim any ownership in any of the content of Participant's Health Data, including any text, data, information, images, sound, video, or other material, that Participant may send via the Network.

ii. Other Specified Purposes Listed in Participation Agreement. The Participation Agreement contains one or more specific permitted purposes for which the Participant who executes such Participation Agreement is using the Network.

iii. Limited License to Access, Use, and Disclose Participant Data. Subject to the terms and conditions of this Agreement, Participant hereby grants Vendor a limited, non-exclusive, non-transferable, non-sublicensable license to access,

use, and disclose the Health Data during the Term and during any period thereafter for which a Permitted Purpose exists, as applicable, to (a) process the data as instructed by AHCA (and to the extent not inconsistent therewith, by Participants or data sources solely with respect to their respective Data), (b) as necessary to provide the Services for Participants' benefit as provided in this Agreement, (c) for the Permitted Purposes, and (d) as otherwise permitted in the Agreement.

iv. Use and disclosure of Administrative Data and Transaction Data, by Vendor.

a. Administrative Data. Vendor may use and disclose Administrative Data for purposes of providing services to Participants and Vendor Network Participants, for the purposes set forth in any terms of use applicable to a service, for Vendor's proper management and administration, and as required by law.

b. Transaction Data. "Vendor may use and disclose Transaction Data for any lawful purpose, including, by way of illustration and not limitation, (i) for the analysis, development, improvement, and provision of Vendor products and services; (ii) for recordkeeping, fee calculation, internal reporting, support, and other internal business purposes; (iii) to report the number and type of transactions and other statistical information; and (iv) to otherwise administer and facilitate Vendor services.

c. **Permitted Future Uses (Re-Disclosure)**. Subject to Section 13.g. of the General Terms and Conditions (Disposition of Health Data on Termination), Recipients may retain, use, and re-disclose Health Data received in response to a request in accordance with Applicable Law and the Recipient's policies and procedures.

d. **Management Uses**. Vendor may request information from Participant related to potential breach or other security or technical issue, and Participant shall not unreasonably refuse to provide information to Vendor for such purposes. Notwithstanding the preceding sentence, in no case shall a Participant or Vendor be required to disclose PHI to Vendor in violation of Applicable Law. Any information, other than Health Data, provided by a Participant to Vendor shall be treated as Proprietary Information in accordance with Section 11 of the General Terms and Conditions (Proprietary Information) of this Agreement unless agreed otherwise. Vendor shall have access to all Health Data and Proprietary Information necessary in order to fulfill its duties under this Agreement.

e. **Prohibited Purposes**. Neither Vendor, nor any Participant, may access or use the Health Data of another party to compare patient volumes, practice patterns, or make any other comparison without all Participants' written approval, except to the extent that such access or use is consistent with one or more Permitted Purposes. For the avoidance of doubt, neither Vendor, nor any Participant, may access or use the Proprietary Information of another party to compare patient volumes, practice patterns, or make any other such comparison without prior written approval from any Participant whose data would be involved. Uses of Health Data not expressly

permitted by this Agreement (including but not limited to Vendor reselling de-identified Health Data) are expressly prohibited under this Agreement without separate written approval from any Participant whose data would be involved.

4. **Network Operating Policies and Technical Requirements**

a. **General Compliance**. Each Participant shall comply with the Network Operating Policies and Technical Requirements that are applicable to the health information exchange services that Participant has subscribed to through its Participation Agreement(s).

b. **Adoption of Network Operating Policies and Technical Requirements**. The Participants hereby grant Vendor the power to adopt new Network Operating Policies and Technical Requirements, and to adopt amendments to, or repeal and replacement of, the same at any time through the Change Process described in the next subsection. Unless otherwise Required By Law, or necessary to maintain the stability of the Network, these Network Operating Policies and Technical Requirements shall not alter the relative rights and obligations of the parties under the Agreement and shall not be inconsistent with the Agreement.

c. **Change Process.**

i. **Determination of Materiality**. Vendor shall provide reasonable advance notification to all Participants of any proposed new, or change to existing, Network Operating Policies and Technical Requirements. Vendor shall consider feedback from all Participants including any comments on fiscal impact and then determine, in its sole discretion, whether such proposal is Material. If Vendor determines that the proposal is not Material, then Vendor shall follow the change process in the Section 4(c)(ii). If Vendor determines that the proposal is Material, then Vendor shall follow the change process in Section 4(c)(iii).

ii. **Non-Material Changes**. Vendor may implement any new Network Operating Policies and Technical Requirements, or amend, or repeal and replace any existing Network Operating Policies and Technical Requirements, for a particular service at any time by providing all Participants notice of the change at least thirty days prior to the effective date of the change so long as the new or amended Network Operating Policies and Technical Requirements to the particular service are not Material. Within fifteen days of receiving notice of the non-Material change, a Participant may request that Vendor delay implementation of the change based on unforeseen complications or other good cause. Vendor shall respond to a request to delay implementation within seven days of receiving the request.

iii. **Material Changes**. A material change to Network Operating Policies and Technical Requirements shall be made by an amendment to the Agreement as provided in Section 17.d. of the General Terms and Conditions

(Amendments).

iv. **Change Required to Comply with Federal or Florida State Law or for the Stability of the Network**. If a new or changed Network Operating Policy and Technical Requirement for a service is required for Vendor, or the Participants to comply with federal statutes or regulations, or Florida statutes or regulations, or to maintain the stability of the Network (e.g., the performance and integrity of Health Data exchanged among Participants), Vendor shall seek input from all Participants prior to implementing such change, but is not required to follow the processes required by Sections 4(c)(ii) and (iii) above. Vendor shall not require Participants to comply with such new or changed Network Operating Policies and Technical Requirements prior to the legally required effective date of such federal or Florida state statute or regulation, or federal contract deadline, as applicable. Vendor shall notify Participants immediately in the event of a change that is required in order to comply with federal or Florida state statute or regulation, or to maintain the stability of the Network.

v. **Participant Duty to Terminate Participation or Subscription, as Applicable**. If, as a result of a change made by Vendor in accordance with this Section 4(c), a Participant will not be able to comply with the Network Operating Policies and Technical Requirements or does not otherwise desire to continue subscribing to the Service, then such Participant shall as its sole remedy terminate its subscription to the Service in accordance with the relevant Participation Agreement's terms.

5. **Requirements for Participants.**

a. **Compliance**. All use of and interactions with the Network by Participant (and Participant's Users) shall comply with all applicable Network Operating Policies and Technical Requirements, these General Terms and Conditions, any Participation Agreement(s) between Vendor and Participant, any agreements between Participant and its Participant Users, and Applicable Law. Nothing in this Section shall require a disclosure that is contrary to a restriction (granted by the Participant) placed on PHI by a patient pursuant to Applicable Law. Participant shall be solely responsible for maintaining patient medical records, as applicable, in accordance with Applicable Laws, and shall not rely upon Health Data transmitted the Network for meeting Participant's obligation under any such laws.

b. **Participant's Users and System Access Policies.** Each Participant shall have written policies and procedures in place that govern its Participant Users' ability to access information on or through the Participant's System and through the Network ("Participant Access Policies"). Each Participant acknowledges that Participant Access Policies will differ among them as a result of differing Applicable Law and business practices. At a minimum, each Participant shall ensure that it has a valid and enforceable written agreement with each of its Participant Users, and/or policies and procedures that Participant Users are required to comply with, that ensure that any Health Data accessed by its Participant Users is: (i) for a Permitted Purpose; (ii)

supported by appropriate legal authority for obtaining the Health Data; (iii) requested and viewed by a Participant User with the legal authority to have such access, and (iv) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Participant. Further, each Participant shall employ a process for identity proofing that meets or exceeds National Institutes of Standards and Technology (NIST) Level 3 requirements in effect as of the date of execution of this Agreement by which the Participant, or its designee, validates sufficient information to uniquely identify each person seeking to become a Participant User prior to issuing credentials that would grant the person access to the Participant's System. Participant is solely responsible for authenticating Participant's own Participant Users for that access. Each Participant represents that it shall have the ability to monitor and audit all access to and use of its System related to this Agreement, for system administration, security, and other legitimate purposes. Each Participant agrees to enforce the provisions of this Agreement including but not limited to any provisions regarding limitations on Permitted Purposes for access to the Health Data and any confidentiality provisions of this Agreement by appropriately training all Participant Users, and disciplining individuals within each Participant's organization who violate such provisions pursuant to each Participant's respective Participant Access Policies. Participant shall also require that its Participant Users keep on file any signed patient authorization or consent forms that may be required for documentation regarding access to Health Data from the Network (pursuant to any applicable Network Operating Policies and Technical Requirements).

