

**TECHNOLOGY-ENABLED CARE COORDINATION
SUBSCRIPTION AGREEMENT**

THIS TECHNOLOGY-ENABLED CARE COORDINATION SUBSCRIPTION AGREEMENT ("Agreement") is entered into and effective as of the Effective Date (as defined herein) by and between **NORTH CAROLINA HEALTH INFORMATION EXCHANGE**, a North Carolina nonprofit corporation whose principal office is located at 2300 Rexwoods Drive, Suite 390, Raleigh, North Carolina 27607 (hereinafter, "NC HIE"), and the Participant (hereinafter, "Participant") identified below:

Participant: North Carolina Department of Health and Human Services
Address: 101 Blair Drive
Raleigh, NC 27603
Attn: Darryl Meeks, Director, Health Information Technology

RECITALS:

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

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

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

1. **EFFECTIVE DATE.** The effective date ("Effective Date") of this Agreement shall be the date on which the last of the following events occurs: (a) the full execution of this Agreement by both NC HIE and Participant, and (b) the full execution by NC HIE of the Certification of Compliance With Executive Order #24 attached hereto as Exhibit D.

2. **DEFINITIONS.** All capitalized words and phrases not expressly defined herein and used within this Agreement and the recital paragraphs hereof shall have the definitions set forth for them within the Second Amended and Restated North Carolina Health Information Exchange Participation Agreement (the "Participation Agreement") attached hereto as Exhibit B. If no express definition is set forth for any such words or phrases in the Participation Agreement, they shall have the meaning stated in the HIPAA Regulations or if not defined in the HIPAA Regulations, the meaning assigned by other Applicable Law. All references to "days" in this Agreement shall mean calendar days.

3. USE AND DISCLOSURE OF DATA

(a) For and during the Term of this Agreement and conditioned upon the Participant's compliance with all of the terms and conditions of this Agreement, and the Participation Agreement, NC HIE grants to Participant a limited, non-exclusive, and non-transferrable, royalty-free right and license to access, disclose and use Patient Information solely to carry out Permitted Purposes. Any such access and use shall at all times and in each instance be undertaken in full compliance with this Agreement, the Participation Agreement, and applicable NC HIE Policies and Procedures which may be amended from time to time.

(b) For and during the Term of this Agreement and conditioned upon NC HIE's compliance with all of the terms and conditions of this Agreement, and the Participation Agreement, Participant grants separately to NC HIE an irrevocable, non-exclusive, royalty-free right and license to use all Patient Information and Confidential Information that is Disclosed by Participant through the HIE Network solely as permitted by this Agreement and the Participation Agreement. Notwithstanding the foregoing, if Participant desires to expand the scope of Permitted Purposes with respect to NC HIE's use of Participant's Patient Information, Participant shall identify any expansions and, subject to the decision by NC HIE to implement such expansions, NC HIE shall describe the scope of the expansions in an exhibit to be attached hereto as Exhibit E.

4. SUBSCRIPTION TO SERVICES; FEES.

(a) Subject to the terms and conditions of this Agreement, Participant hereby subscribes to use the services identified on the Service Election and Fee Schedule to be developed, mutually agreed and attached hereto as Exhibit A and thereby incorporated herein by reference (severally and collectively, the "Services"), and NC HIE agrees to implement and make available such Services to Participant for its use. Funding for these services will be provided in accordance with Section 14 Funding. Upon written notice received by Participant at least one hundred eighty (180) days before the end of the initial term of this Agreement or the then current renewal term (if any), NC HIE reserves the right in its sole discretion to discontinue the offering and availability of any or all of the Services and shall have no liability to Participant or its Authorized Users for or arising out of such discontinuance of Services, provided such discontinuance shall only be effective as of the expiration of the initial term of this Agreement or the then current renewal term. Participant shall also receive support and maintenance as part of the subscription services at no cost beyond the fees set forth in Exhibit A and in accordance with the Service Level Agreement set forth in Attachment A to Exhibit A, provided that Participant is not in default of their subscription fees as defined herein.

(b) In the event that: (i) Participant elects to discontinue its subscription to any one or more of the Services, (ii) Participant elects to subscribe to additional services offered by NC HIE and not initially subscribed to by Participant, or that NC HIE first makes available for subscription by Participant subsequent to the Effective Date of this Agreement, or (iii) NC HIE elects to discontinue the offering and availability of any or all of the Services, the parties shall enter into good faith negotiations toward adoption of a new Service Election and Fee Schedule which shall be in substantially the form attached as Exhibit A to reflect the change in Services or addition of additional services, and fees owed on account of the applicable subscription change(s). The execution of a new Service Election and Fee Schedule by both of the parties hereto shall be deemed to amend or modify any and all prior Service Election and Fee

Schedule(s) executed by the parties and without the necessity of any further action on the part of either party.

(c) In the event that Participant and NC HIE subsequently execute a future Exhibit for any reason, the terms of this Agreement shall apply and such Exhibit shall be automatically incorporated herein by this reference.

(d) All fees paid hereunder are stated and must be paid in U.S. dollars. All amounts payable under this Agreement are exclusive of taxes and duties.

5. STATEMENTS OF WORK. The parties contemplate that during the Term of this Agreement, Participant may request that NC HIE provide certain services to Participant for purposes of, among other things and for illustration purposes only, assisting Participant in integrating its internal system onto the HIE Network, or assisting Participant in the fulfillment of certain responsibilities that are otherwise the obligation of Participant pursuant to this Agreement. In such event, Participant shall identify any services which Participant desires be performed by NC HIE as well as the extent to which the services shall be paid for with federal funds. Subject to the decision by NC HIE to provide the services desired by Participant, NC HIE shall prepare a proposed statement of work (a "SOW") which shall include, if and to the extent applicable:

(a) A reasonably detailed identification and scope of the services and or project to be performed by NC HIE for Participant under the specific SOW, and the location where such services will be performed;

(b) Any specific Deliverables (as that term is defined in Section 8(a) below) or milestones to be achieved under such SOW;

(c) The fees, anticipated costs and expenses for the services to be performed under such SOW;

(d) The time period during which performance of the services under such SOW shall be performed and completed;

(e) Specific staffing requirements of NC HIE and Participant for the particular services; and

(f) Such other information as Participant and NC HIE deem relevant to the services covered by the SOW.

Each proposed SOW shall be subject to the approval of Participant and NC HIE and, when acceptable to both parties, shall be executed by both parties. Upon the full execution of any such SOW by both Participant and NC HIE, such SOW shall be automatically deemed incorporated by reference into this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall constitute a commitment of either party to enter into any particular SOW with the other, and in the event of any inconsistency between this Agreement and a SOW, this Agreement shall govern and control, except with respect to compensation and payment terms in a SOW, and terms in a SOW that are specifically identified as superseding the terms of this Agreement.

6. PARTICIPANT'S AUTHORIZED USERS. For and during the Term of this Agreement and conditioned upon Participant's compliance with all of the terms and conditions of this Agreement and the Participation Agreement, NC HIE grants to Participant the non-exclusive, non-transferable, right to authorize Participant's Authorized Users, if any, to use the Services, which usage shall be authorized by Participant in the manner prescribed by the Participation Agreement.

7. OBLIGATIONS OF NC HIE.

(a) Compliance with Laws. NC HIE shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority. In providing Services and Deliverables and without limiting or modifying in any respect NC HIE's obligations, NC HIE shall comply, and shall cause each of its employees and subcontractors to comply at all times, with State policies that are of general application to State contractors or that NC HIE has otherwise agreed to comply with, including, without limitation, DHHS Privacy and Security policies and Standards, the Statewide Information Security Manual and ITS Security Standards and Policies. (<http://www.ncdhhs.gov/pso/> and <http://www.esrmo.scio.nc.gov/security/default.aspx>).

(b) Accountability for Breaches. Upon the suspicion or the discovery of breach of privacy and security of confidential information, NC HIE shall notify the DHHS Privacy and Security Office and report the breach as an incident report (<http://www.ncdhhs.gov/pso/incidents.htm>). NC HIE shall comply with applicable federal and state law, regulations and policies, as well as Participant's Information Incident Management Policy located at:

http://info.dhhs.state.nc.us/olm/manuals/dhs/pol-80/man/19incident_management1.htm

and the North Carolina Statewide Information Security Manual located at:

<https://www.scio.nc.gov/mission/itPoliciesStandards.aspx>

(c) Care of Information. NC HIE shall use best efforts to safeguard and protect all data, documents, files, and other materials received from the State and NC DHHS during performance of any contractual obligation from loss, destruction or erasure.

(d) Third Party Non-Disclosure and Confidentiality Agreements. NC HIE warrants that all its employees and any approved third party vendors and subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina and sufficient in breadth to include and protect confidential information of the State. NC HIE will, upon request of the State or DHHS, verify and produce true copies of any such agreements. Production of such agreements by NC HIE may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that NC HIE produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. With respect to Deliverables (as that term is defined in Section 8(a) below), the State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for NC HIE's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax

Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

(e) Participant Consent. NC HIE shall not use any Protected Health Information provided by any Participant for any reason or purpose other than as permitted pursuant to the Participation Agreement without obtaining the prior written consent of such Participant.

8. INTELLECTUAL PROPERTY RIGHTS.

(a) Copyrights and Ownership of Deliverables. Participant shall be the exclusive owner and have all right, title and interest in and to all copyrights, patents, trademarks, service marks, trade secrets, and other intellectual property and proprietary rights associated with any ideas, concepts, techniques, inventions, processes, works of authorship (including without limitation patentable discoveries involving computer software or business methodology) inherent to the materials created by NC HIE for Participant hereunder and required to be delivered to Participant by virtue of their description or specification as a deliverable in a SOW (the "Deliverables"). All Deliverables shall be "works made for hire." To the extent any of the Deliverables are not deemed "works made for hire," effective upon creation of such Deliverables, NC HIE hereby assigns all right, title and interest in these works to Participant without further compensation. To the extent the Deliverables include, embed, or are comprised of any third party works and products, prior to so incorporating such works and products NC HIE shall obtain at its own expense a fully paid, perpetual, irrevocable, worldwide license allowing Participant to access, use, copy, distribute, perform, execute, display and digitally transmit such works and products co extensively with Participant owned portion of the Deliverables. NC HIE agrees, and shall cause each of its personnel to agree, to execute and sign any and all applications, assignments, or other instruments which Participant may deem necessary in order to enable it, at its expense, to apply for, prosecute, and obtain copyrights, patents or other intellectual property or proprietary rights in the United States and foreign countries or in order to transfer to Participant all right, title, and interest in said Deliverables. The Deliverables may include data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices, and specifications (collectively, "Technical Elements") owned or developed by NC HIE prior to, or independently from, its engagement hereunder (and any modifications or enhancements to NC HIE's Technical Elements developed in the course of performing the Services) (collectively, "NC HIE Technical Elements"). Notwithstanding the above terms of this Section 8(a), NC HIE shall retain exclusive ownership rights to all NC HIE Technical Elements. Accordingly, to the extent that any such NC HIE Technical Elements are integrated into any Deliverables, NC HIE hereby grants to Participant a perpetual, worldwide, non-exclusive, paid-up, license to create derivative works based upon or incorporating the Technical Elements, which Technical Elements and derivative works Participant may copy, perform, use, execute, display, internally distribute and digitally transmit for use in the ordinary course of Participant's operations.

(b) Federal Intellectual Property Bankruptcy Protection Act. The parties agree that Participant shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n) and any amendments thereto.

9. TERM; TERMINATION.

(a) Term; Renewal. The term of this Agreement shall commence on the Effective Date and shall continue in effect thereafter for a two (2) year period from the Effective Date (until the "Renewal Date"). Thereafter, this Agreement may be renewed repeatedly for consecutive periods of one (1) year each (the initial term, collectively with any such renewal terms, the "Term") if with respect to each renewal Participant gives NC HIE notice of renewal not less than thirty (30) days prior to the then forthcoming Renewal Date; provided, however, with respect to the third (3rd) and subsequent prospective years of renewal, Participant shall have no option to renew this Agreement if at least ninety (90) days prior to the then forthcoming Renewal Date NC HIE gives notice that the renewal option is withdrawn. No notice of renewal by Participant shall be effective unless it bears the signatures of the North Carolina State Chief Information Officer and an authorized representative of Participant. If Participant does not renew this Agreement for an additional year or the renewal option is withdrawn, the Term of this Agreement shall expire on the Renewal Date of the then current year.

(b) Without Cause Termination Rights. Either party may terminate this Agreement upon ninety (90) days prior written notice to the other party; provided, however, Participant may terminate this Agreement upon thirty (30) days prior written notice to NC HIE if Participant gives such notice within fourteen (14) days of Participant's receipt from NC HIE of (i) notice that NC HIE has changed its Policies and Procedures (as contemplated in Section 7 of the Participation Agreement), or (ii) a copy of any amendment to the Participation Agreement that has been unilaterally adopted by NC HIE and distributed to Participant in accordance with Section 18 of the Participation Agreement.

(c) Termination by Participant for Cause.

