



NY Care Information  
Gateway

**Terms and Conditions  
For  
Participation Agreements**

## NY Care Information Gateway

### Terms and Conditions for Participation Agreement

#### **1. DEFINITIONS**

**1.1** “Authorized User” means an employee or independent contractor of Participant or a credentialed member of Participant’s professional staff designated by Participant to use the RHIO System on behalf of the Participant. The types of employees, independent contractors or credentialed professional staff members of a Participant that may qualify as Authorized Users shall be set forth in the RHIO Policies and Procedures.

**1.2** “Data Provider” means a Participant that is registered to make Patient Data accessible pursuant to the Participation Agreement.

**1.3** “Data Recipient” means a Participant that uses the RHIO System to access Patient Data pursuant to the Participation Agreement.

**1.4** “Dial Tone Services” means the services described in the Dial Tone Service Requirements, which are part of the SHIN-NY Policy Standards.

**1.5** “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 CFR Parts 160 and 164.

**1.6** “HITECH” means the Health Information Technology for Economic and Clinical Health Act, as amended from time to time.

**1.7** “Oversight Entity” means the entity responsible for implementing and overseeing the Oversight and Enforcement Policies, which are part of the SHIN-NY Policy Standards, and for establishing remedies under the Oversight and Enforcement Policies.

**1.8** “Patient Data” means information provided by a Participant pursuant to the Participation Agreement or information provided by a participant of another Qualified Entity or otherwise available through the RH IO System via the SHIN-NY.

**1.9** “Participation Agreement” means the agreement made by and between the RHIO and each Participant, which sets forth the terms and conditions governing the operation of the RHIO System and the rights and responsibilities of the RHIO and the Participants with respect to the RHIO System and the SHIN-NY. These terms and conditions are incorporated into and made a part of the Participation Agreement.

**1.10** “Qualified Entity” or “QE” means a not-for-profit entity that has been certified as a Qualified Entity under New York State Department of Health regulations and has executed a contract with the State Designated Entity, pursuant to which it has agreed to be bound by the SHIN-NY Policy Standards.

**1.11** “Regulatory Authority” means (a) any national, state or local government, any political subdivision thereof; (b) any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department or bureau; (c) any commission or entity that contracts with a governmental entity to administer or assist in the administration of a government program; or (d) any arbitrator with authority to bind the State Designated Entity or the RHIO under any laws.

**1.12** “Related Documentation” means all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describes the function and use of related Software or Tools.

**1.13** “RHIO System” means the clinical information data exchange operated by the RHIO.

**1.14** “RHIO Policies and Procedures” means the policies and procedures adopted by the Board of Directors of the RHIO for the operation of the RHIO System and the participation by Participants in the RHIO System, as described in Section 2. Copies of the RHIO Policies and Procedures as in effect as of the date hereof are attached hereto.

**1.15** “SHIN-NY” means the Statewide Health Information Network of New York, which is a set of agreements (and the transactions, relations and data that are created by and through such set of agreements) between the New York State Department of Health, the State Designated Entity, Qualified Entities and the participants of Qualified Entities to make possible the exchange of clinical information among participants of Qualified Entities for authorized purposes to improve the quality, coordination and efficiency of patient care, reduce medical errors and carry out public health and health oversight activities, while protecting privacy and security. Pursuant to such agreements, the State Designated Entity, the Qualified Entities and the participants of Qualified Entities agree to be bound by policy and technical requirements in the SHIN-NY Policy Standards that has been created through the Statewide Collaboration Process.

**1.16** “SHIN-NY Applications” means all Software and Tools that are owned, controlled by or developed on behalf of the State Designated Entity or the RHIO for use in connection with the SHIN-NY.