c. **Other Impermissible Purposes.** Participant shall not use the Network or permit any Participant User to use the Network to conduct any business or activity, or solicit the performance of any activity, which is prohibited by or would violate any Applicable Law or legal obligation, or for purposes that may create civil or criminal liability, including but not limited to: (i) uses which are defamatory, deceptive, obscene, or otherwise inappropriate; (ii) uses that violate or infringe upon the rights of any other person, such as unauthorized distribution of copyrighted material; (iii) "spamming," sending unsolicited bulk e-mail or other messages on the Network or sending unsolicited advertising or similar conduct; (iv) threats to or harassment of another; (v) knowingly sending any virus, worm, or other harmful component; and (vi) impersonating another person or other misrepresentation of source.

d. **Cooperation.** To the extent not legally prohibited, each Participant shall: (i) cooperate fully with Vendor and each other Participant with respect to such activities as they relate to this Agreement; (ii) provide such information to Vendor and/or each other Participant as they may reasonably request for purposes of performing activities related to this Agreement, (iii) devote such time as may reasonably be requested by Vendor to review information, meet with, respond to, and advise Vendor or other Participants with respect to activities as they relate to this Agreement; (iv) provide such reasonable assistance as may be requested by Vendor when performing activities as they relate to this Agreement; and (v) subject to a Participant's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting a Participant's Proprietary Information, provide information and assistance to Vendor or other Participants in the investigation of Breaches and Disputes. In no case shall a

Participant be required to disclose PHI in violation of Applicable Law. In seeking another Participant's cooperation, each Participant shall make all reasonable efforts to accommodate the other Participant's schedules and operational concerns. A Participant shall promptly report, in writing to any other Participant, and Vendor, any problems or issues that arise in working with the other Participant's employees, agents, or subcontractors that threaten to delay or otherwise adversely impact a Participant's ability to fulfill its responsibilities under this Agreement.

e. **Backup.** Participant is responsible for developing and maintaining backup procedures to be used in the event of a failure or unavailability of the Network, and is responsible for implementing any such backup procedures, as determined necessary by Participant.

6. **Enterprise Security.**

a. **Safeguards**. Vendor and each Participant shall be responsible for maintaining a secure environment that supports access to, use of, and the continued development of the Network. Each Participant and Vendor shall use appropriate safeguards to prevent use or disclosure of PHI by such party other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of PHI through the Network. Appropriate safeguards for Participants and Vendor shall be those identified in the HIPAA Security Rule, 45 CFR Part 160 and 164, Subparts A and C, regardless of whether Participant is subject to HIPAA Regulations. Participants shall also be required to comply with any applicable Network Operating Policies and Technical Requirements that may define expectations for Participants with respect to enterprise security.

b. **Malicious Software**. In participating in the Network, each Participant and Vendor shall ensure that it employs security controls that meet applicable industry or Federal standards so that the information and Health Data being transmitted and any method of transmitting such information and Health Data will not introduce any viruses, worms, unauthorized cookies, Trojans, malicious software, "malware," or other program, routine, subroutine, or data designed to disrupt the proper operation of a System, the Network or any part thereof, or any hardware or software used by a Participant or Vendor 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 a System or the Network or any part thereof or any hardware, software or data used by a Participant or Vendor in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable. In the absence of applicable industry standards, each Participant and Vendor shall use all commercially reasonable efforts to comply with the requirements of this Section.

c. **Other**. Participant will not knowingly use the Network, and will not permit any of its Participant Users to use the Network, (i) in a manner that significantly and adversely affects the performance or availability to other Participants of the Network, (ii) in a manner that interferes in any way with Vendor's computers or network security, or

(iii) to attempt to gain unauthorized access to Vendor's or any Participant's computer system.

7. **Breach Notification.**

a. **Procedure for Notification of Vendor and Impacted Participants**. Each party to this Agreement agrees that without unreasonable delay but not later than two (2) business days after determining that a Breach occurred, the party responsible for the Breach will Notify Vendor and all Participants likely impacted by the Breach of such Breach. The notification should include sufficient information for the other notified parties to understand the nature of the Breach. For instance, such notification could include, to the extent available at the time of the notification, the following information:

i. One or two sentence description of the Breach
ii. Description of the roles of the people involved in the Breach (e.g., employees, Participant Users, service providers, unauthorized persons, etc.)
iii. The type of PHI Breached
iv. Participants likely impacted by the Breach
v. Number of Individuals or records impacted/estimated to be impacted by the Breach
vi. Actions taken by the Participant to mitigate the Breach
vii. Current status of the Breach (under investigation or resolved)
viii. Corrective action taken and steps planned to be taken to prevent a similar Breach.

The notifying party shall have a duty to supplement the information contained in the notification as it becomes available and cooperate with other Participants and Vendor, subject to Section 5(d)(v). The notification required by this Section shall not include any PHI.

b. **Summary Notification to Non-Impacted Participants**. Vendor will Notify the Participants of any Breach. Vendor will provide, in a timely manner, a summary to such Participants that does not identify any of the Participants or Individuals involved in the Breach.

c. **Proprietary Information**. Information provided by a Participant in accordance with this Section, except Health Data, may be "Proprietary Information." Such "Proprietary Information" shall be treated in accordance with Section 11 (Proprietary Information).

d. **Legal Obligations**. This Section shall not be deemed to supersede or relieve a party's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law, including, but not limited to The HIPAA Breach Notification Rule, 45 CFR §§ 164.400-414 and Florida Statutes § 501.171, and those related to Individuals. The parties shall work together to coordinate any notification to Individuals, the federal government, and any public announcement

regarding the Breach that may be required by Applicable Law or the policies of a party. The party responsible for the Breach will be responsible for, and must bear the cost of, making any notifications required under Applicable Law.

e. **Consumer Complaints.** Within two (2) business days of Vendor's receipt of specific consumer complaints about privacy and security received from consumers, Vendor will refer all such consumer complaints to the appropriate Participant to investigate as a possible breach. At the same time that Vendor refers such consumer complaints to the appropriate Participant, but not earlier. Vendor shall maintain a record of the date the complaint was received, date of referral to the appropriate Participant, description of complaints, available contact information about the consumer, and Participant and Participant Users identified in the complaint.

8. **Representations and Warranties.**

The parties hereby represent and warrant the following as it applies to them respectively:

a. **Accurate Participant Information**. Except to the extent prohibited by Applicable Law, each Participant has provided, and will continue to provide Vendor with all information reasonably requested by Vendor necessary to discharge Vendor's duties under this Agreement or Applicable Law, including during the Dispute Resolution Process. Any information provided by a Participant to Vendor shall be responsive and accurate, including any information provided by Participant during any registration process for a particular service; however, this representation shall not extend to any Health Data. Each Participant shall provide notice to Vendor if any information previously provided by the Participant (other than Health Data) materially changes. Each Participant acknowledges that Vendor reserves the right to confirm or otherwise verify or check, in its sole discretion, the completeness and accuracy of any registration or other information provided by Participant at any time and each Participant will reasonably cooperate with Vendor in such actions, given reasonable prior notice. Notwithstanding the foregoing, Vendor is entitled to rely on the accuracy of information provided by each Participant, and Vendor has no duty to confirm, verify, or check the completeness and accuracy of any information.

b. **Execution of this Agreement**. Prior to participating in the Network, each Participant shall have executed a Participation Agreement and returned an executed copy to Vendor. In doing so, the Participant affirms that it has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals and consents in order for it to execute this Agreement. The representative signing this Agreement on behalf of the Participant affirms that he/she has been properly authorized and empowered to enter into this Agreement on behalf of the Participant. Similarly, Vendor affirms that its representatives signing this Agreement are duly authorized and that Vendor has full power and authority to enter into and perform this Agreement.

c. **Agreements with Subcontractors**. To the extent that a Participant uses subcontractors in connection with the Network or its use of Health Data obtained

from the Network, each Participant affirms that it has valid and enforceable agreements with each of its subcontractors that require the subcontractor to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of any Health Data to which it has access; (iii) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Participant; and (iv) reasonably cooperate with Vendor and the other Participants to this Agreement on issues related to the Network, under the direction of Participant.

d. **Accuracy of Health Data and Authority to Transmit, Receive and/or Disclose (as applicable)**. Each Participant hereby represents that at the time of transmission, that (i) the Health Data it provides pursuant to its Participation Agreement is an accurate representation of the data contained in or available through its System subject to the limitations set forth in Section 9.d. of the General Terms and Conditions (Incomplete Medical Record), (ii) the Health Data it provides is sent from a System that employs security controls that meet industry standards so that the information and Health Data being transmitted are intended to be free from malicious software in accordance with Section 6.b. of the General Terms and Conditions (Enterprise Security, Malicious Software), (iii) the Health Data it provides is provided in a timely manner and in accordance with applicable Network Operating Policies and Technical Requirements, (iv) that Participant is authorized to provide or make such Health Data available through the Network under the terms of this Agreement without violating any rights, including copyrights, of third parties, and (v) that Participant has met any requirements under Applicable Law including but not limited to obtaining any consent or authorization(s) from the Individual who is the subject of the Health Data, or their legally authorized representative, if required, before making a request for such Individual's Health Data through the Network. OTHER THAN THE REPRESENTATIONS IN THIS PARAGRAPH, NEITHER VENDOR NOR PARTICIPANT MAKE ANY OTHER REPRESENTATION, EXPRESS OR IMPLIED, ABOUT THE HEALTH DATA. MORE SPECIFICALLY, THE HEALTH DATA MADE AVAILABLE THROUGH THE NETWORK IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE PARTICIPANT OR AHCA OR VENDOR 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 THE PARTICIPANT, AHCA AND/OR VENDOR HAS BEEN APPRISED OF THE POSSIBLIITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTICIPANT AND VENDOR DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS, OR OTHER THIRD PARTIES

OR DUE TO HARDWARE OR SOFTWARE FAILURES.

e. **Absence of Final Orders**. Each party hereby represents and warrants that, as of the Effective Date, it is not subject to a final order issued by any Federal, State, local or international court of competent jurisdiction or regulatory or law enforcement organization, which will materially impact the party's ability to fulfill its obligations under this Agreement. Each party shall inform Vendor if at any point during its participation in the Network it becomes subject to such an order; Vendor will inform all Participants if a Participant informs Vendor that the Participant is subject to such an order.