(i) Participant may terminate this Agreement immediately in the event of NC HIE's breach of any term or condition of this Agreement, provided that such breach remains uncured after a period of sixty (60) days following NC HIE's receipt of written notice from Participant describing in reasonable detail the nature of such breach.

(ii) The filing of a petition for bankruptcy by NC HIE shall be an act of default under this Agreement. Participant may terminate for cause on written notice to NC HIE.

(iii) In the event of termination by Participant, all finished or unfinished deliverable items prepared by NC HIE pursuant to a SOW issued under this Agreement shall be the property of Participant, and NC HIE shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, NC HIE shall not be relieved of liability to Participant for any damages directly or indirectly sustained by Participant by virtue of NC HIE's breach of this Agreement. In the event of such a breach by NC

HIE, Participant may withhold any payment due NC HIE for the purpose of setoff until such time as the exact amount of damages due Participant from such breach can be determined, provided however, that prior to exercising such setoff right, and within 30 days of the date of the breach by NC HIE, the parties shall meet and confer at an mutually agreeable time and location and, in good faith, attempt to resolve such breach and determine the nature, extent and amount of any damages incurred by Participant as a result of such breach, and provided further that in the event Participant exercises such set off right, it shall not withhold from NC HIE any more than is reasonably necessary to cover the damages estimated or calculated by Participant in good faith has having been sustained from such breach.

(d) Termination by NC HIE for Cause. NC HIE may terminate this Agreement immediately upon the occurrence of any of the following events:

(i) A breach by Participant of any of the terms and conditions of this Agreement, including without limitation any failure of Participant to pay to NC HIE any fees owed by Participant pursuant to this Agreement at the time when due, which breach remains uncured beyond a period of thirty (30) days following Participant's receipt of written notice from NC HIE describing in reasonable detail the nature of such breach;

(ii) A breach by Participant of any of the terms and conditions of the Participation Agreement, which breach remains uncured beyond any available cure periods set forth within the Participation Agreement; or

(iii) The termination by Participant of its status as a Participant party to the Participation Agreement in accordance with the terms of the Participation Agreement, or the termination by NC HIE of Participant as a Participant party to the Participation Agreement in accordance with the terms of the Participation Agreement.

10. INSURANCE.

(a) Insurance Coverage. During the Term of this Agreement, NC HIE shall provide, at its sole cost and expense, commercial insurance of such types and with such terms and limits as may be reasonably associated with this Agreement. At a minimum, NC HIE shall provide and maintain the following coverage and limits:

(i) Worker's Compensation Insurance. NC HIE shall provide and maintain worker's compensation insurance, as required by the laws of the states in which its employees work, covering all of NC HIE's employees who are engaged in any work under this Agreement.

(ii) Employer's Liability Insurance. NC HIE shall provide employer's liability insurance, with minimum limits of \$500,000.00, covering all of NC HIE's employees who are engaged in any work under this Agreement.

(iii) Commercial General Liability Insurance. NC HIE shall provide commercial general liability insurance on a comprehensive broad form on an occurrence basis with a minimum combined single limit of \$1,000,000.00 for each occurrence.

(iv) Automobile Liability Insurance.

(1) NC HIE shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage; a limit of \$500,000.00 for uninsured/under insured motorist coverage; and a limit of \$2,000.00 for medical payment coverage.

(2) NC HIE shall provide this insurance for all automobiles that are: (a) owned by NC HIE and used in the performance of this Agreement; (b) hired by NC HIE and used in the performance of this Agreement; and (c) owned by NC HIE's employees and used in performance of this Agreement ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance.

(3) NC HIE is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired, or non-owned—unless the vehicle is used in the performance of this Agreement.

(b) Exclusion of Defense Costs. The insurance coverage minimums specified in Section 10(a) are exclusive of defense costs.

(c) Nature of Coverage Minimums. NC HIE understands and agrees that the insurance coverage minimums specified in Section 10(a) are not limits, or caps, on NC HIE's liability or obligations under this Agreement.

(d) Waiver of Insurance Requirements by Alternative Coverage. NC HIE may obtain a waiver of any one or more of the requirements in Section 10(a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in Section 10(a). Participant shall be the sole judge of whether such a waiver should be granted.

(e) Waiver of Insurance Requirements by Self-Insurance. NC HIE may obtain a waiver of any one or more of the requirements in Section 10(a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in Section 14(b). Participant shall be the sole judge of whether such a waiver should be granted.

(f) Material Obligation of Insurance. Providing and maintaining the types and amounts of insurance or self-insurance specified in this Section 10 is a material obligation of NC HIE and is of the essence of this Agreement.

(g) Authorized Insurers. NC HIE shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.

(h) Compliance with Policies and Insurer Requirements. NC HIE shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.

(i) Demonstration of Compliance. NC HIE shall demonstrate its compliance with the requirements of this Section 10 by submitting certificates of insurance to Participant before NC HIE begins any work under this Agreement.

11. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY WITH RESPECT TO ANY DEMAND OR CLAIM IN RELATION TO THIS AGREEMENT OR WITH RESPECT TO THE SERVICES OR DELIVERABLES, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE GREATER OF (A) THE TOTAL FEES PAID OR ACCRUED AS PAYABLE TO NC HIE BY PARTICIPANT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE APPLICABLE DEMAND(S) AND OR CLAIM(S), OR (B) ONE MILLION DOLLARS (\$1,000,000). IN ANY EVENT, THE LIABILITY OF PARTICIPANT SHALL NOT EXCEED THE LIMITS OF THE STATE TORT CLAIMS ACT, AND NOTHING IN THIS AGREEMENT IS INTENDED OR SHALL BE DEEMED A WAIVER OF THE STATE'S SOVEREIGN IMMUNITY.

12. INDEMNITY.

(a) Indemnification by NC HIE. NC HIE shall protect, defend, indemnify, and hold Participant, and Participant's officers, directors, agents, contractors, and employees harmless from and against any and all third party claims, demands, actions, or suits brought against Participant, and any and all losses, costs, reasonable expenses (including reasonable attorneys' fees), damages, liabilities, recoveries and judgments of every nature or description brought against Participant or any of the foregoing officers, directors, agents and employees of Participant and arising out of (i) the performance by NC HIE of the obligations to be performed by it hereunder, (ii) any breach by NC HIE of any representation or warranty made by it under this Agreement, and (iii) any breach by NC HIE of its obligations, agreements, or covenants under this Agreement. Without limiting the breadth of NC HIE's duty of indemnification, the foregoing indemnification shall also apply with respect to any and all claims, demands, actions, or suits brought against Participant by any other NC HIE Participant that relate to or result from Participant's receipt of the aggrieved Participant's Patient Information through the HIE Network, if the receipt of Patient Information by the other NC HIE Participants occurred despite NC HIE's prior representation or promise to the aggrieved Participant that its Patient Information would not be Disclosed or otherwise made accessible through the HIE Network to persons or entities such as Participant.

13. SOFTWARE VENDOR INDEMNITY AND LIMITATION OF LIABILITY.

(a) For purposes of this Section 13 of the Agreement, the term "Software" shall mean and refer to, severally and collectively, the Portal v7.0 (including Results Viewer), Rhapsody Integration Engine, Clinical Data Repository, HIE Module, NextGate Master Patient Index, NextGate Provider Index, and Health Language LE Architecture software owned by Orion Health, Inc. ("Orion Health") and which is used in connection with the operation of the HIE Network and offering of the Services by NC HIE for end use by Participants and their Authorized Users.

(b) ORION HEALTH SHALL NOT BE LIABLE TO PARTICIPANT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES RELATED TO DELAYS, LOSS OF

DATA, INTERRUPTION OF SERVICE OR LOSS OF USE, BUSINESS, REVENUE, OR PROFITS), OR THE USE OR INABILITY TO USE THE SOFTWARE, UNLESS SUCH DAMAGES RESULT OR ARISE OUT OF, OR ARE AWARDED AS A RESULT OF, THE GROSSLY NEGLIGENT ACTS OR OMISSIONS, OR INTENTIONAL WRONGDOING, OF ORION HEALTH.

(c) ORION HEALTH'S TOTAL LIABILITY TO PARTICIPANT AND PARTICIPANT'S EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THE SOFTWARE SHALL BE LIMITED TO (A) FOUR MILLION DOLLARS (\$4,000,000) FOR ANY CLAIM AND RESULTING LIABILITY DIRECTLY RELATED TO THE OPERATION OR USE OF THE SOFTWARE; OR (B) TWO MILLION DOLLARS (\$2,000,000) IN TOTAL FOR ANY CLAIM AND RESULTING LIABILITY DIRECTLY RELATED TO THE MAINTENANCE, SUPPORT OR IMPLEMENTATION SERVICES PROVIDED BY ORION HEALTH.

(d) Orion Health shall be an intended third party beneficiary of the terms and provisions of this Section 13.

14. FUNDING.

(a) No Initial Funding. As of the Effective Date this Agreement contains no funding. Any funding will be added through either (i) a mutually agreed upon Service Election and Fee Schedule (Exhibit A) or (ii) SOWs initiated from authorized and approved Divisions of the North Carolina Department of Health and Human Services. All fees, anticipated costs and expenses for services to be performed shall be specified in a (i) mutually agreed upon Service Election and Fee Schedule (Exhibit A) or (ii) a fee schedule included in a SOW.

(b) Availability of Funds. The payment of the sums specified in 14(a) above is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds to the North Carolina Department of Health and Human Services. Nevertheless, NC HIE may discontinue the provision of services to Participant in the event any invoice or progress payment owed to NC HIE (which is not then the subject of legitimate dispute) is not paid within ninety (90) days of its due date. In the event of NC HIE's proper exercise of such right to discontinue services, NC HIE shall not be liable to Participant for any damages sustained, directly or indirectly, by Participant as a result of NC HIE's discontinuance of service performance.

15. AUDITS. Subsections (a) and (b) below shall apply with respect to a given SOW only if it is to be paid for to any extent with federal funds.

(a) Audit Requirement. Non-Federal entities that expend \$500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133, Subpart B, § ___.200. Guidance on determining Federal awards expended is provided in OMB Circular A-133, Subpart B, § ___.205.

(b) Single Audit. Non-Federal entities that expend \$500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with OMB Circular A-133, Subpart B, § ___.500, except when they elect to have a program-specific audit conducted in accordance with OMB Circular A-133, Subpart B, § ___.200, paragraph (c).

16. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY A VOLUNTARY EXCLUSION.

(a) Eligibility to Participate in Transaction. NC HIE agrees that it certifies, by executing any SOW that is paid for to any extent with federal funds, that neither NC HIE nor its principals is at the time of execution debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in such transaction by any Federal Department or Federal Agency.

(b) Explanation for Inability to Certify. Where NC HIE is unable to certify to any of the statements in this certification, NC HIE shall attach an explanation to the SOW.

17. NOTICES. Any notice or other communication to be made under this Agreement shall be given in writing to the appropriate party's representative at the address for such party as is reflected on the first page of this Agreement and shall be deemed to have been delivered: (a) three (3) business days after deposit in the mail when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, FedEx or United Parcel overnight delivery, return receipt requested; (b) upon the date indicated on the return receipt, when sent by certified or registered mail, return receipt requested; (c) upon delivery, if personally delivered; or (d) upon receipt/delivery, if sent by e-mail or fax. Either party may change its address for notices at any time by notifying the other of such party's new address in writing, which change of address notice shall be tendered in the manner required by this Section 17 for notices generally.

18. JOINDER TO NC HIE PARTICIPATION AGREEMENT; ORDER OF PRECEDENCE. Participant is hereby joined as a party to the Second Amended and Restated North Carolina Health Information Exchange Participation Agreement attached to this Agreement as Exhibit B. From the Effective Date of this Agreement, Participant shall be subject to all of the duties and obligations and entitled to all of the rights and benefits of a Participant as provided therein. If this Agreement is executed by a single Participant on behalf of one or more Participating Entities, each Participating Entity listed on Exhibit C shall be individually entitled to the rights and subject to the obligations set forth in the Participation Agreement. A breach of the Participation Agreement by Participant or a Participating Entity or by NC HIE shall constitute a breach of this Agreement. In event of any conflict between the terms of this Agreement and the Participation Agreement, the terms of this Agreement shall control.

19. AUTHORITY; NO CONFLICT. NC HIE and Participant each represent and warrant to the other as follows: (a) that it is authorized to enter into this Agreement and to perform its obligations hereunder, and that the individual signatory executing this Agreement on its behalf is authorized, and has the capacity, to so execute this Agreement on its behalf, and (b) that the execution of this Agreement by it and the performance of its obligations hereunder shall not conflict with or result in, with or without the passage of time or the giving of notice thereof, any breach, default or violation of any third party agreement to which it is bound, or any judgment, order or ruling of any court, administrative or regulatory agency or body, or arbitration award, to which it is bound or subject.

20. RELATIONSHIP. The relationship between the parties to this Agreement is strictly that of independent contractors, and this Agreement shall not create a partnership or any other form of business relationship, or create an agency relationship, between the parties hereto.