**1.17** “SHIN-NY Policy Standards” means the set of policies and procedures, including technical standards and SHIN-NY services and products, that are developed through the Statewide Collaboration Process and adopted by the New York State Department of Health, including the following: (i) Privacy and Security Policies and Procedures for QEs and Their Participants in New York State; (ii) Oversight and Enforcement Policies for Qualified Entities; (iii) Qualified Entity Dial Tone Service Requirements; (iv) Qualified Entity Member Facing Service Requirements; and (v) Qualified Entity Organizational Characteristics Requirements. The SHIN-NY Policy Standards are incorporated by reference into New York State Department of Health Regulations at 10 N.Y.C.R.R. Part 300.

**1.18** “SHIN-NY Services” means (i) the Dial Tone Services that the State Designated Entity makes available to Qualified Entities and participants of Qualified Entities accessing the SHIN-NY through Qualified Entities in accordance with the Dial Tone Service Requirements,

which are part of the SHIN-NY Policy Standards and (ii) any other services that the State Designated Entity makes available to Qualified Entities and Participants of Qualified Entities.

**1.19** “SHIN-NY Stakeholders” means the New York State Department of Health, the State Designated Entity, the Qualified Entities, the participants of Qualified Entities, health care providers, health plans, state and local health departments and health care consumers.

**1.20** “Software” means the source code and object code versions of any applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such programs, software, languages, and Related Documentation are recorded or printed, together with all corrections, improvements, updates and releases thereof.

**1.21** “State Designated Entity” means the New York eHealth Collaborative or such other entity as in the future may be designated by New York State to operate and maintain the SHIN-NY.

**1.22** “Statewide Collaboration Process” means an open, transparent process to which multiple SHIN-NY Stakeholders contribute, that is administered by the State Designated Entity for the development of SHIN-NY Policy Standards as provided under New York State Department of Health regulations.

**1.23** “Terms and Conditions” means these Terms and Conditions for Participation Agreements set forth in this document, as amended, repealed, and/or replaced from time to time as described herein.

**1.24** “Tools” means any Software development and performance testing tools, and any know-how, methodologies, processes, technologies or algorithms and Related Documentation.

**1.25** “Unauthorized Use” means (i) any attempt at or any action that results in circumventing the access controls or access policies of a Qualified Entity; (ii) use other than in accordance with applicable laws and policies including, without limitation, applicable state and local law relating to privacy and the protection of personal information and any privacy policies posted on any website or contained in any written materials relating to the SHIN-NY; (iii) use in violation of intellectual property, privacy, publicity, proprietary information rights and policies of others; and (iv) use other than in accordance with the express terms of the Qualified Entity Participation Agreement entered into by the RHIO and the State Designated Entity or the SHIN-NY Policy Standards.

## **2. POLICIES AND PROCEDURES; TERMS AND CONDITIONS**

**2.1** Generally. These Terms and Conditions, the RHIO Policies and Procedures, and the SHIN-NY Policy Standards shall apply to the operation of the RH IO System and the relationships among the RH IO, its Participants, other Qualified Entities, and the participants of other Qualified Entities, all of which will be sharing Patient Data through the SHIN-NY. The RH IO and each Participant agrees to comply with these Terms and Conditions, the RH IO Policies and Procedures, and the SHIN-NY Policy Standards. The RH IO Policies and

Procedures and the SHIN-NY Policy Standards shall be deemed to be incorporated by reference into and thus be a part of these Terms and Conditions.

**2.2** Changes to Terms and Conditions and RHIO Policies and Procedures. The RHIO is solely responsible for the development of these Terms and Conditions and the RHIO Policies and Procedures, and may amend, or repeal and replace, these Terms and Conditions and/or the RHIO Policies and Procedures at any time as the RHIO determines is appropriate, provided that any such amendment, repeal or replacement of these Terms and Conditions and/or the RHIO Policies and Procedures shall require the approval of the Board of Directors of the RH IO. The RH IO shall notify all Participants of any changes to these Terms and Conditions and/or the RHIO Policies and Procedures at least thirty (30) days prior to the implementation of the change; provided that, if the change requires modifications to the Participant's system or may otherwise materially affect the Participant's operations or obligations under the Participation Agreement, the RHIO shall notify the Participant at least ninety (90) days prior to the implementation of the change. Notwithstanding the foregoing, if the change is required in order for the RHIO and/or Participants to comply with applicable laws, rules, regulations or the SHIN-NY Policy Standards, or for the RHIO to continue to participate in the SHIN-NY, the RHIO may implement the change within a shorter period of time as the RH IO reasonably determines is appropriate under the circumstances; provided that the RHIO shall provide the Participants with as much notice of such change as reasonably possible.