9. **Disclaimers.**

a. **Accuracy of Patient Record Matching**. Each Participant acknowledges that there could be errors or mismatches when matching patient identities between disparate Health Data sources, but Vendor will take commercially reasonable measures to help ensure accurate patient matching occurs, if Vendor is involved in matching for the particular service to which Participant is subscribed. Participant is solely responsible for ensuring that any PHI obtained through the Network relates to a particular Individual as intended by the Participant and for the immediate destruction of any PHI obtained inadvertently.

b. **Accuracy of Health Data**. Nothing in this Agreement shall be deemed to impose responsibility or liability on a Participant or on Vendor related to the clinical accuracy, content or completeness of any Health Data provided pursuant to this Agreement.

c. **Reliance on a System**. Participants may not rely upon the availability of a particular Participant's Health Data, if such Health Data is provided as part of the particular Service.

d. **Incomplete Medical Record**. Each Participant acknowledges that Health Data may not include the Individual's full and complete medical record or history.

e. **Use of Network in an Emergency**. Participant and Participant Users are responsible for determining the appropriate use of the Network for communications or transactions concerning or supporting treatment in an emergency or other urgent situation. Further, to the extent that a Participant needs patient information in an emergency or on an urgent basis, Participant and Participant Users retain sole responsibility for communicating directly to any provider, including Participants according to Participant's own policies and procedures, and Participant agrees that it will not rely upon the Network or Vendor for delivery of such messages or to obtain patient information.

f. **Patient Care**. Health Data obtained through the Network is not a substitute for any Participant or Participant User, if that person/entity is a health care provider, obtaining whatever information they deem necessary, in their professional judgment, for the proper treatment of a patient. The Participant or Participant User, if they are a health

care provider, shall be 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 Network or Health Data made available thereby. None of the Participants or Vendor, by virtue of executing this Agreement, assumes any role in the care of any patient.

g. **Carrier Lines**. All Participants acknowledge that the exchange of Health Data between Participants through the Network is to be provided over various facilities and communications lines, and information shall 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 may be beyond the Participants' or Vendor's control. Provided a Participant and Vendor use reasonable security measures, no less stringent than those directives, instructions, and specifications contained in this Agreement, the Participants and Vendor assume no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted over those carrier lines, which are beyond the Participants' and Vendor's control, or any delay, failure, interruption, interception, loss, transmission, or corruption of any Health Data or other information attributable to transmission over those carrier lines which are beyond the Participants' and Vendor's control. Use of the carrier lines is solely at the Participants' and Vendor's risk and is subject to all Applicable Laws.

10. **License to Common Network Resources.**

Participant is hereby granted a nonexclusive, nontransferable, revocable and limited license to Network resources solely for use as a Participant under this Agreement. Participant shall not (a) sell, sublicense, transfer, exploit or, other than pursuant to this Agreement, use any Common Network Resources for Participant's own financial benefit or any commercial purpose, or (b) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code to any Common Network Resources. THE COMMON NETWORK RESOURCES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

11. **Proprietary Information.**

Each Receiving Party shall hold Proprietary Information in confidence and agrees that it shall not, during the term or after the termination of this Agreement, redisclose to any person or entity, nor use for its own business or benefit, any information obtained by it in connection with this Agreement, unless such use or redisclosure is permitted by the terms of this Agreement. Proprietary Information may be redisclosed under operation of law, provided that the Receiving Party immediately notifies the Discloser of the existence, terms and circumstances surrounding such operation of law to allow the Discloser its rights to object to such disclosure. If after Discloser's objection, the Receiving Party is still required by law to redisclose Discloser's Proprietary Information, it shall do so only to the minimum extent necessary to comply with the operation of the law and shall request that the Proprietary Information be treated as such.

12. **Liability.**

a. **Party Liability**. As between parties to this Agreement: Each party shall be responsible for its own acts and omissions and not for the acts or omissions of any other party. In circumstances involving harm to other parties caused by the acts or omissions of individuals who access Health Data or Proprietary Information through the Network or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from Vendor, the Participant or any of the Participant Users, each party shall be responsible for such harm to the extent that the individual's access was caused by the party's breach of the Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. Notwithstanding any provision in this Agreement to the contrary, the party shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This section shall not be construed as a hold harmless or indemnification provision. To the extent that a Participant is prohibited, by Applicable Law, from being subject to the liability outlined in this Section 12(a) (Party Liability), it shall be exempt from this Section 12(a)(Party Liability). If the Participant is an agency of the State of Florida or otherwise enjoys sovereign immunity (a "State Participant"), the limitations on tort claims as set forth in Section 768.28, Florida Statutes, shall apply to all tort-related claims, including without limitations, all claims that the State Participant may be required to defend under the indemnification provisions of this Agreement. The Parties to this Agreement expressly agree that any State Participant's execution of the Agreement, including any indemnification obligations that may be contained in this Agreement, shall not constitute a waiver of sovereign immunity, and that the entire extent of the State Participant's liability shall not exceed the limitations on tort claims set forth in Section 768.28, Florida Statutes.

b. **Effect of Agreement**. Except as provided in Section 8(d) (Representations and Warranties, Accuracy of Health Data and Authority to Transmit) and Section 17 (Dispute Resolution) of the General Terms and Conditions, nothing in this Agreement shall be construed to restrict AHCA's, Vendor's or a Participant's right to pursue all remedies available under Applicable Law for damages or other relief arising from acts or omissions of other parties hereto related to the Network or this Agreement, or to limit any rights, immunities or defenses to which a party may be entitled under Applicable Law.

c. **Limited Release of Vendor Liability**. Participants hereby release Vendor from any claim arising out of any inaccuracy or incompleteness of Health Data or any delay in the delivery of Health Data or failure to deliver Health Data to the Network when requested except for those arising out of Vendor's gross negligence.

13. **Term, Suspension and Termination.**

a. **Term**. Unless otherwise specified in the Participation Agreement, the initial term of this Agreement shall be for a period of two years commencing on the Effective Date. Upon the expiration of the initial term, this Agreement shall automatically renew,

unless prohibited by law, for successive one-year terms unless terminated pursuant to this Section 13 (Term, Suspension and Termination).

b. **Suspension or Termination by Participant.**

   i. **Suspension**. A Participant may voluntarily suspend its own participation in the particular Service for a valid purpose, as determined by Vendor, by giving Vendor at least twenty-four hours prior notice. Once proper notice is given, Vendor shall be empowered to suspend the Participant's access as of the date of suspension specified in the notice. Once Vendor suspends the Participant's access, Vendor shall provide notice of such voluntary suspension to all Subscribing Participants. During the suspension, neither the Participant, nor Participant Users, shall access the Network or be responsible for complying with the terms of this Agreement except those terms that survive termination of this Agreement in accordance with Section 19(g) (Survival) of the General Terms and Conditions. Any voluntary suspension shall be for no longer than five consecutive calendar days or for more than twenty calendar days during any twelve-month period, unless a longer period is agreed to by Vendor.

   ii. **Termination**. A Participant may terminate its participation in a particular service by terminating this Agreement, with or without cause, by giving Vendor at least five business days prior notice. Once proper notice is given, Vendor shall be empowered to revoke the Participant's access as of the date of termination specified in the notice. If the Participant wishes to resume participation, it will be required to execute a new Participation Agreement, including acceptance of the most recent version of the General Terms and Conditions.