Neither party to this Agreement shall, nor shall either party have any authority to, create or incur any liability or obligation on behalf of the other.

21. ASSIGNMENT.

(a) Assignment by Participant. Except as provided by law, Participant shall not assign, sublicense or otherwise transfer in any manner any of Participant's rights and obligations under this Agreement without the prior written consent of NC HIE in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed.

(b) Assignment by NC HIE. NC HIE may assign its rights and obligations under this Agreement, including without limitation its right to receive payment hereunder, only as a whole and only to the North Carolina Community Care Networks, Inc. However, upon written request approved by the issuing purchasing authority, Participant may:

(i) Forward NC HIE's payment check(s) directly to any person or entity designated by NC HIE, or

(ii) Include any person or entity designated by NC HIE as a joint payee on NC HIE's payment check(s).

In no event shall such approval and action obligate Participant to anyone other than NC HIE and NC HIE shall remain responsible for fulfillment of all contract obligations.

22. BENEFICIARIES. Except as herein specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Participant and NC HIE. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Participant and NC HIE that any such person or entity, other than Participant or NC HIE, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

23. EQUAL OPPORTUNITY/NONDISCRIMINATION. NC HIE shall comply with all Federal statutes and implementing regulations relating to nondiscrimination concerning race, color, sex, religion, national origin, handicaps, and age. These include but are not limited to:

(a) Title VI of the Civil Rights Act of 1964;

(b) Title IX of the Education Amendments of 1972, as amended;

(c) 49 CFR Part 21, Non-Discrimination in Federally-assisted programs of the United States Department of Transportation;

(d) 49 CFR Part 27, Rehabilitation Act of 1973, as amended; and

(e) The Age Discrimination Act of 1975, as amended.

24. DRUG FREE WORKPLACE. NC HIE shall comply with the provisions cited in the Drug-Free Workplace Act of 1988 (49 CFR Part 29 Sub-part F).

25. FEDERAL GRANT REQUIREMENTS AND CONTRACTS. This section shall apply with respect to a given SOW only if it is to be paid for to any extent with federal funds. NC HIE shall comply with the following statutes and implementing regulations as applicable:

(a) 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments;

(b) Office of Management and Budget hereinafter referred to as "OMB", Circular A-87, and Cost Principles for State, Local, and Indian Tribal Governments;

(c) OMB Circular A-21, Cost Principles for Institutions of Higher Education;

(d) OMB Circular A-122 Cost Principles for Nonprofit Organizations;

(e) 5 U.S.C. §§ 1501-1508 and 5 CFR Part 151 "Political Activity of State and Local Offices, or Employees" (Hatch Act); and

(f) specific federal policies and requirements related to the funding.

26. LOBBYING. This section shall apply with respect to a given SOW only if it is to be paid for to any extent with federal funds.

(a) Restrictions. NC HIE shall comply with the restrictions of lobbying members of Congress, 18 USC, Section 1913; prohibiting the use of Appropriated or Federal funds for "grass roots" lobbying campaigns to encourage third parties, members of special interest groups, or the general public to urge members of a State legislature to support or oppose a pending legislative or appropriations matter.

(b) Disclosure. NC HIE shall complete a lobbying disclosure form to disclose Lobbying activities pursuant to 31 U.S.C. 1352 with respect to any SOW hereunder that is paid for to any extent with federal funds.

27. PUBLIC LAW 103-227, PART C-ENVIRONMENTAL TOBACCO SMOKE, ALSO KNOWN AS THE PRO-CHILDREN ACT OF 1994 (ACT). This section shall apply with respect to a given SOW only if it is to be paid for to any extent with federal funds. NC HIE shall comply with the requirement of the Act that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000.00 per day and/or the imposition of an administrative compliance order on the responsible entity.

28. CONFIDENTIALITY.

(a) NonDisclosure. Any information, data, instruments, documents, studies or reports given to or prepared or assembled by NC HIE for or on behalf of Participant under this Agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of Participant. NC HIE acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Agreement.

(b) N.C. Public Records Act. Pursuant to the N.C. Public Records Act, N.C. Gen. Stat. Ch. 132, the State may maintain the confidentiality of certain types of information. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. NC HIE may designate appropriate information provided to Participant under this Agreement as confidential, consistent with and to the extent permitted under Statutes cited above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the NC HIE warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the rules and statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of NC HIE's confidential information and not as an arbiter of claims against NC HIE's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the NC HIE agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The NC HIE agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the NC HIE in writing of any action seeking to compel the disclosure of NC HIE's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to NC HIE with respect to the disclosure of NC HIE's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

29. OVERSIGHT.

(a) Access to Persons and Records. The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, Participant shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

(b) Record Retention. Records shall not be destroyed, purged or disposed of without the express written consent of Participant. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the SOW is subject to federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Agreement has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later.

30. CERTIFICATION REGARDING COLLECTION OF TAXES. G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or

transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. NC HIE certifies that it and all of its affiliates (if any) collect all required taxes, if any.

31. SALES/USE TAX REFUNDS. If eligible, NC HIE and all of its subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Agreement, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

32. ATTORNEY'S FEES. In the event of any action brought by either party against the other arising out of this Agreement, or for the purposes of enforcing the Agreement or collection of any damages alleged to have resulted to one of the parties by reason of the breach or failure of performance of the other, the party prevailing in any such action shall be entitled to recover reasonable attorneys' fees and cost of suit as may be determined by the court.

33. WAIVER OF DEFAULT. Waiver by either party of any default or breach in compliance with the terms of this Agreement by the other party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of Participant and NC HIE and attached to this Agreement.

34. SEVERABILITY. In the event any one or more provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other instrument or document, and this Agreement and such other instruments and documents shall be interpreted and construed as if such invalid, illegal or unenforceable provision had never been contained therein.

35. BINDING EFFECT. The rights and obligations of the parties to this Agreement shall be binding upon and inure to the benefit of their respective successors and permitted assigns.

36. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral statements or agreements between the parties with respect to the subject matter hereof. Without limiting the generality of the preceding sentence, this Agreement supersedes and replaces the North Carolina Health Information Exchange Master Agreement entered into by the parties on or about September 25, 2012 ("Master Agreement"), except to the extent the Master Agreement's terms establish or bear upon the parties' respective rights, duties, obligations and liabilities in or related to the Master Agreement's Statements of Work.

37. AMENDMENTS. This Agreement may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of Participant and NC HIE.

38. GOVERNING LAW; VENUE. This Agreement, including, without limitation, all issues as to capacity, interpretation, construction, and performance hereof, shall be governed and construed in accordance with the laws of the State of North Carolina. NC HIE by signing this Agreement, agrees and submits, solely for matters concerning this Agreement, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive

venue for any legal proceedings shall be Wake County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

39. SURVIVAL. All provisions of this Agreement which by their nature give rise to continuing obligations of the parties shall survive the expiration or termination of this Agreement, including without limitation the terms of Sections 2, 4(d), 7(b) (after expiration or termination, with respect to a breach NC HIE then first knows or suspects to have occurred prior to expiration or termination), 8, 9(c)(iii), 10(c), 11, 12, 13, 14(b), 15, 22, 28(a), 29, 32, 34, 36, 38 and 39.

40. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

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

NC HIE:

NORTH CAROLINA HEALTH
INFORMATION EXCHANGE,
a North Carolina nonprofit corporation



By: Chris Scarboro
Title: President
Date: 5-12-14

PARTICIPANT:

NORTH CAROLINA DEPARTMENT
OF HEALTH AND HUMAN SERVICES



By: Aldona Z. Wos, M.D.
Title: Secretary
Date: 5-12-2014

SAMPLE EXHIBIT A

SERVICE ELECTION AND FEE SCHEDULE

This Service Election and Fee Schedule is an attachment to the Technology Enabled Care Coordination Agreement between Participant and NC HIE Group ("Agreement") dated _____, 20__ and is effective on the date of execution by and between NC HIE and Participant and any capitalized terms which appear herein shall have the same meaning as given in the Agreement unless otherwise noted.

Service	Description	Patient Population(s)	Infrastructure/Build Cost	Operating Cost	Service Election (Y/N)
NC HIE Core Services	<p>Connectivity Services: NC HIE will connect Participant to the HIE network and allow for the exchange of healthcare information between authorized Participants. The HIE Connectivity Service will provide Participants:</p> <ul style="list-style-type: none"> a) the ability to publish information to other Participants, b) the ability for other Participants to publish information to Participant, and c) the ability for Participant to query the HIE network for information. <p>The HIE network will provide the following services as part of supporting the exchange of information:</p> <ul style="list-style-type: none"> a) Enterprise Master Patient Index b) Provider Directory c) Privacy and Consent Module d) Integration Bus supporting HL7, CCD, and other industry standards e) Normalization and Transformation Module f) Auditing and Compliance Function 	Medicaid Beneficiaries	N/A	TBD per Unique Medicaid Beneficiary available in the NC HIE to be billed Monthly	

Service	Description	Patient Population(s)	Infrastructure Build Cost	Operating Cost	Service Election (Y/N)
	<p><u>Longitudinal Patient Record:</u> NC HIE will make available to Authorized Users of Participant access to the NC HIE Network containing longitudinal patient records. This web-based portal or integrated service can be used to view the longitudinal patient record, set alerts and notifications, and access other HIE services.</p> <p><u>Direct Secure Messaging:</u> NC HIE will provision Authorized Users of Participant with a Direct messaging environment. Each Authorized User will be provided access to a web-based messaging environment with a unique address assigned. Alternatively, organizations can contract with NC HIE to function as their integrated Health Internet Service Provider (HISP), whereby users will have the ability to exchange messages directly from their EHR (additional integration fees may apply).</p> <p><u>Training Services:</u> Initial training services for HIE Network use and patient opt-out.</p>				
Additional Services to be Determined					

Annual Subscription Fees are invoiced annually in advance. One-time charges shall be invoiced as described below. All invoices are due within thirty days of the invoice date.

Contact and Billing Information

Participant Contact (Contracting Entity): <NAME> <ADDRESS> <PHONE> <EMAIL>	Participating Entity: <NAME> <ADDRESS> <PHONE> <EMAIL>
Accounting Contact: <NAME> <ADDRESS> <PHONE> <EMAIL>	NC HIE Representative: Chris Scarboro (919) 882-0313 chris.scarboro@nchie.org
Invoices to: <EMAIL>	PO Number (if applicable): <#####>
ALL PRICING IN UNITED STATES DOLLARS	

Agreed and Accepted:

Participant

Date

SAMPLE ATTACHMENT A TO EXHIBIT A

NC HIE SERVICE LEVEL AGREEMENT

NC HIE has set up a multiple Tier Help Desk process to resolve QO, if applicable, and Participant questions. The table below outlines some typical questions and related responsibilities by Tier. The basic principle is that the QO or Participant Administrator(s) provide the initial support and helpdesk to the Participants' users and that NC HIE Call Center will handle the 2nd Tier, if needed. In addition, NC HIE will provide an online issue tracking system that includes a full text search capability for finding solutions to similar issues.

	Tier 1	Tier 2
User:	QO or Participant Administrator	QO/Participant Administrator(s)
Questions:	QO or Participants that have a question regarding <ul style="list-style-type: none"> • What is my user id? • Could you reset my password? • How do I set up a new user. • How do I do access or connect to the HIE? • I have an individual who wants to Opt-Out. What is this process? • Could you help me with a technical issue with the HIE solution? 	QO/Participants Tier 1 Help-Desk cannot resolve: <ul style="list-style-type: none"> • that a participant cannot access or connect to the HIE • that a participant is not able to access patient information by breaking the glass • the slow performance of the system • the error message that a participant is receiving • When will we have a gateway to VA? • I cannot access the online ticketing system
QO/Participant Role	Help Desk and Support to the participants	Inform outcome to participants
NC HIE Role	Make training and FAQ available for QO/Participant Help Desk	Help desk and support to the QO/Participant Administrator(s) (designated contacts)

Service Level Agreements

Definitions:

The Service Level describes the key areas of measurement used for demonstrating compliance with the provision of services. The Service Level Metric is a subset of each Service Level. The Service Levels are described with some of the following components.