**2.3** Standard of Performance. The RHIO shall ensure that the RHIO System operates in accordance with the service level provisions set forth in the SHIN-NY Policy Standards.

### **3. COMPLIANCE AND PROTECTED HEALTH INFORMATION**

**3.1** Compliance with HIPAA, RHIO Policies and Procedures, SHIN-NY Policy Standards, and Other Laws and Regulations. The RHIO and each Participant shall comply with all applicable standards for the confidentiality, security and use of patient health information under HIPAA, the RHIO Policies and Procedures, the SHIN-NY Policy Standards, Article 33 of the New York Mental Hygiene Law, Article 27-F of the New York State Public Health Law, and any other applicable laws, rules or regulations. Each Participant agrees to report promptly upon its knowledge to the RH IO, and the RHIO agrees to report promptly to the Audit Subcommittee of the RH IO or such other committee or subcommittee of the Board of Directors as may be established by the RHIO Policies and Procedures, any material breach of the provisions of this Section 3.1 that relates to these Terms and Conditions and the Participation Agreement. In addition, the RHIO agrees to report promptly to the other Participants any material breach of the provisions of this Section 3.1.

**3.2** Business Associate Agreement. The Participant and the RHIO shall be bound by the terms of the Business Associate Agreement attached hereto as Exhibit A.

**3.3** Qualified Service Organization Agreement. The Participant and the RHIO shall be bound by the terms of the Qualified Service Organization Agreement attached hereto as Exhibit B.

### **4. OTHER OBLIGATIONS OF PARTICIPANTS.**

#### **4.1 User Access Management**

(a) **Identification of Authorized Users.** Each Participant shall identify, in accordance with the RHIO Policies and Procedures and the SHIN-NY Policy Standards, all of the Participant's Authorized Users, Roles and the level of access to the RHIO System to be provided to such Authorized User. In accordance with the RHIO Policies and Procedures, each Participant will notify the RHIO whenever an individual is removed as an Authorized User by reason of termination of employment or otherwise, or whenever an individual's Authorized User category is modified. Such notification will be made as soon as reasonably practicable but in any event within one business day of such termination or modification. Each Authorized User shall be entitled to access and use the RHIO System in accordance with the requirements set forth in the RHIO Policies and Procedures.

(b) **Responsibility for Conduct of Participant and Authorized Users.** As between the Participant, on the one hand, and the RHIO and the other Participants, other Qualified Entities and participants of other Qualified Entities, on the other hand, the Participant shall be solely responsible for all acts and omissions of the Participant and/or the Participant's Authorized Users with respect to the RHIO System and/or any confidential and/or other information accessed in connection therewith. In addition, as between the Participant, on the one hand, and the RHIO and the other Participants, other Qualified Entities and participants of other Qualified Entities, on the other hand, the Participant shall be solely responsible for all acts or omissions of any other individual who accesses and uses the RHIO System either through the Participant or by use of any password, identifier or log-on received or obtained from the Participant if access and/or use was due to the negligent or intentional failure of the Participant to comply with its obligations under this Article 4.

**4.2 Privacy and Security.** The Participant shall implement privacy and security measures with respect to the RH IO System in accordance with the RHIO Policies and Procedures and SHIN-NY Policy Standards.

**4.3 Software and/or Hardware Provided by Participant.** Each Participant shall be responsible for procuring all equipment and software (other than the Associated Technology, if any, made available to the Participant by the RHIO pursuant to the Participation Agreement) necessary for it to access and use the RHIO System.

**4.4 Other Resources.** Each Participant shall be responsible for providing such other resources as may be reasonably necessary in connection with the implementation of the RHIO System at the Participant, including but not limited to making available such Participant staff members as may be necessary for such purposes.