c. **Suspension by the Vendor**. Upon Vendor completing a preliminary investigation and determining that there is a substantial likelihood that a Participant's acts or omissions create an immediate threat or will cause irreparable harm to another party, including, but not limited to, a Participant, a Participant User, the Network, Vendor, or an Individual whose PHI is exchanged through the Network, the Participants hereby grant to Vendor, the power to summarily suspend, to the extent necessary to address the threat posed by the Participant, a Participant's access to a particular service, pending the submission and approval of a corrective action plan, as provided in this Section. Vendor shall immediately suspend the Participant's access to a particular service and within twelve hours of suspending Participant's access (i) provide notice of such suspension to all Subscribing Participants; and (ii) provide to the suspended Participant a written summary of the reasons for the suspension. Participant shall use reasonable efforts to respond to the suspension notice with a detailed plan of correction or an objection to the suspension within three business days or, if such submission is not reasonably feasible within three business days, then at the earliest practicable time. If the Participant submits a plan of correction, Vendor will within five business days review and either accept or reject the plan of correction. If the plan of correction is accepted, Vendor will, upon completion of the plan of correction, reinstate Participant's access to the particular service and provide notice to all Subscribing Participants of such reinstatement. If the plan of correction is

rejected, Participant's suspension will continue, during which time Vendor and Participant shall work in good faith to develop a plan of correction that is acceptable to both Participant and Vendor. At any time after Vendor rejects Participant's plan of correction, either Participant or Vendor may submit a Dispute to the Dispute Resolution Process described in Section 17 (Dispute Resolution) of the General Terms and Conditions. If Vendor and Participant cannot reach agreement on a plan of correction through the Dispute Resolution Process, Vendor may terminate Participant in accordance with Section 13(d) (Termination by the Vendor). Nothing in this Agreement obligates Vendor to investigate or audit any Participant's compliance with this Agreement or Applicable Law.

d. **Termination by Vendor**. Vendor may terminate a Participant's access to a particular service and this Agreement with respect to a Participant as follows:

    i. After taking a suspension action in accordance with Section 13(c) (Suspension by Vendor) of the General Terms and Conditions when there is a substantial likelihood that the Participant's acts or omissions create an immediate threat or will cause irreparable harm to another party including, but not limited to, a Participant, a Participant User, the Network, Vendor, AHCA, or an Individual whose PHI is exchanged through the Network;

    ii. In the event that the Participant has materially breached this Agreement and has not cured such material breach after ten business days' notice that includes a detailed description of the alleged material breach; or

    iii. Immediately in the event that the Participant violates this Agreement's provisions regarding protection of Vendor's Proprietary Information.

    A Participant whose access is revoked by virtue of termination may appeal such revocation through the Dispute Resolution Process. However, during the pendency of any such appeal, the Participant's access to the particular service may continue to be revoked at the discretion of Vendor.

e. **Effect of Termination**. Upon any termination of this Agreement for any reason, the terminated party shall cease to be a Participant and thereupon and thereafter neither that party nor its Participant Users shall have any rights to use the Network (unless such Participant Users have an independent right to access the Network through another Participant). Vendor shall revoke a terminated Participant's access to particular service and provide notice of such Participant's access to the remaining Subscribing Participants. As an exception to the foregoing, termination of a Participant for one subscribed service would not necessarily terminate Participant from another subscribed service, if Participant had subscribed to more than one service on the Network. In the event that any Participant(s) are terminated, this Agreement will remain in full force and effect with respect to all other Participants. Certain provisions of this Agreement survive termination, as more fully described in Section 19(g) (Survival).

f. **Disposition of Health Data Upon Termination**. At the time of termination,

Recipient (other than Vendor) may, at its election, retain Health Data on Recipient's System (if applicable) in accordance with the Recipient's document and data retention policies and procedures, Applicable Law, and this Agreement, including Section 3(c) (Permitted Future Uses (Re-Disclosure)) of the General Terms and Conditions. Vendor shall terminate access to or from a terminated Participant's system on the termination date for that Participant. Vendor will delete or destroy a terminated Participant's Health Data, including but not limited to any Health Data; however, if Vendor determines that returning or destroying PHI is not feasible, then Vendor must maintain the privacy protections under the Business Associate, Qualified Services Organization, as applicable, and other provisions of this Agreement relating to protection of Health Data and according to Applicable Law for as long as Vendor retains the PHI, and Vendor may only use or disclose the PHI for the specific uses or disclosures that make it necessary for Vendor to retain the PHI.

g. **Disposition of Health Data Upon Request.** In addition to Vendor's obligations to delete or destroy a terminated Participant's Health Data as set forth above, Vendor shall, at any time requested by a Participant via notice during the term, but no more than once per calendar year, promptly and to the extent feasible, delete all the Health Data in Vendor's possession that the Participant had delivered to Vendor prior to the twelve (12) month period before the request was made. Vendor may keep and continue exchanging any data for the prior twelve (12) months unless Participant terminates this Participation Agreement.

h. **Feasibility.** Participant acknowledges that among the possible reasons for which return, deletion, or destruction of Health Data by Vendor, as required in this Section 13, may not be feasible are instances in which the Health Data has been transmitted by Vendor to another Participant for Permitted Purposes hereunder.

14. **Insurance.**

a. **Insurance by Vendor**. Vendor shall maintain Workers Compensation insurance and Commercial General Liability insurance including bodily injury, property damage, personal and advertising injury and products and completed operations. This insurance will provide coverage for all claims that may rise from the services and/or operations completed under this Agreement, whether such services and/or operations are by Vendor or anyone directly employed or engaged by it (including, but not limited to, its subcontractors). Vendor will maintain professional liability insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) and network risks (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in the performance of its services. Vendor reserves the right to self-insure any of the required coverages in this section, provided that such self-insurance meets all regulatory requirements.

b. **Insurance by Participants**. Each Participant shall carry insurance in an amount sufficient to cover its obligations hereunder; however, each Participant reserves the right to self-insure to meet the obligation of coverage in this section, provided that

such self-insurance meets all regulatory requirements.

15. **Indemnification.**

a. **Indemnification by Participants**. Participant will indemnify and hold harmless Vendor and other Participants, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising directly from Participant's or Participant's Users' breach of this Agreement, including the unauthorized or improper use of the Network or Participant's or Participant's Users' use or disclosure of Health Data for any purpose other than a Permitted Purpose. The Participant will not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). The foregoing indemnity shall apply only to the extent of the willful misconduct or gross negligence of the Participant or Participant User.

b. **Indemnification by Vendor.**

i. **For Breach**. Vendor will indemnify and hold harmless Participants, Participant Users, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising directly from Vendor's breach of this Agreement, including the unauthorized or improper use of the Network or Vendor's use or disclosure of Health Data for any purpose other than a Permitted Purpose or as otherwise allowed under this Agreement. Vendor shall not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). The foregoing indemnity shall apply only to the extent of the willful misconduct or gross negligence of Vendor.

ii. **For Infringement**. Vendor will indemnify and hold harmless Participants, Participant Users, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties that the use of the Network or any Network resource or software provided by Vendor infringes any patents, copyrights or trademarks or is a misappropriation of trade secrets, provided that Participant notifies Vendor in writing promptly upon discovery of any such claims and gives Vendor complete authority and control of, and full cooperation with, the defense and settlement of such claim. Vendor shall not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits).

iii. **Indemnification in General**. In the event a suit is brought against a party to this Agreement under circumstances where Section 15(a) (Indemnification by Participants) or 17(b) (Indemnification by Vendor) of the General Terms and Conditions applies (the "sued party"), the indemnifying party, at its sole cost and expense, shall defend the sued party in such suit if written notice thereof is promptly given to the indemnifying party within a period wherein the indemnifying party is not prejudiced by lack of such notice. If indemnifying party is required to indemnify and

defend, it will thereafter have control of such litigation, but the indemnifying party may not enter into any settlement or other agreement with respect to any claim that imposes any duty or obligation on the sued party, or provides for an admission of fault on the part of the sued party, without the prior written consent of the sued party, which consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the sued party; and the indemnifying party, in defending any action on behalf of the sued party, shall be entitled to assert in any action every defense or immunity that the sued party could assert in its own behalf. This indemnification not only applies to civil suits filed against the sued party, but also to administrative actions and civil penalties on the sued party imposed by state or federal government agencies that may result from breach of this Agreement by the indemnifying party. Any action or claim against the indemnifying party must be brought in writing within one (1) year from the date of filing of the claim by the third party against the sued party, otherwise the indemnity is invalid.

c. **Exception for Certain Participants**. The obligation to indemnify in this Section 15 (Indemnification) shall not apply to any Participant who is barred by statute or other Applicable Law from indemnifying another party. In the case of a State Participant, the provisions of Section 768.28, Florida Statutes, relating to sovereign immunity shall govern. In addition, a State Participant's indemnification obligations shall be no greater than the limitations on tort claims as set forth in Section 768.28, Florida Statutes, and treated as if the tort claims prompting Vendor or other Participants to invoke the indemnification obligation had been asserted against the State Participant directly. In the event that any third parties asserts claims against the State Participant and Vendor and/or other Participants, the State Participant's aggregate obligations shall not exceed the limitations on tort claims as set forth in Section 768.28, Florida Statutes. Nothing in this Agreement shall be construed as a waiver of sovereign immunity or consent by a state agency or political subdivision to suit by third parties.