- **Actual Uptime** - means the measurement of time that the Service is actually available for use by NC HIE and its users as contemplated under the QO/Participant Subscription Agreement during a calendar month. Such measurement will be calculated by subtracting Downtime from Scheduled Uptime.
- **“Available” or “Availability”** - means the Actual Uptime expressed as a percentage of the Scheduled Uptime for the Service (i.e., $\text{Availability \%} = ((\text{Actual Uptime})/(\text{Scheduled Uptime})) \times 100\%$). The Service shall not be considered Available (i) during an Outage or (ii) when it is not otherwise available for use by NC HIE and its users.
- **NC HIE Environment** – The environment for which the definition of the scope of Service is defined and includes the system servers, operating system, and databases. NC HIE will work with QO/Participant to address network-based outages but does not have responsibility for network service levels.
- **Downtime** - means the aggregate duration of Outages for the Service during the applicable Scheduled Uptime during a calendar month.
- **“Incident” or “Problem”** means any event in the Service that is not part of the standard operation of the service and that causes, or may cause, an interruption to, or a reduction in, the quality or Availability of the Services.
- **Measurement Hours** –Sets forth the hours and respective time zones that performance against the Service Level will be measured.
- **Outage** - means any time during which the Service is not Available as defined as a Priority 1 and 2 incident in which NC HIE Solution is not responding or performing according to specification, measured from the point in time that such is or reasonably should be detected by NC HIE, but in any event no later than the time the Outage actually occurred. An Outage is an Incident.
- **Production Environment** - The system environment, which the NC HIE is using to process live business data in actual business operations.
- **Reporting Period** – The Reporting Period sets out the periodic basis for which performance reports for the Service Level will be delivered.
- **Resolve or Resolution** - means, with respect to an Incident, that a workaround or fix with respect to such Incident has been implemented by NC HIE.
 - **Resolution Time** - “Resolution Time” shall be calculated for each Incident occurring in a calendar month as the total minutes commencing from the time when NC HIE becomes aware of a Priority 1, 2, or 3 Incident, whether by automated alarm or otherwise, until NC HIE resolves each such Incident as determined by QO/Participant. NC HIE shall track and report monthly to QO/Participant each Priority 1, 2 and 3 Incident and the time required to resolve each such Incident. The Resolution Time Service Level is set forth on the Problem Management Process service level.
 - **Respond** - means, with respect to an Incident, that NC HIE has notified QO/Participant of such Incident and commenced steps to Resolve such Incident.
 - **Scheduled Uptime** - means twenty-four (24) hours each day, seven (7) days per week, excluding (i) regular maintenance windows between the hours of 10:00 p.m. and 3:00 a.m. Pacific Time on Saturdays and Sundays and (ii) Scheduled Outages. NC HIE shall ensure that the Services remain Available during the foregoing maintenance windows to the extent reasonably practicable.

- **Server** - shall mean the server(s) on which the Services will be hosted.
- **Service** - shall be the Hosting services delivered by NC HIE to the QO/Participant.
- **Service Level Metric** – The Service Level Metric is comprised of two parts, the Metric and the Threshold. The Metric is the value that defines the data points that will be measured and reported. The Threshold is a description of the metric level to be measured against. Threshold levels will be Service Level, and Missed Service Level.

Problem Management Process

Coverage Hours:

Help desk coverage shall be provided by NC HIE to QO or Participant Administrators on Business Days (Monday – Friday) 8 AM to 8 PM EST. A Business Hour is defined as 8 AM to 8 PM EST during any Business Day. After hours coverage will be available for Priority 1 and Priority 2 problems on a 24x7x365 basis.

Problem Priority Definition

All problems or requests received by NC HIE help desk shall be given a problem priority based on the feedback from the reporting party. The definitions for Problem Priority are as follows:

Priority	Definition
Priority 1	Priority 1 Critical Business Impact – System down or immediate work stoppage of a critical business service that threatens current and future productivity.
Priority 2	Priority 2 Significant Business Impact – Problem where system or business service is proceeding but in a seriously impaired or in a restricted fashion and no acceptable workaround is possible.
Priority 3	Priority 3 Some Business Impact – Problem for which the impact is an inconvenience, which may require a workaround to restore functionality and productivity is not seriously impaired.
Priority 4	All other problems or requests.

Problem Response Time

For purposes of reporting and tracking problems as well as ensuring that problem resolution is completed in a timely and orderly manner, the following guidelines have been established for problem response times. Key definitions are:

- **Initial Response:** This term shall refer to NC HIE providing updates to QO by phone, email or other manner as determined by NC HIE for resolution of each support request submitted by QO.

- Progress Report: This term shall define the frequency with which updates are provided to the party who report the problem/request
- Communication Method: This term shall refer to the method through which Progress Reports and the Initial Response are communicated to the reporting party
- Target Resolution Time: This term shall mean the target elapsed time between when NC HIE is formally notified of a support request by QO and the time a final position is agreed between NC HIE and QO/Participant, where either a solution (which may be remedying the fault or providing a work-around) has been reached or no further action can be taken under the terms of this Agreement. This time is a target only, and NC HIE does not guarantee that any particular support request will be resolved within the specified time period.

Fault Priority Level	Initial Response Time	Progress Report	Communication Method	Target Resolution Time	Coverage Hour(s)
Level 1	1 Hour	2 Hours	Phone and e-mail	5 Business Hours	7x24x365
Level 2	2 Hours	4 Hours	Phone and e-mail	10 Business Hours	7x24x365
Level 3	Next Business Day	Daily	E-mail	3 Business Days	Business Day
Level 4	Next Business Day	As required	E-mail	By arrangement	Business Day

Service Availability:

NC HIE systems and services shall achieve a Systems Availability of 99.7% or better. The Systems Availability will be measured Daily and reported to QO/Participants on a monthly basis.

EXHIBIT B

PARTICIPATION AGREEMENT

(Attached Separately)

EXHIBIT C

PARTICIPATING ENTITIES

	Legal Entity Name	Address	Contact Person	Email	Phone
1					
2					
3					
4					
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EXHIBIT D

Certification of Compliance With
Executive Order #24

The undersigned certifies, to the best of his or her knowledge and belief, that:

By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

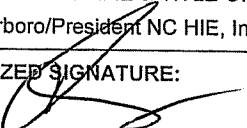
- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. § 133-32.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of this Attachment and submitting a bid in response to the accompanying solicitation, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

TYPE OR PRINT NAME & TITLE OF PERSON SIGNING: Chris Scarboro/President NC HIE, Inc.	E-MAIL: chris.scarboro@nchie.org
AUTHORIZED SIGNATURE: 	DATE: 5/12/14

SECOND AMENDED AND RESTATED
NORTH CAROLINA HEALTH INFORMATION EXCHANGE
PARTICIPATION AGREEMENT

THIS SECOND AMENDED AND RESTATED NORTH CAROLINA HEALTH INFORMATION EXCHANGE PARTICIPATION AGREEMENT (the "Agreement") is entered into and effective this 28th day of February, 2014, by NORTH CAROLINA HEALTH INFORMATION EXCHANGE, a North Carolina nonprofit corporation ("NC HIE").

R E C I T A L S:

A. NC HIE has established a voluntary electronic, statewide network (the "HIE Network") to facilitate the exchange of Patient Information among Participants through the HIE Network for Permitted Purposes.

B. Participants seek to ensure that appropriate care management is delivered between multi-disciplinary care teams to improve the quality and coordination of health care services through the enhanced access to Patient Information and other clinical support.

C. NC HIE seeks to assist Participants in improving the quality and coordination of health care services through the enhanced access the HIE Network will provide to Patient Information and other clinical support.

D. NC HIE entered into that certain North Carolina Health Information Exchange Participation Agreement dated March 20, 2012 (the "Original Agreement") with North Carolina Community Care Networks, Inc. d/b/a Community Care of North Carolina, as the initial Participant party to such Agreement, which Original Agreement was amended and restated pursuant to that certain Amended and Restated North Carolina Health Information Exchange Participation Agreement dated July 1, 2013 (the "First Amended and Restated Agreement").

E. Pursuant to Section 17 of the First Amended and Restated Agreement, such First Amended and Restated Agreement may be amended by agreement of at least two-thirds (2/3) of the Board of Directors of the NC HIE.

F. At least two-thirds (2/3) of the Board of Directors of NC HIE has by their agreement authorized the amendment and restatement of the First Amended and Restated Agreement in the manner set forth in this Agreement, and NC HIE is desirous of so amending and restating the First Amended and Restated Agreement.

NOW, THEREFORE, in accordance with Section 17 of the First Amended and Restated Agreement, NC HIE hereby amends and restates the First Amended and Restated Agreement in its entirety as follows:

1. AMENDMENT AND RESTATEMENT OF THE FIRST AMENDED AND RESTATED PARTICIPATION AGREEMENT. This Agreement shall be deemed to and hereby does amend, restate, supersede and replace in full the First Amended and Restated Agreement.

2. DEFINITIONS. A defined term, indicated by capitalizing of the first letter(s) not otherwise set forth below or elsewhere in the Agreement shall have the meaning stated in the HIPAA Regulations or if not defined in the HIPAA Regulations, assigned by other Applicable Law.

Advisory Council shall mean the NC HIE Advisory Council, composed of qualified third parties selected and formed to advise NC HIE as to matters related to the administration of the HIE Network.

Agreement shall mean this Second Amended and Restated North Carolina Health Information Exchange Participation Agreement and all Exhibits hereto.

Applicable Law shall mean all applicable state and federal statutes and regulations governing the activities of Participants in connection with this Agreement.

Authorized Users shall mean persons health care providers, employees, professional staff, and other Workforce members of a Participant organization who have been authorized by the Participant to utilize the HIE Network for a Permitted Purpose through Participant's System or through user interfaces made available by NC HIE and who have, at the request of Participant or as otherwise provided in the NC Policies and Procedures, been assigned a user name and password by NC HIE. Authorized Users shall only be natural persons and shall not be other legal or operating entities or affiliates or subsidiaries of Participant except as may be provided in the NC HIE Policies and Procedures. References to Participant will be deemed to include a reference to the Participant's Authorized Users unless the context requires otherwise.

Confidentiality Agreement shall mean an agreement between a party and one or more of its Authorized Users that establishes and defines restrictions on the acquisition, access, Disclosure, and use of Patient Information through its System and the HIE Network, including means for safeguarding Patient Information and Confidential Business Information.

Confidential Business Information shall mean proprietary or confidential materials or information of a party in any medium or format that a party labels as such upon disclosure, and shall include, but not be limited to: (i) the party's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, 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 party; and (iii) information or reports provided by a Discloser pursuant to this Agreement. "Confidential Business Information" shall not include Patient Information; or any information which: (a) is or becomes known publicly available through no fault of a Receiving Party (as defined below); (b) is learned of by a Receiving Party from a third party entitled to Disclose such information; (c) is already known to a Receiving Party before receipt from a Discloser, as evidenced by such Receiving Party's written records generated before the Receiving Party received such information; or (d) is independently developed by a Receiving Party without reference to, reliance on, or use of a Discloser's Confidential Business Information. Patient Information is excluded from the definition of Confidential Business Information.

Disclose, Disclosed, and the noun form, Disclosure, shall mean the release, transfer, provision of, access to, or divulging in any other manner, of Patient Information.

Effective Date shall mean the date that both of the following occur: (i) the Second Amended and Restated NC HIE Participation Agreement is approved by the NC HIE Board and (ii) the Second Amended and Restated Participation Agreement is executed unilaterally.

eHealth Exchange (formerly the NwHIN) shall mean the national eHealth Exchange network, which is a set of standards, services and policies approved by the Office of the National Coordinator for Health IT that enables secure, nationwide health information exchange over the Internet.

eHealth Exchange Breach shall mean the unauthorized acquisition, access, use, or Disclosure of Patient Information through the eHealth Exchange. The term "eHealth Exchange Breach" does not include the following:

(i) any unintentional acquisition, access, use, or Disclosure of Patient Information by an employee or individual acting under the authority of a Participant or Authorized User if:

I. such acquisition, access, use, or Disclosure was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the Participant or Authorized User; and

II. such Patient Information is not further acquired, accessed, used or Disclosed by such employee or individual; or

(ii) The term "eHealth Exchange Breach" also shall not include any acquisition, access, use or Disclosure of information contained in or available through the Participant's System or the HIE Network where such acquisition, access, use, or Disclosure was not directly related to exchanging Patient Information over the eHealth Exchange.

Emergency Medical Condition shall mean a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in (i) placing an Individual's health in serious jeopardy, (ii) serious impairment to an Individual's bodily functions, or (iii) serious dysfunction on any bodily organ or part of an Individual.

HIE Network shall mean the voluntary, statewide health information exchange network overseen and administered by NC HIE pursuant to Article 29A of Chapter 90 of the North Carolina General Statutes that enables the secure exchange of Patient Information between and among Participants in support of the provision and improvement of healthcare services and health.

HIE Services shall mean software, utilities, and automated tools made available by NC HIE either directly or through a Qualified Organization for use in connection with the use of the HIE Network.

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 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act ("HIPAA") of

1996 and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") of the American Recovery and Reinvestment Act of 2009, as in effect on the Effective Date of this Agreement and as may be amended, modified, or renumbered hereafter.

Individual shall mean the individual person who is the subject of Patient Information and shall include a Personal Representative in accordance with 45 CFR § 164.502.

Joinder Agreement shall mean the agreement that each Participant who is a signatory to a Subscription Agreement signs pursuant to which such Participant agrees to become a party to, and be bound by, this Agreement as the same may be amended from time to time in accordance with its terms.

Master Patient Index shall mean an electronic database that maintains a unique index (or identifier) for every Individual.

Message shall mean a vehicle for transmitting Patient Information between Participants through the HIE Network.

NC HIE Policies and Procedures shall mean the NC HIE's detailed policies and procedures.

