

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (“Agreement”) is made and entered into by and between The Interboro Regional Health Information Organization Inc. d/b/a NY Care Information Gateway, a New York nonprofit corporation (“RHIO”), and the Participant identified on the Signature Page (“Participant”) with reference to the following facts:

A. The RHIO is organized to advance interoperable health information technology to improve health care quality and safety and reduce costs, and operates a clinical information data exchange to facilitate the sharing of patient information among clinicians and provide clinicians with the ability to securely access a patient’s information where and when needed (the “RHIO System”).

B. The RHIO participates in the Statewide Health Information Network of New York (the “SHIN-NY”), which facilitates the exchange of patient information throughout New York State.

C. Participants that utilize the RHIO System will: (i) receive electronically, and use in the provision of medical services for their patients, health, demographic and related information provided by other participants that utilize the RHIO system (collectively, “Data Providers”) and other health care providers and health-related entities participating in the SHIN-NY; and (ii) make available electronically to other participants in the RHIO system (collectively, “Data Recipients”) and other health care providers and health-related entities participating in the SHIN-NY certain health information, all as described in the RHIO’s policies and procedures (the “RHIO Policies & Procedures”) and in the policies and procedures relating to the operation of the SHIN-NY that are adopted by the New York State Department of Health (the “SHIN-NY Policy Standards”).

D. The RHIO and the Participant wish to arrange for the Participant’s participation in the RHIO System and connection to the SHIN-NY on the terms and conditions set forth in this Agreement.

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

1. Participation Agreement.

1.1 Status.

1.1.1 This Agreement is a Participation Agreement as is described in the RHIO Terms and Conditions for Participation Agreements (the “Terms and Conditions”). A copy of the Terms and Conditions as in effect as of the date hereof is attached hereto. The RHIO and the Participant shall comply with the Terms and Conditions, as amended, repealed, and/or replaced from time to time as described therein. The Terms and Conditions are hereby incorporated by reference into, and made a part of, this Agreement.

1.1.2 Only individuals or organizations who enter into Participation Agreements with the RHIO shall be permitted to access and use the RHIO System.

1.2 Terms of Participation. The RHIO and the Participant shall participate in the RHIO System and perform their respective responsibilities with respect thereto as described in this Agreement, the Terms and Conditions, the RHIO Policies & Procedures and the SHIN-NY Policy Standards.

1.3 Changes. The Terms and Conditions and the RHIO Policies & Procedures shall be subject to change from time to time as described in Section 2.2 (“Changes to Terms and Conditions and Policies & Procedures”) of the Terms and Conditions. In addition, the SHIN-NY Policy Standards shall be subject to change from time to time by the New York State Department of Health.

1.4 Participant Registration. The Participant shall be registered with the RHIO to act, and shall act only, as the following Participant Type(s) (a) Data Provider and Data Recipient or (b) Data Provider or (c) Data Recipient):

1.5 Fees.

1.5.1 Amounts Payable. The Participant will pay the RHIO fees in accordance with the fee schedule set forth on Exhibit A.

1.5.2 Changes to Fees. Fees are subject to change. The RHIO will notify the Participant in writing with thirty (30) days prior notice of any changes to these fees.

1.5.3 Payment Terms. The RHIO will submit invoices to the Participant for payment of fees for services rendered hereunder, and the Participant shall pay such invoices within thirty (30) days of the invoice date. Any payment not received by the RHIO within fifteen (15) days of the due date shall be subject to a late payment charge of 1.5% per month, or the maximum rate allowed by law, whichever is less. All invoices shall be paid in full, without reduction or set off of any kind. The Participant will pay all amounts due in U.S. currency.

2. Term and Termination.

2.1 Term. The term of this Agreement shall commence on the Effective Date set forth on the signature page to this Agreement, and shall continue in effect until terminated as described below.

2.2 Termination

2.2.1 Either party may terminate this Agreement without cause upon at least sixty (60) days prior written notice to the other party.

2.2.2 Either party may terminate this Agreement upon written notice to the other party: (i) if the other party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof from the other party; or (ii) in the event the other party terminates or suspends its business, becomes subject to any

bankruptcy or insolvency proceeding under federal or state statute, or becomes subject to direct control by a trustee or similar authority.

2.2.3 Either party may terminate this Agreement immediately upon written notice to the other party if the other party has materially breached any of its obligations under this Agreement and the security of the RHIO System has been or is likely to be seriously compromised by such breach, or such breach has been or is likely to result in a serious violation of the legal obligations of either party to patients with respect to the privacy or confidentiality of Protected Health Information.

2.2.4 The Participant may terminate this Agreement immediately in the event of any change to the Terms and Conditions, the RHIO Policies and Procedures and/or the SHIN-NY Policy Standards that affects a material right of the Participant by giving the RHIO written notice of termination not more than thirty (30) days following the Participant's receipt of notice of the change. Such termination shall be effective as of the effective date of the change to which the Participant objects.