16. **General Fee Terms for Services.**

Any fees payable for service(s) offered are provided in the applicable Participation Agreement, as amended from time to time by Vendor. Unless expressly modified in the Participation Agreement, the following terms apply to payment of fees.

a. Taxes. All fees and other charges for subscribing to a particular service 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 Vendor's net income) that Vendor 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 or services provided pursuant to this Agreement.

b. Third Party Fees and Charges. The Participant will be solely responsible for any other charges or expenses the Participant may incur to access or use the service, including without limitation, Carrier Line and equipment charges, and fees charged by vendors of third party products that may be included and specified in

a Participation Agreement to which Participant has executed.

c. Failure to Pay Fees.

i. Interest on Late Payments. Fees not paid for the service by the due date set in the Participation Agreement(s) executed by Participant may bear interest at the rate of one and a half percent (1.5%) per month or the highest legal rate of interest, whichever is lower. The accrual of such interest shall not affect the rights and remedies of Vendor under this Agreement.

ii. Suspension of Service. In the event fees are not paid by thirty (30) days following the due date (or, in the event the Participant disputes any portion of the fees due), Vendor may suspend the Participant's access to a service on thirty (30) days' prior notice. Vendor may charge a reasonable renewal fee to cover its costs and overhead associated with restoring a suspended service after suspension due to non-payment.

iii. Collection. In the event that payment due to Vendor is collected at law or through an attorney-at-law, or under advice therefrom, or through a collection agency, Participant agrees to pay all costs of collection, including without limitation all court costs and reasonable attorneys' fees.

17. **Dispute Resolution.**

a. **General**. The parties acknowledge that it may be in their best interest to resolve Disputes through an alternative dispute resolution process rather than through civil litigation. The parties have reached this conclusion based upon the fact that the legal and factual issues involved in this Agreement are unique, novel, and complex, and limited case law exists which addresses the legal issues that could arise from this Agreement. Therefore, the parties shall submit Disputes related to this Agreement to the Dispute Resolution Process in the next Section 17(b). Except in accordance with Section 17(c) (Immediate Injunctive Relief) of the General Terms and Conditions, if a party refuses to participate in the Dispute Resolution Process, such refusal shall constitute a material breach of this Agreement and shall be grounds for termination.

b. **Dispute Resolution Process:**

i. Notice of Dispute. When a Dispute arises, a party will send Notice, in accordance with the notice provision of the Agreement, to the other parties to this Agreement involved in the Dispute. The Notice must contain a summary of the issue as well as a recommendation for resolution. The party must send a copy of the Notice to Vendor and AHCA for informational purposes.

ii. Informal Conference. Within thirty calendar days of receiving the Notice, the parties involved in the Dispute are obligated to meet and confer with each other, at least once in good faith and at a mutually agreeable location (or by telephone), to try to reach resolution (the "Informal Conference"). If the parties to the Dispute reach a resolution at the Informal Conference, they will

provide notification to that effect to Vendor. The parties agree that if any party refuses to participate in such Informal Conference, or if the Informal Conference fails to produce a mutually acceptable resolution of the Dispute within thirty (30) calendar days after the parties' receipt of Notice of the Dispute, the other party or parties may submit the matter to mediation or arbitration pursuant to this Section 17(b).

iii. Mediation. In the event a Dispute arises between or among the parties that cannot be settled by Informal Conference as set forth above, the parties may, on mutual agreement, submit the matter to mediation to be conducted in a mutually agreeable location in Florida. The process for selecting the mediator shall be determined by the mutual written consent of the parties. If the parties fail to agree to a process within ten (10) calendar days from a request, the requesting party may proceed to invoke the arbitration process provided for herein. The consent of any party to such mediation may be withdrawn at any time, without cause. If the parties to the Dispute reach a resolution at the mediation, they will provide notification to that effect to Vendor.

iv. Binding Arbitration. The parties agree that any Dispute which cannot be resolved between or among them after following the Dispute Resolution Process set forth in this Section shall be subject to mandatory and binding arbitration before a single arbitrator. The arbitration shall be conducted by and according to the American Health Lawyers' Association's Alternative Dispute Resolution Service ("AHLA – ADR") Rules of Procedure for Arbitration, and judgment on the award by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in such location as mutually agreed upon by the parties; provided, if the parties fail to agree within ten days of the request for arbitration, the location shall be determined by the arbitrator and shall be in the state of Florida. Each party involved shall be responsible for the costs and fees of its attorneys, accountants, consultants and other costs incurred in the preparation and presentation of its position at arbitration. The parties to the Dispute shall bear equally the cost of the arbitrator and those costs common to multiple parties. In the event the prevailing party is required to seek enforcement of any arbitrator's decision in a court of competent jurisdiction, the party ultimately prevailing in any appeal thereof shall have the costs and fees of its attorneys, accountants, and other consultants incurred in prosecuting such appeal and post judgment collection costs paid by the non-prevailing party or parties. If the arbitrator requires the assistance of a financial or accounting expert to carry out his duties under this Section, then the parties to the Dispute shall have the equal obligation to pay for such experts.

c. **Immediate Injunctive Relief**. Notwithstanding the prior Section, a party may be relieved of its obligation to participate in the Dispute Resolution Process if such party

(i) believes that another party's acts or omissions create an immediate threat to the confidentiality, privacy or security of Health Data exchanged through the Network or will cause irreparable harm to the Network or another party (Participant, Participant

User, Vendor, or Individual) and (ii) pursues immediate injunctive relief against such other party in a court of competent jurisdiction. The party pursuing immediate injunctive relief must notify Vendor of such action within twenty-four hours of filing for the injunctive relief and of the result of the action within twenty-four hours of learning of the same. If the injunctive relief sought is not granted and the party seeking such relief chooses to pursue the Dispute, the parties must then submit to the Dispute Resolution Process.

d. **Activities During the Dispute Resolution Process**. Pending resolution of any Dispute under this Agreement, the parties agree to fulfill their responsibilities in accordance with this Agreement, unless the party is a Participant and voluntarily suspends its participation in the Network in accordance with Section 13(b) (Suspension or Termination by Participant) of the General Terms and Conditions, or is suspended in accordance with Section 13(c) (Suspension by Vendor) of the General Terms and Conditions.

e. **Implementation of Agreed Upon Resolution**. If, at any point during the Dispute Resolution Process, all of the parties to the Dispute accept a proposed resolution of the Dispute, the parties agree to implement the terms of the resolution in the agreed upon timeframe.

f. **Exceptions for Certain Participants**. The obligation to engage in binding arbitration in this Section 17 (Dispute Resolution) shall not apply to any Participant who is barred by statute or other Applicable Law from engaging in binding arbitration with another party. Binding arbitration pursuant to this Section shall not apply to the rights of action involving the state or its agencies or subdivisions or the officers, employees, or agents thereof pursuant to Section 768.28. If the Participant is an agency of the State of Florida, the provisions of Section 768.28, Florida Statutes, relating to sovereign immunity shall govern.

18. **Notices.**

All Notices to be made under this Agreement shall be given in writing to the appropriate party's representative at the address listed in the Participation Agreement, and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by U.S. Postal Service Certified Mail, return receipt requested; or (iii) if by transmission nationally recognized overnight courier service that has the capability to track the notice, upon receipt.

19. **Miscellaneous/General.**

a. **Governing Law**. In the event of a Dispute between or among the parties arising out of this Agreement, Florida law will govern the operation of the parties involved in the Dispute, excluding its conflicts of law rules.

b. **Changes to Applicable Law**. Any new legislation or amendments to government regulations or administrative rules that become effective after the Effective Date of this Agreement shall be mutually agreed to by AHCA, Vendor, and Participants as to the applicability of the change to

this Agreement. Upon mutual agreement of the parties, a written amendment will subsequently be made to this Agreement to incorporate the requisite change(s).

c. **Entire Agreement**. This Agreement sets forth the entire and only agreement among Vendor and the Participants relative to the subject matter hereof and supersedes all previous negotiations and agreements, whether oral or written. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon Vendor or any Participant.

d. **Amendment**. Except for changes to any fees charged by Vendor in the Participation Agreement (if any), and changes to Network Operating Policies and Technical Requirements for the particular service, made in accordance with Section 4 (Network Operating Policies and Technical Requirements) of the General Terms and Conditions, this Agreement may be amended only by an instrument in writing signed by the party against whom the change, waiver, modification, extension, or discharge is sought, unless otherwise indicated in this Agreement.

e. **Assignment**. No party shall assign or transfer this Agreement, or any part thereof, without the express written consent of Vendor. Any assignment that does not comply with the requirements of this Section shall be void and have no binding effect.