Opt Out shall mean an Individual's right, including through a Personal Representative, to disallow the Individual's Patient Information that is maintained by or on behalf of one or more specific Participants from being Disclosed to other Participants through the HIE Network.

Participant shall mean a person or organization that is a party to this Agreement or a Joinder Agreement. Entities that control one another or are under common control by a parent or other entity ("Affiliates"), may elect to participate in the HIE Network as a single Participant or multiple Participants. If this Agreement is joined by a single Participant on behalf of multiple related entities with the authority to do so, the individual entities shall be listed on an Exhibit captioned "Participating Entities" and each entity so listed shall be individually entitled to the rights and subject to the obligations set forth in this Agreement.

Patient Information shall mean medical or other health care information of or about an Individual which is Disclosed by Participants or Third Party Data Contributors through the HIE Network or which is maintained by NC HIE for indexing, record location or other purposes all in accordance with this Agreement, NC HIE Policies and Procedures and Applicable Law.

Permitted Purposes shall mean the following reasons for which Patient Information may be acquired, accessed, Disclosed or used through the HIE Network:

(i) Treatment of the Individual. Treatment shall mean the provision, coordination, or management of health care and related services by one or more Providers and that the use or Disclosure otherwise complies with the requirements of HIPAA as set forth in 45 CFR §164.506 (c) or successor provisions of HIPAA and is otherwise permitted by Applicable Law;

(ii) Payment activities, provided that the Participant has an established Treatment relationship with the Individual and that the use or Disclosure otherwise complies with the requirements of HIPAA as set forth in 45 CFR §164.506 (c) or successor provisions of HIPAA and is otherwise permitted by Applicable Law;

(iii) Quality assessment and improvement activities, including care coordination, defined in the HIPAA Regulations as a subset of health care operations activities, provided that the Participant has an established Treatment relationship with the Individual and that the use or Disclosure otherwise complies with the requirements of HIPAA set forth in 45 CFR §164.506 (c) or successor provisions of HIPAA and is otherwise permitted by Applicable Law;

- I. Public Purpose; Public Purpose shall mean a Disclosure of Patient Information to public health officials or government agencies and others when required by Applicable Law or when permitted by Applicable Law and consistent with the mission of NC HIE
- II. Pursuant to an Authorization required by the HIPAA Regulations;
- III. To demonstrate meaningful use of certified electronic record technology, provided that the purpose is not otherwise described in subdivisions (i.) through (v.) of this definition and the purpose is permitted by Applicable Law, including but not limited to the HIPAA Regulations. Meaningful use of certified electronic health record technology” shall have the meaning assigned to it in the regulations promulgated by the Department of Health and Human Services under the American Recovery and Reinvestment Act, Sections 4101 and 4102.;
- IV. To carry out NC HIE’s or a Participant’s proper management and administration of its System or its responsibilities under this Agreement and Applicable Law; and
- V. A Participant or Third Party Data Contributor may limit or expand, within a Subscription Agreement or other written agreement, the permitted purposes for which the Patient Information of such Participant or Third Party Data Contributor may be acquired, accessed, Disclosed or used through the HIE Network. In the event Participant or Third Party Data Contributor so elects to limit or expand the permitted purposes for which their Patient Information may be acquired, accessed, Disclosed or used, then “Permitted Purposes” shall mean the purposes set forth within the applicable Subscription Agreement or other written agreement.

Physician Address Directory shall mean an electronic record of database of Authorized Users among whom a Message can be sent and/or from whom a Message can be received, including physicians and other non-physician users of the HIE Network.

Provider shall mean (i) an entity such as a hospital, nursing home, home health agency, adult care home, mental health facility or professional corporation legally authorized to provide health care services in North Carolina, (ii) a health care professional licensed under Chapter 90 of the N.C. General Statutes or a resident or student acting under the supervision of such a professional, or (iii) a local health department as defined in N.C. General Statutes §130A-2.

Qualified Organization or "OO" shall mean a Participant designated by NC HIE to contract with other Participants on NC HIE's behalf to facilitate such other Participants' use of the HIE Network.

Recipient shall mean a party, a public health official, a governmental entity or other individual or entity that receives Patient Information transmitted through the HIE Network by a Third Party Data Contributor as provided for in this Agreement.

Subscription Agreement shall mean any of the following: (i) a Qualified Organization Subscription Agreement by and between NC HIE and a Qualified Organization that authorizes the Qualified Organization to use and make available HIE Services for sale and subscription by Participants on NC HIE's behalf; (ii) a Subscription Agreement by and between a Qualified Organization and its subscribing Participants for use of the HIE Services and participation in the HIE Network; or (iii) any other written agreement between NC HIE and a Participant that authorizes such Participant to use the HIE Services or participate in the HIE Network.

System shall mean any software, portal, platform, or other electronic medium used by a party through which the party accesses, Discloses or uses Patient Information through the HIE Network, without regard to whether or not such party controls the applicable software, portal, platform, or medium, whether through ownership, lease, license, or otherwise.

Third-Party Data Contributor shall mean an entity other than a Participant that provides information through the HIE Network to populate NC HIE's Master Patient Index, the Physician Address Directory, or to otherwise provide Patient Information to Recipients in a capacity other than that of a Participant. Third Party Data Contributors include, but are not limited to, clinical laboratories, radiology-imaging providers and others that provide results or reports to Participants, to public health officials, to governmental agencies and others through a Push Message.

User Access Policies shall mean a Participant's policies and procedures that govern the acquisition, access, Disclosure or use of Patient Information through the HIE Network by such Participant's Authorized Users using such Participant's System.

3. PURPOSE AND SCOPE. This Agreement sets forth the provisions governing the acquisition, access, Disclosure or use of Patient Information through the HIE Network. It is the intent of the parties hereto to protect the confidentiality, privacy and security of Patient Information in accordance with this Agreement, the NC HIE Policies and Procedures, and Applicable Law.

4. LICENSE TO ACCESS PATIENT INFORMATION.

(a) By Participants. During the Term defined in Section 12(a), and solely as permitted by this Agreement, NC HIE hereby grants Participants a non-exclusive, personal, non-transferable, non-sublicensable, revocable in accordance with Section 12 limited license to access, Disclose and use Patient Information through the HIE Network to carry out Permitted Purposes and to comply with the requirements of Applicable Law.

(b) By NC HIE. Participant hereby grants separately to NC HIE and all other Participants an irrevocable, non-exclusive, royalty-free right and license to use all Patient Information and Confidential Information that was Disclosed by Participant through the HIE Network during the Term of this Agreement and solely as permitted by this Agreement, which will survive the termination or expiration of this Agreement. Nothing in the grant of a license

shall be deemed to limit the provision of this Agreement or of Applicable Law that makes Patient Information incorporated into a Recipient's medical records, other data or databases, the property, and the legal responsibility of the Recipient.

5. OBLIGATIONS OF PARTICIPANTS.

(a) Participant shall be responsible for assuring that Participant has all equipment, software and other resources necessary and appropriate to acquire, access, use and Disclose Patient Information in accordance with this Agreement and to conform to any applicable technical specifications required by NC HIE.

(b) Participant may authorize persons whose conduct, in the performance of work for Participant, is under the direct control of Participant, including members of its own workforce, its independent contractors, and credentialed members of its medical or other professional staffs to access, Disclose or use Patient Information through the HIE Network only to the extent consistent with this Agreement and solely for Permitted Purposes.

(c) Participant acknowledges and agrees that it is responsible for its Authorized Users' access, Disclosure and use of Patient Information and for any other individuals' use of Patient Information by use of any security credential received or obtained, directly or indirectly, lawfully or unlawfully, from the Participant or its Authorized Users.

(d) Participant will use and maintain reasonable and appropriate administrative, technical and physical safeguards to protect the confidentiality, integrity, and availability of Patient Information and to prevent the acquisition, access, Disclosure or use of Patient Information through the HIE Network other than for Permitted Purposes or as required by Applicable Law. To that end, Participant agrees to:

(i) Establish role-based access standards reasonably designed to enable each Authorized User to access such Patient Information through the HIE Network as is necessary for the performance of his or her authorized activities. These standards shall ensure that Authorized Users access Disclose or use only the Minimum Necessary amount of Patient Information reasonably required to carry out the authorized purpose.

(ii) Establish policies and procedures that provide for appropriate: (i) identification and authentication of its Authorized Users; (ii) security audit controls and documentation to guard against unauthorized access to Patient Information; and (iii) protection against any type of virus or malicious software designed to disrupt the operation of, destroy or damage its or NC HIE's System or the HIE Network.

(e) Participant shall have in place written User Access Policies that govern its Authorized Users' ability to access, Disclose and use Patient Information through the HIE Network using such Participant's System. Such Policies shall be consistent with this Agreement. Participant agrees to provide to NC HIE, upon reasonable request, copies or detailed summaries of its User Access Policies.

(f) Participant is responsible for establishing a means to inform its Authorized Users of notices, changes, information and restrictions applicable to the use and Disclosure of Patient Information through the HIE Network under this Agreement. Participant shall require that all of its Authorized Users comply with the applicable requirements of this Agreement and Applicable Law and shall promptly take appropriate action in the event that Participant knows, or reasonably

should have known, of a violation of the Agreement by an Authorized User. Participant will be responsible for any breach of this Agreement by an Authorized User. Participant agrees that notices provided to Participant will be effective as to Authorized Users and the Participant will secure Authorized Users agreement to the foregoing.

(g) Participants shall provide periodic reports to NC HIE upon request about the security measures implemented for using the HIE Network, including any material security incidents that have arisen since any prior report. A "material security incident" is one that results in unauthorized acquisition, access, use, disclosure, modification, destruction of Patient Information, or interference with NC HIE's or Participant's System operations. Security incidents that are not material include, but are not limited to, pings on a firewall, attempts to log onto a system with an invalid security credential, malware, and denial-of-service attacks that do not result in a server being taken off-line.

(h) NC HIE, in its discretion, may deny access to Patient Information through the HIE Network to any Participant or Authorized User it reasonably believes has acquired, accessed, used or Disclosed Patient Information through the HIE Network other than as permitted under this Agreement or Applicable Law.

(i) If a Participant identifies "Participating Entities", the Participant warrants, represents and agrees that the Participant:

(i) Has written authority to bind each of the identified Participating Entities to the duties and obligations set forth in this Agreement; and

(ii) To the extent the Participant does not have appropriate written authority to bind a Participating Entity, the Participant hereby guarantees the Participating Entity's performance of Participating Entity's obligations under this Agreement.

(j) Make its internal practices, books and records relating to uses and Disclosures of Patient Information pursuant to applicable Subscription Agreements and this Agreement available to the Secretary of the U.S. Department of Health and Human Services or his/her designee, as necessary to comply with the HIPAA Regulations or other Applicable Law.

(k) To the extent that a Participant uses technology partners in connection with the Participant's acquisition, access, use or Disclosure of Patient Information through the HIE Network, such Participant shall have valid and enforceable agreements with each technology partner that require the technology partner to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of Patient Information to which it has access; (iii) as soon as reasonably practicable after determining a Breach has occurred, report such Breach to the Participant in accordance with Section 10 of this Agreement; and (iv) reasonably cooperate with other Participants and NC HIE on issues related to this Agreement, under the direction of the Participant.

6. OBLIGATIONS OF NC HIE.

(a) NC HIE shall maintain the functionality of the HIE Network.

(b) To the extent that NC HIE workforce members have access to information, including Patient Information or Confidential Information of Participant, such information will be used only for one or more of the following purposes:

(i) To facilitate the Disclosure of Patient Information to Participants for Permitted Purposes.

(ii) To process or otherwise implement Opt Out requests.

(iii) To perform patient identity or patient records maintenance.

(iv) To conduct or assist in the performance of audits permitted or required by the NC HIE Policies and Procedures, including the performance of audits of Emergency Access.

(v) To evaluate the performance of or develop recommendations for improving the operation of the HIE Network.

(vi) To conduct technical system support and maintenance on the HIE Network;

(vii) To carry out NC HIE's functions and obligations under this Agreement, applicable Subscription Agreements or other written agreements with Third Party Data Contributors, and the NC HIE Policies and Procedures.

(viii) To engage in any other activities as may be required to facilitate the operation of the HIE Network that are authorized by the NC HIE Board of Directors and are consistent with this Agreement and Applicable Law.

(c) Implementation of Opt Out. NC HIE shall establish a process for notifying Individuals about (i) the benefits of the HIE Network, (ii) the Individual's right to Opt Out and the potential consequences to Individuals of Opting Out, (iii) the Individual's right to rescind a previous decision to Opt Out, and (iv) a process whereby an Individual may exercise the right to Opt Out and the right to rescind a previous decision to Opt Out.

(d) Emergency Medical Condition Exception to Opt Out. Authorized Users may access Patient Information maintained by Participants about an Individual who has exercised his or her right to Opt Out of Disclosures by such Participants if all of the following requirements are satisfied:

(i) The reasonably apparent circumstances indicate to the Authorized User that: (a) the Individual has an Emergency Medical Condition; (b) a meaningful discussion with the Individual or his or her Personal Representative about whether to rescind a previous decision to Opt Out is impractical due to the nature of the Individual's Emergency Medical Condition; and (c) information available through the HIE Network could assist in the diagnosis or Treatment of the Individual's Emergency Medical Condition.