2.2.5 The Participant may terminate this Agreement immediately in the event of any increase in fees payable hereunder that exceeds ten percent (10%) per year by giving the RHIO written notice of termination not more than thirty (30) days following the RHIO's notice of such fee increase. Such termination shall be effective as of the effective date of the increase in fees.

2.3 Effect of Termination.

2.3.1 In the event of termination of this Agreement, the Participant shall pay the termination fees, if any, set forth on Exhibit A. Such termination fees shall be paid on or prior to, and shall be a condition to, termination of this Agreement, except in the event of termination by the RHIO, in which case such termination fees shall be due and payable no later than the effective date of termination,

2.3.2 No termination of this Agreement will affect any obligations that accrued prior to such termination and remain unsatisfied at the date of termination.

2.4 Survival of Provisions. Any provision of this Agreement or the Terms and Conditions that contemplates performance or observance subsequent to termination will survive termination.

3. General Provisions

3.1 Applicable Law. This Agreement shall be governed by the laws of the State of New York, without reference to the principles thereof respecting conflicts of laws. All actions against the Participant of whatever nature shall be brought exclusively in the City of New York, in the county within the City in which the cause of action arose, or if it arose outside of the city, in the county of New York. If for any reason whatsoever any such action is removed to a United States Court, such action shall be brought exclusively in a United States Court of competent jurisdiction in New York County.

3.2 Non-Assignability. Neither party may assign or transfer such party’s rights under this Agreement without the prior written consent of the other party; provided, however, that the RHIO may assign this Agreement without the prior written consent of the Participant to the successor in any merger, consolidation or similar transaction involving the RHIO.

3.3 Notices. Any and all notices required or permitted under this Agreement shall be sent by United States mail, overnight delivery service, or hand delivery to the address set forth on the signature page, or such different address as a party may designate in writing. If notice is given by email, and the notifying party receives notice that the email message was not delivered, it shall give the notice by United States mail, overnight delivery service, or facsimile.

4. Signature. By signing this Agreement, the undersigned represents and warrants that he or she has received and read a copy of the Terms and Conditions and that he or she either (a) is the Participant or, (b) if the Participant is an organization, is an individual acting on the Participant’s behalf who is authorized to sign this Agreement and enter into this Agreement on behalf of the Participant.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Effective Date: _____

“RHIO”		“Participant”	
The Interboro Regional Health Information Organization Inc. d/b/a NY Care Information Gateway, a New York nonprofit corporation			
By:		By:	
Name:	Nick VanDuyne	Name:	
Title:	Executive Director	Title:	
Date:		Date:	
Address for purposes of notice: <u>NY Care Information Gateway</u> <u>PO Box 800038</u> <u>Elmhurst, NY 11380</u> Attention: Executive Director Electronic Mail: notices@NYCIG.org Questions or Concerns: Sue-Ann Villano: Sue-Ann.Villano@NYCIG.org		Address for purposes of notice: Attention: _____ Electronic Mail: _____ Facsimile: _____	

EXHIBIT A

NY Care Information Gateway Fees

At present, NY Care Information Gateway shall not charge the Participant any fees for the services set forth under the heading “Services” on this Exhibit A (the “Basic Services”). However, this may be subject to change.

In the event there is a change to Participant fees for the Basic Services, NY Care Information Gateway will provide the Participant at least thirty (30) days prior written notice of such fees by providing the Participant with a revised version of this Exhibit A setting forth such fees. The revised version of this Exhibit A shall replace this Exhibit A and shall be incorporated into and made a part of the Participation Agreement to which this Exhibit A is attached.

Within thirty (30) days of the date that NY Care Information Gateway first provides a revised version of Exhibit A setting forth such fees, Participant shall have the right to terminate this Agreement as set forth in section 2.2.4 without any obligation to pay such fees.

Notwithstanding the foregoing there may be fees connected with additional services provided to the Participant. Such fees shall be set forth in one or more separate scopes of work that will be agreed to by the Participant and NY Care Information Gateway in writing and incorporated by reference into the Participation Agreement to which this Exhibit A is attached.

Services

Clinical Viewer: NY Care Information Gateway has arranged for the provision of a Clinical Viewer. The Clinical Viewer is a web-based, viewable collection of patient historical community-wide medical transactions (e.g. lab results, radiology reports and medication history). Authorized users can search for their patient via the MPI and RLS, and make inquiries into their patient's clinical results.

NY Care Information Gateway Fees for the Basic Services also include shared technical and administrative costs of the RHIO, including:

- Administration & Management of NY Care Information Gateway including staff, physician and patient marketing, patient education materials, user training, insurance, and other management activities
- Enterprise Master Patient Index and Record Locator Service
- Peer to Peer messaging via the Clinical Message Center
- Consent Management
- Event notifications (requires an ADT interface)
- Identity management and security
- Maintenance of interfaces to participating hospitals, homecare agencies, ambulatory care and EMR products