f. **Additional Participants.** Upon Vendor's acceptance of a new participant in the Network, Vendor will coordinate for the new Participant to execute and become bound by this Agreement. To accomplish this, the new participant will enter into a Participation Agreement, pursuant to which the new participant agrees to be bound by this Agreement. The Participants and Vendor agree that upon execution of the Participation Agreement by a duly authorized representative of Vendor, all then- current Participants shall be deemed to be signatories to such Participation Agreement with the result being that current Participants and the new participant are all bound by the Agreement and obligated to each other in accordance with its terms. The new participant shall not be granted the right to participate in the particular service until both it and Vendor execute the Participation Agreement.

g. **Survival**. The provisions of Sections 3(c) (Permitted Future Uses (Re-Disclosure)), 3(d) (Management Uses), 7 (Breach Notification), 11 (Proprietary Information), 14 (Liability), 15(g) (Disposition of Health Data Upon Termination), 15 (Indemnification), 17 (Dispute Resolution) and any other provisions of this Agreement that by their nature or by express statement shall survive, shall survive the termination of this Agreement for any reason. In addition, any Participant obligation to pay fees to Vendor shall survive termination of this Agreement and the terms of Section 16 (General Fee Terms for Service) of the General Terms and Conditions shall survive and apply, as needed.

h. **Waiver**. No failure or delay by any party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.

i. **Validity of Provisions**. In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of this Agreement, invalid, void or

otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect, as long as the original intent of the Agreement would not thereby be frustrated.

j. **Priority**. In the event of any conflict or inconsistency between a provision in the General Terms and Conditions of this Agreement and the body of the Participation Agreement, the terms contained in the body of the Participation Agreement shall prevail.

k. **Headings**. The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify, or aid in the interpretation or construction of meaning of the provisions of this Agreement. All references in this instrument to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Agreement. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision.

l. **Relationship of the Parties**. The parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the parties. No party hereto shall have any authority to bind or make commitments on behalf of one another, nor shall any such party hold itself out as having such authority. No party to this Agreement shall be held liable for the acts or omissions of another party hereto.

m. **Third-Party Beneficiaries**. With the exception of the parties to this Agreement, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

n. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the Participant whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.

o. **Force Majeure**. A party shall not be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (i) severe weather or storms; (ii) earthquakes or other disruptive natural occurrences; (iii) strikes or other labor unrest; (iv) power failures; (v) nuclear or other civil or military emergencies; (vi) terrorist attacks; (vii) acts of legislative, judicial, executive, or administrative authorities; or (viii) any other circumstances that are not within its reasonable control. This Section shall not apply to obligations imposed under Applicable Law.

p. **Time Periods**. Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of Vendor and the affected party(ies).

[END OF GENERAL TERMS AGREEMENT]

Attachment E

Entities Covered by This Agreement

The following provider entities are included as part of the Participation Agreement as subsidiaries or affiliates. Each subsidiary or affiliate is individually entitled to the rights and subject to the obligations of the Participation Agreement. Parent organization represents and warrants that it has legal authority to bind each subsidiary or affiliate listed below to the Participation Agreement and that it will provide the Vendor Designated Contact, as set forth on the signature page of the Participation Agreement, with advance written notice of any additions or deletions of subsidiaries or affiliates identified below.

Parent organization (Participant Agreement signer):

Organization Legal Name:
DBA or Familiar Name:
Address:
NPI:

Subsidiaries or affiliates covered by this Participation Agreement – Indicate parent organization if different from above (add tables as necessary):

Organization Legal Name:
DBA or Familiar Name:
Address:
NPI:
Parent Organization:

Organization Legal Name:
DBA or Familiar Name:
Address:
NPI:
Parent Organization:

Organization Legal Name:
DBA or Familiar Name:
Address:
NPI:
Parent Organization:

CERTIFICATION

I hereby agree to the foregoing on behalf of the parent organization and each identified subsidiary or affiliate and certify that the information provided herein is accurate.

Signature:

Printed Name: Date:

Organization: Title:

Phone: Email:

Attachment F

PARTICIPATION AGREEMENT BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by Vendor ("Business Associate") and Participant ("Covered Entity") and is effective as set forth in Section 6(a) below.

RECITALS

A. Business Associate provides services to Covered Entity in accordance with a Participation Agreement ("Participation Agreement").

B. Under the Participation Agreement, Covered Entity may disclose information to Business Associate which constitutes Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996, as amended by the relevant portions of the Health Information Technology for Economic and Clinical Health ("HITECH") Act (collectively, "HIPAA").

C. The purpose of this Agreement is to satisfy the requirements of HIPAA that Business Associate provide satisfactory written assurances to Covered Entity that it will comply with the applicable requirements of HIPAA.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. Definitions. Unless otherwise defined in this Agreement, including the definitions stated in the Recitals, which are incorporated into this Section 1 by reference, capitalized terms have the meaning ascribed to them under HIPAA or in the Participation Agreement for purposes of this Business Associate Agreement.

    a. Breach. "Breach" means the unauthorized acquisition, access, use, or disclosure of Unsecured Protected Health Information which compromises the security or privacy of such information, subject to the statutory exceptions specified at Section 13400 of the HITECH Act and to the regulatory exclusions specified at 45 C.F.R. §164.402 and any future amendments thereto.

    b. Guidance. "Guidance" shall mean official guidance of the Secretary as specified in the HITECH Act and any other official guidance or interpretation of HIPAA by a federal governmental agency with jurisdiction.

    c. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for a Covered Entity that are (i) the medical records and billing records about Individuals maintained by or for a covered Health Care Provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a Health Plan; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. For purposes of this definition, the term record means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or

for the Covered Entity.

d. "HIPAA Regulations" or "Regulations". References to "HIPAA Regulations" or "Regulations" shall mean the Privacy Rule and the Security Standards, as amended by Regulations commonly referred to as the HITECH Modifications to the HIPAA Privacy, Security Enforcement and Breach Notification Regulations.

e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E, as amended by the HITECH Act and the HIPAA Regulations and Guidance.

f. Protected Health Information or PHI and ePHI. "Protected Health Information" and "PHI" shall have the same meaning as the term "protected health information" in HIPAA and shall include ePHI. Specific references to "ePHI" shall be deemed to refer only to PHI in electronic form. All references to PHI or ePHI in this Agreement shall refer only to PHI or ePHI of Covered Entity created, received, maintained or transmitted by Business Associate under the Participation Agreement unless specifically stated otherwise. Protected Health Information includes Genetic Information.

g. Security Incident. "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. Security Standards. "Security Standards" shall mean the Security Standards at 45 CFR parts 160, 162 and 164, as amended by the HITECH Act and HIPAA Regulations and Guidance.

i. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

j. Subcontractor. "Subcontractor" shall mean an individual or entity to which Business Associate delegates a function, activity or service involving access to PHI or ePHI of Covered Entity, other than as a member of Business Associate's Work Force.

k. Unsecured. "Unsecured" as applied to Protected Health Information means Protected Health Information in any form, electronic, paper or oral, that is not secured through the use of a technology or methodology specified by the Secretary in Regulations or Guidance.

2. Obligations and Activities of Business Associate as to Protected Health Information.

a. Business Associate agrees to not Use or further Disclose Protected Health Information other than as permitted or required by the Participation Agreement, this Agreement, or as Required by Law and to otherwise comply with the provisions of the Privacy Rule and the Security Rule applicable to Business Associate. This includes the restrictions on the Sale of PHI and on its Use for Marketing provided in the HIPAA Regulations. The restrictions on the Secondary Use of Data contained in the Terms and Conditions of the Participation Agreement are also specifically incorporated into this Agreement.

b. Business Associate agrees to use appropriate safeguards to prevent Use or Disclosure of Protected Health Information other than as provided for in Section 2(a.) above. If and to the extent Protected Health Information disclosed to, accessed, used, maintained, held, or created by Business Associate as ePHI, Business Associate will comply with the applicable provisions of the Security Standards, by providing Administrative, Physical, and Technical Safeguards for all ePHI and by developing Policies and Procedures implementing those Safeguards.

c. Business Associate agrees to promptly report to Covered Entity any Use or Disclosure of the Protected Health Information not provided for in the Participation Agreement and/or this Agreement. Business Associate agrees to report to Covered Entity any Breach within five (5) business days of the first day the Breach is known, or reasonably should have been known, to the Business Associate, including for this purpose known to any employee, officer, or other agent of the Business Associate (other than the individual committing the Breach) ("Breach Notice"). The Breach Notice will include the date of the Breach and the date of discovery of the Breach and, to the extent known to Business Associate at the time in the exercise of reasonable diligence, identification of each Individual whose Unsecured PHI was, or is reasonably believed by the Business Associate to have been, subject to the Breach, and the nature of the PHI that was subject to the Breach and other information required for notification of Individuals of the Breach (collectively, "Breach Information"). Business Associate will notify Covered Entity in writing of any additional Breach Information not included in the Breach Notice or of the circumstances that prevent Business Associate from obtaining such information not later than ten (10) days after the Breach Notice was sent by Business Associate. Business Associate will cooperate with Covered Entity in the further investigation of the Breach, as reasonably required or as requested by Covered Entity. If Business Associate believes that the facts related to a Breach justify the application of any statutory exceptions specified at Section 13400 of the HITECH Act and to the regulatory exclusions specified at 45 C.F.R. §164.402, Business Associate shall describe those facts in the Breach Notice and the parties shall thereafter discuss the possible application of an exception or an exclusion, provided that any final decision on the availability of an exclusion or exception will be that of the Covered Entity.

d. The parties agree that this Section 2(d.) satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required, except on request as stated below. For purposes of this Agreement, such Unsuccessful Security Incidents include, without limitation, activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service and any combination of the above, so long as no such Unsuccessful Security Incident results in unauthorized access, use, disclosure, modification or destruction of ePHI or interference with information system operations related to the ePHI, provided that, upon written request from Covered Entity, Business Associate will provide a log or similar documentation of Unsuccessful Security Incidents for the period of time reasonably specified in Covered Entity's request.