(ii) The Authorized User obtains access to the HIE Network through a Participant that is treating or diagnosing the Individual's Emergency Medical Condition.

(iii) The Authorized User is involved in providing or arranging for the diagnosis or Treatment of the Individual's Emergency Medical Condition.

(iv) Authorized Users shall cease emergency access of an Individual's Patient Information under this Section 6(c) promptly upon (a) stabilization of the Individual's Emergency Medical Condition, or (b) a request by the Individual or his or her Personal Representative to cease such access.

(e) Business Associate Services. NC HIE acknowledges and agrees that it is performing its obligations under all applicable Subscription Agreement(s) and this Agreement as a Business Associate of Participants who are considered Covered Entities and that it shall limit its use and Disclosure of any Patient Information Disclosed to NC HIE by such Covered Entity Participants to only those purposes described in and allowed by the "Additional Business Associate Requirements" attached hereto and incorporated herein as Exhibit A.

(f) Compliance with CLIA. For the sole and limited purpose of facilitating a "Report of Record" to be transmitted from an originating laboratory, or other authorized source, to a Participant pursuant to and in accordance with the Clinical Laboratory Improvement Amendments of 1988 ("CLIA"), NC HIE agrees to be and by signing this Agreement or the Joinder Agreement, Participant hereby designates NC HIE to be the Participant's "Designated Agent" for purposes of compliance with CLIA. This designation is limited and transient such that NC HIE shall be considered a "Designated Agent" of Participant only during the window of time beginning with the point at which a CLIA "Report of Record" is received by NC HIE and ending with the point at which the "Report of Record" is delivered to Participant (the Designated Agent Window"), and for the sole purpose of transmitting the "Report of Record" to the Participant. As used in this Section 6(e), the "Report of Record" shall mean the information contained in a document, electronic or otherwise, that is certified by the originating laboratory, or other authorized source, as containing the requisite information needed to satisfy CLIA's requirement for delivery of a test result to the ordering Participant.

(g) Subcontractors. To the extent that a NC HIE uses technology partners in connection with the Participant's acquisition, access, use or Disclosure of Patient Information through the HIE Network, NC HIE shall have valid and enforceable agreements with each technology partner that require the technology partner to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of Patient Information to which it has access; (iii) as soon as reasonably practicable after determining a Breach has occurred, report such Breach to NC HIE in accordance with Section 9 of this Agreement; and (iv) reasonably cooperate with NC HIE on issues related to this Agreement, under the direction of the NC HIE.

7. NC HIE POLICIES AND PROCEDURES. NC HIE shall from time-to-time develop Policies and Procedures and post them on the NC HIE Website and provide notice to Participants in accordance with Section 15. NC HIE, with the approval of its Board of Directors, may amend any provision of the NC HIE Policies and Procedures in accordance with its provisions.

8. APPLICABILITY OF HIPAA REGULATIONS. Each Participant agrees as follows: If the Participant is a Covered Entity, the Participant does, and at all times shall, comply with the HIPAA Regulations to the extent applicable. If the Participant is a Business Associate of a Covered Entity, the Participant does, and at all times shall, comply with the provisions of its Business Associate Agreement(s) and Applicable Law. If the Participant is a governmental entity, the Participant does, and at all times shall, comply with the applicable privacy and security laws and regulations to which it is subject. If the Participant is neither a Covered Entity, a Business Associate of a Covered Entity, nor a governmental entity, the Participant shall, as a contractual standard, at all times, at a minimum, comply with the provisions of the HIPAA Regulations as if it were acting in the capacity of a Covered Entity.

9. TRANSACTIONS OVER THE EHEALTH EXCHANGE. When the parties are acquiring, accessing, using or Disclosing Patient Information not simply through the HIE Network but also over the eHealth Exchange, they will comply with the additional requirements related to such Patient Information set forth in Exhibit B, attached hereto and incorporated herein by reference.

10. BREACH NOTIFICATION.

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

(b) Responsibilities of NC HIE. If NC HIE becomes aware of any actual or suspected Breach, either through notification by a Participant or otherwise, NC HIE must, at a minimum, notify any Participants whose Patient Information is affected by the Breach. Except as otherwise provided in applicable Policies and Procedures, such notification shall be made as expeditiously as possible and without unreasonable delay.

(c) Contents of Notification. The notification required by this Section 9 shall include sufficient information for NC HIE and notified Participants to understand the nature and the extent of the Breach. For instance, such notification should include, to the extent available at the time of the notification the following information:

(i) A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;

(ii) The identification of each Individual who's Patient Information has been, or is reasonably believed to have been, accessed, acquired, used, or Disclosed during the Breach;

(iii) Description of the roles of the people involved in the Breach (e.g., employees, Authorized Users, service providers, unauthorized persons, etc.);

(iv) Description of the types of Patient Information that were involved in the Breach (whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(v) Description of Participants likely impacted by the Breach;

(vi) Number of Individuals or records impacted/estimated to be impacted by the Breach;

(vii) Description of actions taken to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breach;

(viii) Current status of the Breach (under investigation or resolved);

(ix) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address; and

(x) Corrective action taken and steps planned to be taken to prevent a similar Breach.

(d) The notifying party shall supplement the information contained in the notification as it becomes available and cooperate with other Participants and NC HIE in mitigating the effects of the Breach.

(e) Except as provided for in this Section 10 (c)(ii), the notification shall not include any Patient Information.

(f) NC HIE will provide, in a timely manner, a summary of the Breach that does not identify any of the Participants or Individuals involved in the Breach.

(g) This Section 10 shall not be deemed to supersede or relieve a party's reporting obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law, including, but not limited to, the party's reporting obligations related to Individuals.

(h) The parties shall work together to coordinate any notification to Individuals, and applicable regulatory agencies, and any public announcement regarding the Breach that may be required by Applicable Law or the policies of a party.

11. CONFIDENTIAL BUSINESS INFORMATION.

(a) Each party shall hold all Confidential Business Information it receives (referred to as the "Receiving Party" for purposes of this Section 11), in confidence and shall not, during the term or after termination of this Agreement, disclose to any person or entity, nor use for its own business or benefit, any Confidential Business Information obtained by it in connection with this Agreement, unless such use or disclosure is permitted by the terms of this Agreement. Notwithstanding the foregoing, Confidential Business Information may be disclosed as required by operation of Applicable Law, provided that NC HIE or a Participant, (referred to as the Disclosing Party for purposes of this Section 11), as the Receiving Party, promptly and in advance of such disclosure, if at all possible, notifies the Disclosing Party of the existence, terms and circumstances surrounding such operation of law or Applicable Law to allow the Disclosing Party its rights to object to such disclosure. If after Disclosing Party's objection the Receiving Party is still required by operation of law or Applicable Law to disclose its Confidential Business Information, it shall do so only to the minimum extent necessary to comply with the operation of law or Applicable Law and shall request that the Confidential Business Information be treated as confidential to the maximum extent practicable under the circumstances.

(b) The Receiving Party shall return, or destroy and certify the destruction of, all Confidential Business Information (including all copies thereof) to the Disclosing Party promptly upon request, provided that the Receiving Party may retain in its confidential files one copy of any written materials for purposes of verifying compliance with this Agreement.

12. TERM AND TERMINATION.

(a) Term. The initial term of this Agreement shall commence as of the Effective Date and shall extend through December 31 of that same year. Following the initial term, this Agreement will automatically renew for consecutive one (1) year periods (the initial term, collectively with any such renewal terms, the "Term").

(b) Termination by NC HIE of HIE Services. NC HIE may terminate this Agreement at any time without cause by giving not less than ninety (90) days prior written notice to all Participants. Upon termination by NC HIE of the HIE Services, NC HIE will treat the Patient

Information Disclosed to NC HIE by Participants as set forth in the Business Associate Responsibilities attached hereto and incorporated herein by reference as Exhibit A.

(c) Effect of Termination of Subscription Agreement on participation in the HIE Network. The termination of a Participant's Subscription Agreement, for any reason, will terminate the Participant's Joinder Agreement, thereby terminating the terminating Participant's participation in the HIE Network.

(d) Termination Based Upon Change in Law. NC HIE and Participants intend and in good faith believe that this Agreement complies with all federal, State and local laws. If any provision of this Agreement is declared void or unenforceable in a final, non-appealable ruling by a court or arbitrator of competent jurisdiction, or otherwise rendered void, unenforceable or obsolete by the enactment of any law or regulation, and if the provision(s) at issue is necessary to effectuate the purposes of this Agreement, the parties agree to attempt to renegotiate in good faith the affected provision(s) of this Agreement so as to comply with such rulings(s), law(s), or regulation(s) to the satisfaction of NC HIE and Participants. In the event the parties are not able to renegotiate the affected provision(s) of this Agreement to their mutual satisfaction within one hundred eighty (180) days of the enactment of the applicable ruling(s), law(s), or regulations(s), then this Agreement shall automatically terminate.

13. DISCLAIMERS.

(a) Carrier Lines. The parties acknowledge that access to the HIE Network is to be provided over various facilities and communication lines, and information will be transmitted over facilities and communications lines, and information will be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained and serviced by third-party carriers, utilities, and Internet service providers, all of which are beyond NC HIE's control. NC HIE HEREBY DISCLAIMS ANY LIABILITY FOR OR RELATING TO THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED ON THE CARRIER LINES, OR ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY PATIENT INFORMATION OR CONFIDENTIAL BUSINESS INFORMATION ATTRIBUTABLE TO TRANSMISSION ON THE CARRIER LINES. USE OF THE CARRIER LINES IS SOLELY AT THE RISK OF EACH PARTICIPANT AND ITS AUTHORIZED USERS, AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, NATIONAL AND INTERNATIONAL LAWS.

(b) HIE Services And Software. THE HIE SERVICES AND ALL ASSOCIATED SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS ONLY. ACCORDINGLY, BUT WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, NC HIE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR ASSOCIATED SOFTWARE WILL MEET THE REQUIREMENTS OF ANY PERSON OR WILL OPERATE ERROR-FREE OR CONTINUOUSLY, AND NC HIE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OR REPRESENTATIONS CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY ONE OR MORE OF THE GOODS AND SERVICES REFERRED TO ABOVE. THE PARTIES AGREE THAT NO AGREEMENTS, REPRESENTATIONS OR WARRANTIES OTHER THAN

THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT ANY APPLICABLE SUBSCRIPTION AGREEMENT, AND THE NC HIE PRIVACY AND SECURITY POLICIES HAVE BEEN MADE, AND THAT NO FUTURE AGREEMENT, REPRESENTATION OR WARRANTY OF ANY PARTY WITH REGARD TO PATIENT INFORMATION, GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO, OR AN AMENDED AND RESTATED VERSION OF, THIS AGREEMENT.

(c) Patient Information. PATIENT INFORMATION THAT MAY BE PROVIDED TO PARTICIPANTS AND THEIR AUTHORIZED USERS THROUGH THE HIE NETWORK ARE BEING PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR COMMON LAW, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NO PARTY WARRANTS THAT THE PERFORMANCE OF ITS SYSTEM OR THE HIE NETWORK OR THE DELIVERY OF PATIENT INFORMATION WILL BE TIMELY, UNINTERRUPTED, OR ERROR FREE.

14. HIE NETWORK SOFTWARE VENDOR INDEMNITY AND LIMITATION OF LIABILITY.

(a) For purposes of this Section 14, the term "Software" shall mean and refer to, severally and collectively, the Portal v7.0 (including Results Viewer), Rhapsody Integration Engine, Clinical Data Repository, HIE Module, NextGate Master Patient Index, NextGate Provider Index, and Health Language LE Architecture software owned by Orion Health, Inc. ("Orion Health") and which is used in connection with the operation of the HIE Network and offering of the Services by NC HIE and QO for end use by Participant and its Authorized Users.

(b) Orion Health shall have no liability for any third party claim with respect to medical malpractice related to the use of the Software unless and until adjudicated by a court of competent jurisdiction and the cause of the claim is determined by such court to be directly related to the malfunction of the Software. Participant shall indemnify Orion Health for any breach of Participant's obligations under this Agreement.

(c) ORION HEALTH SHALL NOT BE LIABLE TO PARTICIPANT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR LOSS OF USE, BUSINESS, REVENUE, OR PROFITS), OR THE USE OR INABILITY TO USE THE SOFTWARE, UNLESS SUCH DAMAGES RESULT FROM OR ARISE OUT OF, OR ARE AWARDED AS A RESULT OF, THE GROSSLY NEGLIGENT ACTS OR OMISSIONS, OR INTENTIONAL WRONGDOING, OF ORION HEALTH.