Successful Security Incidents will be reported to Covered Entity within two (2) business days of the date the Successful Security Incident is, or in the exercise of reasonable efforts should have been known, to Business Associate. If the Successful Security Incident constitutes a Breach, the parties will proceed as required under this Agreement as to a Breach.

e. Business Associate agrees to use reasonable efforts to mitigate, at its expense, any harmful effect that is known to Business Associate to result from a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of the Participation Agreement and/or this Agreement, including without limitation a Breach. Business Associate will coordinate any mitigation efforts with Covered Entity.

f. Business Associate agrees to ensure that any Subcontractor agrees, in a form meeting the requirements of 45 C.F.R. § 164.314, to substantially the same restrictions and obligations that apply through this Agreement to Business Associate with respect to Protected Health Information, including those obligations relating to ePHI. Upon Business Associate's knowledge of a pattern of activity or practice of a Subcontractor in violation of the requirements of the foregoing agreement, Business Associate will provide notice and an opportunity, not longer than a reasonable time consistent with the nature of the breach and the terms of the Service Agreement with the Subcontractor, for the Subcontractor to end the violation. Business Associate will terminate the agreement with that Subcontractor if the Subcontractor does not end the violation within the time specified by the Business Associate.

g. To the extent Business Associate maintains a Designated Record Set for the Covered Entity, Business Associate will make available, within a reasonable amount of time of receipt of a written request, Protected Health Information in the Designated Record Set in accordance with the requirements of HIPAA, including information, if any, maintained in an Electronic Designated Record Set. Business Associate will report any request for Access that it receives directly from an Individual to Covered Entity within five (5) business days of receipt. Covered Entity will determine any appropriate limitations on such Access and the parties will determine a reasonable method for providing such Access, including, if appropriate, Transmission to a Third Party.

h. To the extent Business Associate maintains a Designated Record Set for the Covered Entity, Business Associate agrees to make an amendment, within a reasonable amount of time of receipt of a written request, to Protected Health Information in the Designated Record Set in accordance with the requirements of HIPAA. Business Associate will report any request for an amendment that it receives directly from an Individual to Covered Entity within five (5) business days of receipt. The Covered Entity will determine and provide to Business Associate the appropriate substance of any such amendment.

i. Business Associate agrees to maintain and make available on written request information required to provide an Accounting of its Disclosures of Protected Health Information required for the Covered Entity to respond to a request by an Individual in accordance with the requirements of HIPAA. At such time as final Regulations or Guidance as to Accounting for Disclosures for purposes of Treatment, Payment and

Health Care Operations ("TPO Accounting") are published, Business Associate will provide an amendment to this Agreement under Section 7(e.) to specify the extent and manner in which TPO Accounting Information will be recorded and provided, to be effective as of the date upon which compliance with TPO Accounting Regulations or Guidance is required by Covered Entity.

j. Subject to receiving notice as described in Section 4(b.), Business Associate agrees to abide by any restriction on the Use or Disclosure of PHI agreed to by Covered Entity, provided that, in the event of an agreement of Covered Entity required by HIPAA not to disclose an item or service paid for, entirely out-of-pocket, by an Individual to a Health Plan for Payment or Health Care Operations purposes unless such Disclosure is Required by Law, the parties agree that such information shall be treated by Covered Entity as Data subject to Special Restrictions under the Participation Agreement and will not made available to Business Associate.

l. Upon request, Business Associate will make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA.

m. To the extent that Business Associate will carry out an obligation of Covered Entity under the Security and Privacy provisions set out in Subpart E of 45 CFR 164, Business Associate will perform such obligations in compliance with the provisions Subpart that apply to the Covered Entity as to such obligations.

3. Permitted Uses and Disclosures of Protected Health Information by Business Associate. Business Associate may Use or Disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Participation Agreement, provided that such Use or Disclosure would not violate the Privacy Rule if done by the Covered Entity. In addition:

a. Except as otherwise limited in this Agreement, Business Associate may Use or Disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out legal responsibilities of Business Associate, provided that in the event of Disclosures, the Disclosure is Required by Law or Business Associate obtains reasonable assurances, in a form substantially similar to a Business Associate Agreement, from the Individual to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the Individual, and that the Individual notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

b. Business Associate may Use Protected Health Information to provide Data Aggregation services to Covered Entity to the extent provided for in the Participation Agreement.

c. Business Associate agrees that it will not De-identify any PHI to which it has access under the Participation Agreement except as for a purpose permitted under the

Participation Agreement, such as Permitted Purposes and subject to any approvals required for such use under the Participation Agreement or permitted under this Agreement. Without limiting the generality of the foregoing, and regardless of what may be permitted under Applicable Law, Business Associate will not manipulate, aggregate, integrate, compile, merge, reorganize, regenerate such PHI, even if De-identified, or derive from such PHI, even if De-identified, any list, compilation, abstraction, or other information to use for a business purpose of Business Associate that is unrelated to the services Business Associate provides under the Participation Agreement ("Secondary Use") or allow access to the PHI or any derivation of it to a third party (even if related to Business Associate) for a Secondary Use.

4. Obligations of Covered Entity to Inform Business Associate of Privacy Practices and Individual Restrictions.

a. Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with HIPAA as well as any changes to such Notice of Privacy Practices, to the extent that a provision of the Notice will affect Business Associate's Use or Disclosure of PHI.

b. Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to in accordance with the Privacy Rule, to the extent that such restriction will affect Business Associate's Use or Disclosure of Protected Health Information. In order to allow Business Associate to comply with such agreed restriction, such notice will be provided at least fifteen (15) business days in advance of the date upon which compliance by the Business Associate is required under HIPAA.

5. Permissible Requests or Disclosures; Minimum Necessary. Except as specifically provided in the Participation Agreement or this Agreement, Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except as provided in this Agreement for Business Associate's Data Aggregation, internal management and administration or legal responsibilities. Without limiting the generality of the foregoing, Covered Entity will provide, and Business Associate will request, no more than, the Minimum Necessary amount of PHI required for the performance of Business Associate's services under the Participation Agreement. As of the date upon which compliance is required with Guidance regarding Minimum Necessary Uses and Disclosures, Business Associate and Covered Entity will comply with such Guidance. To the extent that an amendment to this Agreement is required for such compliance, Business Associate will provide such an amendment in accordance with Section 7(e.)

6. Term and Termination

a. Term. This Agreement is effective as of the Effective Date of Participation Agreement and replaces any prior Business Associate Agreement between the parties relating to the Participation Agreement. This Agreement shall terminate when the Participation Agreement terminates and all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy Protected Health

Information, when protections are extended to such information, in accordance with the provisions of Section 6(c.).

b. Termination.

i. Upon one party's knowledge of a material breach by the other party of this Agreement, the parties shall proceed under the termination for cause for material breach provisions of the Participation Agreement. Notwithstanding the foregoing, if there is no termination for cause for material breach provision in the Participation Agreement, then the non-breaching party shall provide the breaching party with written notice of the material breach which describes the breach in reasonable detail and the breaching party shall have thirty (30) days from receipt of the notice to cure the breach to the reasonable satisfaction of the non- breaching party. If the breaching party has not done so within that period, the non-breaching party may terminate this Agreement for cause effective on further written notice to the breaching party;

ii. Notwithstanding the foregoing, the non-breaching party may immediately terminate this Agreement if the breaching party has breached a material term of this Agreement and the non- breaching party reasonably determines that cure is not feasible.

c. Effect of Termination.

i. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy (in a manner that renders the information Secure) all PHI received from, or accessed, maintained, used, disclosed and/or transmitted for or on behalf of, Covered Entity by Business Associate. If, or to the extent that, Business Associate reasonably determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and agrees to extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible until Business Associate returns or destroys the PHI.

ii. Notwithstanding the foregoing, Covered Entity and Business Associate agree that, as provided in the Participation Agreement, Data (as defined in the Participation Agreement to include Protected Health Information) that has been provided to other Participants in accordance with the Participation Agreement is not subject to the foregoing requirements. In addition, Data of Participant that is incorporated into Business Associate's Health Information Exchange Master Patient Index and Registry, in accordance with and as defined in the Participation Agreement, may be retained by Business Associate for purpose of indexing and record location for records that were made available by Participant prior to termination, subject to extension of required protections under 6(c.)(i.).

iii. To the extent the Participation Agreement specifically deals with the return or

destruction of PHI following termination or expiration of the Participation Agreement, the provisions of the Participation Agreement shall govern, so long as such provisions are compliant with HIPAA.

7. Miscellaneous

a. Regulatory References. A reference in this Agreement to a section in HIPAA or the Privacy Rule, the Security Standards, or HIPAA Regulations or Guidance means the referenced material as in effect as of the Effective Date or as subsequently amended as supplemented or implemented.

b. State Privacy or Security Laws. Business Associate will comply with privacy, data security and consumer notification of a breach of personal information laws of the state of Florida or other states, if applicable to the extent required under the Participation Agreement. In addition, Business Associate will comply with applicable state restrictions on storage or transmission of PHI by Business Associate, as known, or as reasonably should be known, to Business Associate.

c. Permitted Charges. To the extent Business Associate takes any action, such as providing information to an Individual under Section 2(g.), for which a charge or cost is allowed to be collected under HIPAA or state or local law, Business Associate may collect such charge or cost from the Individual or from the Covered Entity, as Business Associate determines appropriate in accordance with Business Associate's Policies and Procedures or after discussion with Covered Entity.

d. Other Agreements for Services. To the extent that Business Associate provides services to Covered Entity under agreements other than the Participation Agreement, and such services involve Business Associate's access to, use, creation or maintenance of PHI of Covered Entity as a Business Associate under HIPAA ("Other Service Agreements"), unless the Other Service Agreement specifically provides otherwise or incorporates another form of Business Associate Agreement, the provisions of this Agreement shall apply to Business Associate under the Other Service Agreement and all references to Participation Agreement shall be deemed to refer to the Other Service Agreement.

e. Amendment. In the event that either party believes that the provisions of this Agreement require amendment based on HIPAA, including but not limited to, Guidance or Regulations or other legislative or regulatory changes to the Privacy Rule or the Security Standards occurring after the Effective Date of this Agreement, that party may notify the other party in writing, including of the text and effective date of the proposed amendment ("Amendment Notice"). The parties shall promptly meet and discuss the proposed amendment and either agree upon it or agree on other mutually acceptable changes to this Agreement responsive to the Amendment Notice. If the parties are unable to agree on the amendment or such changes, in writing, within thirty (30) days of receipt of the Amendment Notice by the other party, the party providing the Amendment Notice may terminate the Participation Agreement, without cost or penalty, effective on the date on which the proposed amendment was to be effective, as specified in the Amendment Notice. However, the foregoing process shall not apply in the event that Business Associate provides an Amendment Notice that has been approved by the Advisory Board

so long as Business Associate provides the Amendment Notice a reasonable time after the Regulatory Change is published in final form and the amendment is effective as of the date compliance with the Regulatory Change is required by Covered Entity and Business Associate.

f. Survival. The respective rights and obligations of the parties under this Agreement which require or contemplate compliance after termination of this Agreement shall survive the termination.

g. Independent Contractor, Not Agent. For purposes of this Agreement and HIPAA, Business Associate will be deemed to be an independent contractor, and not an agent, of Covered Entity under applicable law, including federal common law.

h. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both Business Associate and the Covered Entity to comply with the HIPAA, consistent with the Participation Agreement.

[END OF BUSINESS ASSOCIATE AGREEMENT]

Attachment G

QUALIFIED SERVICES ORGANIZATION AGREEMENT

This Addendum amends the Participation Agreement (the "Participation Agreement") between Vendor and Participant (the "Program"), a facility that provides alcohol or drug abuse diagnosis, treatment or referral within the meaning of 42 C.F.R. Part 2 ("Part 2") and adds a Qualified Services Organization Agreement (the "QSOA") to the Participation Agreement. The Program and Vendor shall collectively be known herein as the "Parties."

WHEREAS, the Program wishes to obtain, and Vendor is willing to provide, certain services to the Program and in order to do so, Vendor must have access to Part 2 Information, as defined below.

WHEREAS, in providing services for the Program, Vendor will serve as a "qualified services organization" of the Program as defined in the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 C.F.R. Part 2, as amended; and

WHEREAS, 42 C.F.R. Part 2 permits the exchange of information to support services provided to a substance use disorder treatment program but prohibits broader sharing of information without patient consent;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS

A. "Part 2 Information" means information protected by 42 C.F.R. Part 2, as more specifically set forth at 42 C.F.R. §§ 2.11 and 2.12(a).

B. "Consent" means a patient's written consent to disclosure of Part 2 Information that conforms with the requirements for valid patient consent set forth in 42 C.F.R. § 2.31.

C. Any other capitalized term has the definition given to it in the Participation Agreement.

II. SERVICES TO BE PERFORMED

A. As a QSO for Program, the Program will provide Vendor with Part 2 Information, which the Parties agree is necessary for Vendor to provide Services (as defined below) to the Program. The Program will not provide any additional Part 2 Information without prior agreement from Vendor, and Vendor shall not have any responsibility for protecting Part 2 Information given to Vendor, other than the Part 2 Information already provided to Vendor for provision of Services, without prior agreement. "Prior agreement" includes data handling information forms provided by the Program during onboarding.

B. Vendor shall provide Services consistent with the restrictions imposed in 42 C.F.R. Part 2. Vendor will take measures to prevent Part 2 Information received from the Program from being made available to other Participants, including the fact that an identified individual is or has been a patient of the Part 2 Program, except as otherwise permitted under Part 2, including after the patient has provided written Consent to Vendor.

C. The Program must be compliant with all provisions of the Participation Agreement. The Program will have access only to the agreed upon Services as specified in the Participation Agreement, and not to other Services unless the Parties agree otherwise in writing.

D. This Addendum does not provide for, or authorize, the disclosure of Part 2 Information without patient Consent for purposes other than the performance by Vendor of the Services and Vendor administrative services, as described in the Participation Agreement.

III. COMPLIANCE WITH 42 C.F.R. PART 2.

A. Vendor agrees that, in receiving, maintaining, processing or otherwise using any Part 2 Information received from the Program, it is bound by 42 C.F.R. Part 2.

B. This Addendum provides for the sharing of Part 2 Information upon the Consent of the patient. Consent can be captured by the Program or any other clinical provider or payer with a relationship to the patient. The Consent must be entered into the Vendor portal; the Program agrees to update their Notice of Privacy Practices and explain to the patient that the Consent allows the Part 2 Information to be released for all treatment, payment, and operations purposes and provide appropriate education on the consequences thereof.

C. Vendor agrees that it shall use and disclose Part 2 Information only as necessary to perform the services described in II B and related administrative services for the Program or as otherwise permitted by 42 C.F.R. Part 2.

D. Vendor agrees that it shall resist any efforts in judicial proceedings to obtain access to the Part 2 Information except as permitted by 42 C.F.R. Part 2.

E. Vendor agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of Part 2 Information, including maintaining written records in a secured room or locked file cabinet, safe or similar container when not in use. With respect to electronic Part 2 Information, Vendor agrees to comply with the standards applicable to electronic health information set forth in the HIPAA Security Rule. *See* Subpart C of 45 C.F.R. Part 164.

F. Vendor shall require any contract agent assisting it in providing services under this Addendum to execute an agreement requiring the contract agent to comply with 42 C.F.R. Part 2 in receiving, maintaining, processing or otherwise using any Part 2 Information.

IV. ADDITIONAL TERMS

A. This Addendum will terminate automatically upon termination of the Participation Agreement. In addition, either Party may terminate this Addendum upon 30 days prior written notice to the other Party.

B. To the extent Vendor] retains Part 2 Information disclosed under this Addendum after the termination of this Addendum, the obligations set forth in this Addendum to protect the Part 2 Information survive the termination of the Addendum.

C. This Addendum supersedes and replaces any and all Qualified Services Organization Agreements that the Program and Vendor may have entered into prior to the date of this Addendum.

D. Any notices concerning this Addendum shall be provided as specified in the Participation Agreement.

The Parties have entered into this Addendum effective as of the day of , 20_.

AGREED TO:

Name of Participating Organization

_____

Signature

_____

Name

_____

Title

_____

Date

For Vendor:

_____

Signature

_____

Name

_____

Title

_____

Date