(d) ORION HEALTH'S TOTAL LIABILITY TO PARTICIPANT OR ANY THIRD PARTY AND PARTICIPANT'S EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THE SOFTWARE SHALL BE LIMITED TO (A) FOUR MILLION DOLLARS (\$4,000,000) FOR ANY CLAIM AND RESULTING LIABILITY DIRECTLY RELATED TO THE OPERATION

OR USE OF THE SOFTWARE; OR (B) TWO MILLION DOLLARS (\$2,000,000) IN TOTAL FOR ANY CLAIM AND RESULTING LIABILITY DIRECTLY RELATED TO THE MAINTENANCE, SUPPORT OR IMPLEMENTATION SERVICES PROVIDED BY ORION HEALTH.

- (e) Orion Health is an intended third party beneficiary of the terms of this Section 14.

15. LIMITATIONS OF PARTY LIABILITY.

(a) As between parties to this Agreement: No party shall be responsible to one another for any claims, demands, expenses, liabilities, or losses, including reasonable attorney fees, which may arise from any acts or failures to act by the other parties to this Agreement or such other parties' Workforce members or agents in connection with this Agreement. In circumstances involving harm to other parties caused by the acts or omissions of individuals who access Patient Information or Confidential Business Information through the HIE Network by use of any security credential received or obtained directly or indirectly, lawfully or unlawfully, from a Participant or NC HIE or any Authorized Users or authorized members of NC HIE's Workforce, each party shall be responsible for such harm to the extent that the individual's access was caused by the party's breach of this Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. Notwithstanding any provision in this Agreement to the contrary, the party shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. If the Participant is an agency of the State of North Carolina, the provisions of N.C. General Statutes §143-291 *et.seq.*, North Carolina General Statutes, relating to sovereign immunity shall govern.

(b) Patient Care. NC HIE does not assume any role in, and shall have no liability for, the care of any Individual, or outcomes therefrom. Each Participant and each Participant's Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management of Individuals resulting from or in any way related to the use of the HIE Network or Patient Information made available thereby. Neither Participants nor any of their Authorized Users shall have any recourse against, and each hereby waives any and all claims against NC HIE for any loss, damage, claim or cost relating to or resulting from such Participant's or its Authorized Users' use or misuse of the HIE Network and Patient Information.

(c) Patient Information. The parties acknowledge that Patient Information made available through the HIE Network is subject to change due to numerous factors, including without limitation changes to Patient Information made at the request of the Individual, changes in the Individual's health condition, the passage of time, and other factors. Without limiting any other provision under this Agreement, no party shall have responsibility for or liability related to the accuracy, content, currency, completeness, or delivery of any Patient Information made available by NC HIE, a Participant or a Participant's Authorized Users

(d) Limitation on Damages. It is expressly agreed that in no event shall a party be liable to another party for consequential, incidental, indirect, punitive, exemplary, or special damages suffered by a party or any other third party. Notwithstanding the foregoing, this Section 15 (d) shall not be construed to limit a party's liability to another party for consequential damages arising from a party's non-compliance with Applicable Law or the obligations under this Agreement.

16. INDEMNIFICATION. Each party agrees to indemnify, defend, and hold the other and its successors, officers, directors, agents and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages (including attorneys' fees) arising out of, or in connection with, the indemnifying party's performance of its obligations under this Agreement or any breach of this Agreement by the indemnifying party. The obligation to indemnify in this Section 16 shall not apply to any party who is barred by Applicable Law from indemnifying another party, nor shall any such party be entitled to indemnification by another party pursuant to this Section 16.

17. NOTICES. Any notice or other communication to be made under this Agreement shall be given in writing to the appropriate party's representative at the address listed in the Participant's Subscription Agreement and shall be deemed to have been delivered: (a) three (3) business days after deposit in the mail when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, FedEx or United Parcel overnight delivery, return receipt requested; (b) upon the date indicated on the return receipt, when sent by certified or registered mail, return receipt requested; (c) upon delivery, if personally delivered; or (d) upon receipt/delivery, if sent by e-mail or fax.

18. AMENDMENTS. This Agreement, including all Exhibits attached hereto, may be amended by agreement of at least two-thirds (2/3) of the Board of Directors of NC HIE. However, if a change to this Agreement or the Exhibits is required for NC HIE or Participants to comply with Applicable Law, then this Agreement or the Exhibits, as applicable, may be amended by approval of a majority of the NC HIE Board. All approved amendments shall be distributed to Participants within five (5) business days of approval and shall become effective thirty (30) days after distribution, except for amendments required by Applicable Law, which shall become effective on the date specified by the NC HIE Board or, if no date is specified, then upon approval.

19. ASSIGNMENT. NC HIE may assign or transfer this Agreement to a successor-in-interest or to an acquiror of all or substantially all of the assets of NC HIE. Participants may not assign or transfer this Agreement, or any part thereof, without the prior written consent of NC HIE, such consent not to be unreasonably withheld. This Agreement shall be binding on NC HIE and Participants, their successors and permitted assigns.

20. WAIVER. No failure or delay by a party in exercising their rights under this Agreement shall operate as a waiver of such rights or estop enforcement thereof, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach or estop enforcement thereof.

21. INTERPRETATION. This Agreement, all its Exhibits, and applicable Subscription Agreements shall be interpreted as a related set of agreements, obligations and requirements. In the event of any material conflict or ambiguity between any of their provisions, the provisions of this Agreement shall control. Any representation, promise, or condition, whether oral or written, that is not incorporated within the agreements described in this Section 19 or in applicable policies and procedures, shall not be binding upon the parties.

22. INCORPORATION BY REFERENCE. All Exhibits attached to this Agreement are incorporated herein by reference and made a part of this Agreement as if those Exhibits were set forth in the text of this Agreement.

23. SEVERABILITY. If any portion of this Agreement shall for any reason be invalid or unenforceable, such portion shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining portions shall remain valid and enforceable and in full force and effect.

24. RELATIONSHIP OF NC HIE AND PARTICIPANTS. Except as specifically provided in Section 6(f) above, (Compliance with CLIA), , nothing contained in this Agreement shall constitute, or be construed to create, a partnership, joint venture, agency or any other relationship between NC HIE and Participants other than that of independent contractors.

25. THIRD-PARTY BENEFICIARIES. Except as otherwise provided in Section 14, this Agreement does not and will not create in any natural person; corporation, partnership or other organization or entity other than the parties any benefits or rights, and this Agreement will be effective only as to the parties and their successors and permitted assigns.

26. FORCE MAJEURE. Notwithstanding any provision hereof to the contrary, in the event of a disruption, delay or inability to complete the requirements of this Agreement due to natural disasters, acts of terror or other similar events out of the reasonable control of a party, none of them shall be considered in breach of this Agreement.

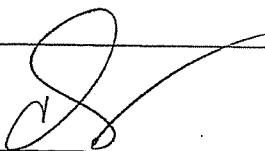
27. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

28. AUTHORITY TO SIGN. Parties warrant that they have the capacity to enter into and perform the obligations under this Agreement and all activities contemplated herein, and that all corporate and other actions required to authorize them to enter into and perform this Agreement were properly taken.

29. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of North Carolina and applicable Federal law.

28. SURVIVAL. The respective rights and obligations of NC HIE and Participants under Sections 10 (Breach Notification), 11 (Confidential Business Information), 12(d), (Disposition of Patient Information Upon Termination of this Agreement), 14 (HIE Network Software Vendor Indemnity and Limitation of Liability), 15 (Limitations of Party Liability), 16 (Indemnification), and any other provision of this Agreement that by its nature or by express statement should survive, shall survive the termination of this Agreement by NC HIE.

IN WITNESS WHEREOF, NC HIE has executed this Agreement as of the date first written above.

By:  _____

Title: President

Date: 2-17-2014

EXHIBIT A

BUSINESS ASSOCIATE OBLIGATIONS

1. PURPOSE: The purpose of this Exhibit A is to provide satisfactory written assurances to Covered Entity Participants that NC HIE will comply with applicable business associate requirements of the HIPAA Regulations, specifically, 45 C.F.R. §§ 164.314(a), .502(e), .504(e), of the privacy and security regulations as modified by the HITECH Act and implemented by Regulations and Guidance.

2. APPLICATION: In addition to the requirements set forth in this Agreement, NC HIE agrees to the following responsibilities which shall apply solely in NC HIE's capacity as a Health Information Exchange and on behalf of a Covered Entity Participant:

(a) Creates, receives, maintains, or transmits Protected Health Information (PHI) for a function or activity regulated by the HIPAA Privacy Rule; or

(b) Provides, other than in the capacity of a member of the Work force of a Covered Entity Participant, HIE Services, 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 NC HIE.

3. DEFINITIONS. All capitalized terms used, but not otherwise defined in this Agreement, shall have the same meaning for those terms as set forth in the HIPAA Privacy and Security Rules for purposes of this Exhibit A.

(a) Breach shall have the same meaning as the term "Breach" set forth in 45 C.F.R. § 164.402.

(b) Designated Record Set shall have the same meaning as "Designated Record Set" set forth in 45 C.F.R. § 164.501.

(c) HITECH Act means Title XIII and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5.

(d) Individual has the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(e) Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

(f) Protected Health Information or PHI and ePHI shall have the same meaning as the term "protected health information" in the HIPAA Regulations 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 shall refer only to PHI or ePHI of Covered Entity Disclosed to, accessed, used, held, or created by NC HIE under an applicable Subscription Agreement and this Agreement unless specifically stated otherwise.

(g) Required By Law has the same meaning as the term "required by law" in 45 C.F.R. § 164.103.

(h) Security Incident shall mean the attempted or successful unauthorized access, use, Disclosure, modification, or destruction of information or interference with System operations in an information system.

(i) Security Rule means the Security Standards and Implementation Specifications at 45 C.F.R. part 160 and part 164, subpart C.

(j) Unsecured Protected Health Information shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published at 74 Fed. Reg. 19006 (April 27, 2009), and in any additional guidance published thereafter.

4. PERMITTED USES and DISCLOSURES.

(a) NC HIE may use and Disclose PHI to perform functions, activities, or services for, or on behalf of Covered Entity Participants in accordance with the terms and conditions of any applicable Subscription Agreement and this Agreement, and, if necessary: (i) for the proper management and administration of NC HIE; and (ii) to carry out the legal responsibilities of NC HIE, provided that such use and disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity Participant.

(b) NC HIE may Disclose PHI in its possession to third parties if: (i) the Disclosure is Required By Law; or (ii) NC HIE obtains reasonable assurances from the third parties to whom the PHI is Disclosed that such PHI will remain confidential and will be used or further Disclosed only as Required By Law or for the purpose for which such PHI was Disclosed to the person or entity, and the person or entity notifies NC HIE of any instances of which it is aware in which the confidentiality of such PHI has been breached; and

(c) NC HIE may use or Disclose PHI pursuant to a valid authorization by an Individual that satisfies the requirements of 45 C.F.R. § 164.508.

5. OBLIGATIONS OF NC HIE.

(a) Prohibition on Unauthorized Use or Disclosure. NC HIE will not use or disclose PHI except as permitted or required by the Privacy Rule, the Security Rule, this Agreement, applicable Subscription Agreements, or as Required By Law.

(b) Minimum Necessary Uses and Disclosures. NC HIE shall limit its use and disclosure of PHI under this Agreement to the "minimum necessary" as set forth in guidance that the Secretary issues under the Privacy Rule, or if guidance has not been issued, to the Limited Data Set (as defined by HIPAA) or the minimum necessary to carry out NC HIE's duties. This Section 5.(b) does not apply to: (i) Disclosures to, or requests by, a health care provider for treatment; (ii) uses or Disclosures made to the Individual; (iii) Disclosures made pursuant to an authorization as set forth in 45 C.F.R. §164.508; (iv) Disclosures made to the Secretary under 45 C.F.R. Part 160, Subpart C; (v) uses or Disclosures that are Required By Law as described in 45 C.F.R. § 164.512(a); and (vi) uses or Disclosures that are required for compliance with applicable requirements of the Privacy Rule.

(c) Safeguards. NC HIE will use appropriate safeguards to prevent the use or Disclosure of PHI other than as provided for by this Agreement. NC HIE will implement administrative, physical and technical safeguards, as required by the Security Rule that reasonably and appropriately protect the confidentiality and integrity of the Electronic Protected

Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity Participant.

(d) Duty to Report Violations. NC HIE agrees to report to Covered Entity Participants any use or Disclosure of PHI by NC HIE not allowed for by the Privacy Rule, the Security Rule or this Agreement and any Security Incident that does not rise to the level of Breach of Unsecured PHI of which it becomes aware. The report shall be made as soon as practicable from NC HIE's discovery of the Security Incident or any impermissible use or disclosure of PHI. For purposes of this reporting requirement, the term "Security Incident" shall mean the attempted or successful unauthorized access, use, Disclosure, modification, or destruction of PHI or interference with NC HIE's System operations. The parties agree that this section satisfies any notice requirements by NC HIE of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents" (as defined below), for which no additional notice to Participants shall be required. Unsuccessful Security Incidents include: (i) "pings" on NC HIE's firewall(s); (b) port scans; (c) attempts to log on to NC HIE's systems or to enter a database of NC HIE with an invalid security credential; (d) denial-of-service attacks that do not result in a server being taken offline; or (e) malware, (e.g., a worm or virus) that does not result in unauthorized access, use, disclosure, modification or destruction of Electronic Protected Health Information.

(e) Duty to Report Breaches. NC HIE also agrees to report any other Breaches of PHI. If a Breach occurs, NC HIE shall cooperate and assist in any steps taken by Covered Entity Participant to mitigate and address the Breach in accordance with Section 10 of this Agreement. Business Associate shall maintain evidence to demonstrate that any notifications required under this Section were made by Business Associate.

(f) Subcontractors and Agents. NC HIE agrees to ensure that any subcontractor or agent to whom it provides PHI agrees in writing to the same restrictions and conditions that apply through this Agreement to NC HIE with respect to such PHI. NC HIE will ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information. Data made available to NC HIE by Covered Entity Participant for the performance or administration of this Agreement shall be used only for those purposes and shall not be used in any other way without the prior written approval of the Covered Entity Participant.

(g) Access to PHI. Upon request by Covered Entity Participant, NC HIE agrees to provide access to PHI in a Designated Record Set in NC HIE's possession and control to Covered Entity Participant or, at the direction of Covered Entity Participant to an Individual in order to meet the requirements of 45 C.F.R. § 164.524.

(h) Amendment of PHI. Upon request by Covered Entity Participant, NC HIE agrees to make available to the Covered Entity Participant, PHI in a Designated Record Set in NC HIE's possession and control, as required for amendment of such PHI, and shall make and incorporate any amendment(s) to the PHI that the Covered Entity Participant agrees to pursuant to 45 C.F.R. § 164.526.

(i) Inspection of Books and Records. Upon reasonable notice, NC HIE agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to Covered Entity Participant or, at the request of Covered Entity Participant, to the Secretary of

the federal Department of Health and Human Services in a time and manner designated by Covered Entity Participant or the Secretary for purposes of the Secretary determining Covered Entity Participant's compliance with the Privacy Rule or Security Rule.

(j) Accounting of Disclosures. NC HIE agrees to provide to Covered Entity Participants, upon request, information regarding Disclosures of PHI by NC HIE through the HIE Network to permit Covered Entity Participants to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528.

6. RETURN OF PHI UPON TERMINATION. Upon termination as provided for in Section 11 of the Agreement, NC HIE shall return or destroy all PHI received from or created or received by NC HIE on behalf of a Covered Entity Participant that NC HIE still maintains in any form and retain no copies of such information. In the event that NC HIE determines that returning or destroying the PHI is infeasible, NC HIE shall provide to Covered Entity Participant notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, NC HIE shall extend the protections of this Agreement to such PHI and limit further uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible, for so long as NC HIE maintains such PHI.

EXHIBIT B

ADDITIONAL PARTICIPANT REQUIREMENTS FOR TRANSACTIONS OVER THE EHEALTH EXCHANGE

In addition to the requirements set forth in the Agreement, Participant agrees to the following requirements, which shall apply solely when Participant, through the HIE Network, is accessing, using, or disclosing Patient Information over the eHealth Exchange:

1. Except to the extent prohibited by Applicable Law, Participant shall provide information that is reasonably requested of it by NC HIE or by the eHealth Exchange Coordinating Committee (the body agreed to by all eHealth Exchange Participants who have signed the multi-party Data Use and Reciprocal Support Agreement ("DURSA") to oversee and facilitate the operations of the eHealth Exchange) for the purposes described in Section 4.03 of the DURSA. Such purposes include for the Coordinating Committee: to determine whether Participant through the Agreement may exchange Patient Information over the eHealth Exchange; to receive and act upon reports of eHealth Exchange Breaches; to suspend or terminate the right of NC HIE or Participant to exchange Patient Information over the eHealth Exchange; to resolve disputes pertaining to the eHealth Exchange; or to fulfill other responsibilities delegated to the Coordinating Committee. Participant shall not be required to disclose PHI to the Coordinating Committee in violation of Applicable Law. Any information other than Patient Information provided to the Coordinating Committee shall be labeled as Confidential Business Information.
2. In exchanging Patient Information over the eHealth Exchange, Participant shall comply with all applicable, current eHealth Exchange Performance and Service Specifications, which can be found at:
http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov_nhin_resources/1194. These may be amended from time to time, and NC HIE shall advise Participants of any proposed amendments and, in the case of a proposed amendment that is "Material" (which is defined in the DURSA as an amendment that will have a significant adverse operational or financial impact on at least 20% of eHealth Exchange Participants, require at least 20% of eHealth Exchange Participants to materially modify their existing agreements with or policies or procedures that govern eHealth Exchange Authorized Users of third parties, or require an amendment to the DURSA), NC HIE shall permit Participant to participate in submitting comments regarding such proposed changes. NC HIE shall advise Participant of any Material amendment to the Performance and Service Specifications with which Participant must comply.
3. In exchanging Patient Information over the eHealth Exchange, Participant shall comply with all current eHealth Exchange Operating Policies and Procedures, which can be found at:
http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov_nhin_resources/1194. These may be amended from time to time, and NC HIE shall advise Participants of any proposed amendments and shall permit Participant to participate in submitting comments regarding such proposed changes or objecting if Participant believes that the proposed changes will have a significant adverse operational or financial impact on

Participant. NC HIE shall advise Participant of any new, amended, repealed or replaced Operating Policies and Procedures and the effective date of any such change.

4. When requesting Patient Information from an eHealth Exchange Participant over the eHealth Exchange, Participant shall submit a copy of the Authorization required by the HIPAA Regulations, if such an Authorization is required in order for the eHealth Exchange Participant to disclose such Patient Information to Participant.
5. When Participant, in accordance with Section 10 of the Agreement, notifies NC HIE of a potential or actual eHealth Exchange Breach, Participant shall assist NC HIE in notifying eHealth Exchange Participants likely impacted by the eHealth Exchange Breach. Participant's notification to NC HIE shall include sufficient information for the Coordinating Committee to understand the nature of the eHealth Exchange Breach. Such notification could include, to the extent available at the time of the notification, the following information:
 - (a) One or two sentence description of the eHealth Exchange Breach;
 - (b) Description of the roles of the people involved in the eHealth Exchange Breach (e.g., employees, Authorized Users, service providers, unauthorized persons, etc.);
 - (c) The type of Patient Information breached;
 - (d) eHealth Exchange Participants likely impacted by the eHealth Exchange Breach;
 - (e) Number of individuals or records impacted, or estimated to be impacted, by the eHealth Exchange Breach;
 - (f) Actions taken by Participant to mitigate the eHealth Exchange Breach;
 - (g) Current status of the eHealth Exchange Breach (under investigation or resolved)
 - (h) Corrective action taken and steps planned to be taken to prevent a similar eHealth Exchange Breach;
6. Participant shall assist NC HIE in supplementing the information contained in the notification as additional information becomes available.
7. Participant shall refrain from disclosing to any other person any passwords or other security measures issued to Participant by NC HIE for purposes of exchanging Patient Information over the eHealth Exchange.
8. To the extent that Participant uses technology partners other than NC HIE in exchanging Patient Information over the eHealth Exchange, it shall maintain valid and enforceable agreements with such technology partners, including health information service providers, requiring them to (a) protect the privacy and security of Patient Information, and (b) as soon as reasonably possible after determining that an eHealth Exchange Breach has occurred, report such breach to Participant and NC HIE in the same manner as outlined in Section 5 of this Exhibit.
9. NC HIE may voluntarily suspend or terminate, or the Coordinating Committee may suspend or terminate, NC HIE's right to exchange Patient Information over the eHealth Exchange. If any such suspension or termination occurs, NC HIE will notify Participant of the action as soon as reasonably possible. If an act or omission of Participant is the reason such suspension or termination occurs, Participant shall cooperate with NC HIE to submit an appeal or a plan of correction to the Coordinating Committee, as applicable, as quickly as practicable.

10. Participant agrees to submit any disputes related to its exchange of Patient Information over the eHealth Exchange to the non-binding Dispute Resolution Process outlined in Attachment 1 to this Agreement. If all of the parties involved in the dispute accept a proposed resolution of the dispute, Participant shall implement the terms of the resolution in the agreed upon time frame. Following the Dispute Resolution Process, Participant may pursue alternative remedies if it believes that the Dispute Resolution Process failed to adequately resolve the dispute.
11. In the event the DURSA is amended and such amendment affects Participant's obligations pursuant to this Exhibit, Participant and NC HIE shall sign an amendment to this Exhibit.

ATTACHMENT 1

EHEALTH EXCHANGE DISPUTE RESOLUTION PROCESS

1. When a Dispute arises, a Participant shall send written Notice, in accordance with the Notice provision in the DURSA, to the eHealth Exchange Participant(s) involved in the Dispute. The notice must contain a summary of the issue as well as a recommendation for resolution. The Participant must send a copy of the notice to the Dispute Resolution Subcommittee (see below) for informational purposes.
2. Within thirty (30) calendar days of receiving the notice, the Participant and the eHealth Exchange Participant(s) (the "Disputing Parties") 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 Disputing Parties reach a resolution at the Informal Conference, they shall provide Notification to that effect to the Dispute Resolution Committee.
3. If the Disputing Parties are unable to participate in an Informal Conference during the thirty (30) day period or to reach resolution at the Informal Conference, they have ten (10) business days following the end of the thirty (30) day period or the Informal Conference, respectively, in which to escalate the Dispute to the Dispute Resolution Subcommittee in writing.
 - The Dispute Resolution Subcommittee (the "Subcommittee") will be a five (5) member standing subcommittee of the Coordinating Committee. The Coordinating Committee shall appoint each member of the Subcommittee for a definite term. The members must be representative of the eHealth Exchange Participants, have diverse skill sets, and be able to help facilitate and reach resolution on conflicts between the Disputing Parties. The Subcommittee must have access to legal counsel to advise it on the law relevant to matters before it.
 - In addition to appointing the five (5) members of the Subcommittee, the Coordinating Committee must also appoint three (3) to five (5) alternates for the Subcommittee. Alternates will serve on the Subcommittee should any of the members have a conflict on a particular Dispute or in the event that a member(s) is unavailable. Subcommittee members are required to declare any conflicts in accordance with the Coordinating Committee's conflict of interest policy. Once a Subcommittee member declares a conflict, the remaining Subcommittee members shall decide amongst themselves whether such member must withdraw from the Subcommittee for the dispute in question.
 - The Subcommittee must also have access to panels of subject matter experts, as identified by the Coordinating Committee, for a variety of topics that may be implicated by a Dispute. Each subject matter expert panel must have at least three (3) experts on it who will rotate as advisors to the Subcommittee.
4. Once a Participant escalates a Dispute to the Subcommittee, the Subcommittee will have thirty (30) calendar days in which to convene a meeting of the Disputing Parties ("Committee Meeting"). During this meeting, each Disputing Party shall be able to present its version of the Dispute and any information that it believes is pertinent to the Subcommittee's decision.

5. The Subcommittee shall have the ability to request additional information from the Disputing Parties to help it make its determination. The Subcommittee, however, shall not have the authority to compel a response or the production of testimony or documents by the Disputing Parties. To the extent that the Disputing Parties do respond to requests of the Subcommittee by producing documents, the Disputing Parties shall have the ability to mark the documents produced as "Confidential Business Information" and the Subcommittee shall treat those documents in accordance with Section 17 of the DURSA.
6. The Subcommittee is encouraged to develop an appropriate and equitable resolution of each submitted Dispute, considering all available evidence, the goals of the Agreement and other relevant considerations. The Subcommittee must also have the authority to recommend sanctions for the breaching Disputing Party. These sanctions include developing corrective action plans, suspension of participation rights, and termination of participation rights. The type of sanction will depend on the nature and severity of the breach.
7. Within fifteen (15) calendar days of the Subcommittee Meeting, the Subcommittee shall issue a written recommendation for resolution, including an explanation of the basis and rationale of its recommendation. If either Disputing Party is dissatisfied with the Subcommittee's recommendation for resolution, it shall have five (5) business days in which to escalate the Dispute to the Coordinating Committee.
8. Within twenty (20) calendar days of receiving notice of escalation from a Disputing Party, the Coordinating Committee shall review the Subcommittee's recommendation along with the information on which such recommendation was based and issue a final resolution. The Coordinating Committee may seek additional information from the Disputing Parties to aid its resolution of the Dispute.
9. Within seven (7) calendar days of receiving the final resolution from the Coordinating Committee, the Disputing Parties shall determine whether to accept or reject the resolution and so notify the Coordinating Committee.
10. The Coordinating Committee shall send a written summary of the resolution of the Dispute to all eHealth Exchange Participants. The summary will not identify the Disputing Parties involved, but will contain sufficient detail about the resolution to serve as an instructive resource for other eHealth Exchange Participants.
11. In no case shall a Participant be required to disclose PHI in violation of Applicable Law as part of its participation in the Dispute Resolution Process. The decision to not disclose PHI shall not be held against a Participant in the Dispute Resolution Process.