**4.5 Viruses and Other Threats.** In providing any data to the RHIO System, the Participant shall use reasonable efforts to ensure that the medium containing such data does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data which will disrupt the proper operation of the RHIO System or any part thereof or any hardware or software used by the RHIO in connection therewith, or which will cause the RH IO System or any part thereof or any hardware, software or data used by the RHIO

or any other Participant in connection therewith, to be destroyed, damaged or rendered inoperable.

**4.6 Authorized User Training.** The Participant shall, at its own expense, utilizing the resources provided by the RHIO pursuant to Section 5.2 hereof, provide to all Authorized Users appropriate and adequate training in accordance with the RHIO Policies and Procedures.

**4.7 Uses of Data.** A Participant may use the RHIO System, the SHIN-NY Applications and the SHIN-NY Services only for the permitted uses described in the RH IO Policies and Procedures and the SHIN-NY Policy Standards; provided that nothing in this Section 4 or elsewhere in the Participation Agreement, these Terms and Conditions, the RHIO Policies and Procedures, or the SHIN-NY Policy Standards is intended or will be deemed to in any way limit Participant's use of its own patient data.

**4.8 Consent.** Prior to accessing and disclosing Patient Data, Participant shall comply with all applicable laws, rules and regulations governing patient consent to the disclosure of information, as well as with all requirements regarding obtaining consent from patients as may be set forth in the RH IO Policies and Procedures and the SHIN-NY Policy Standards.

**4.9 Provision of Data.** If Participant is a Data Provider, the Participant shall make accessible through the RHIO System the information described in the RHIO Policies and Procedures. The Participant will use reasonable efforts to provide Patient Data that accurately reflects the associated data in the Participant's electronic records at the time such Patient Data is made accessible through the RHIO System.

**4.10 Grant of Rights by Participants That Are Data Providers.** Throughout the term of the Participation Agreement, the Data Provider grants to the RHIO a worldwide, non-exclusive, non-transferable, limited, royalty-free right (i) to permit other Participants, other Qualified Entities and the participants of other Qualified Entities to access through the RH IO System and use all Patient Data provided by the Data Provider in accordance with the RHIO Policies and Procedures, the SHIN-NY Policy Standards, and the RHIO Consent model, and (ii) subject to Section 4.7, to use such Patient Data to carry out the RHIO's duties under the RHIO Policies and Procedures and the SHIN-NY Policy Standards, including without limitation system administration, testing, problem identification and resolution, management of the RHIO System, data aggregation activities as permitted by applicable laws, rules and regulations, including without limitation, those promulgated under HIPAA, and otherwise as the RHIO determines is necessary and appropriate to comply with and carry out its obligations under all applicable laws, rules and regulations.

**4.11 Compliance with Laws and Regulations.** Without limiting any other provision of this Participation Agreement, the RHIO Policies and Procedures, and the SHIN-NY Policy Standards relating to the parties' compliance with applicable laws and regulations, each Participant (i) agrees to comply with applicable federal, state and local laws, ordinances and regulations relating to its use of the RHIO System and (ii) remains responsible for ensuring that any service provided pursuant to this Participation Agreement complies with all pertinent provisions of federal, state and local statutes, rules and regulations.

**4.12** Compliance with Regulatory Audit. In the case of an audit performed by or on behalf of any Regulatory Authority of either the RHIO or the SHIN-NY, the Participant shall provide to the RHIO for delivery to the State Designated Entity or the Regulatory Authority such records related to this Agreement and the SHIN-NY as may be required by such Regulatory Authority. The Participant shall also provide access to its facilities or those of its Authorized Users to the extent required by such Regulatory Authority.

**4.13** Compliance with Investigations Concerning Incidents or Reports Involving the SHIN-NY. If the RHIO becomes aware of the occurrence of any incident or report involving the use of or access to, whether or not involving Unauthorized Use, the SHIN-NY or any SHIN-NY Services or any component thereof involving illness, injury, death, property damage or other loss, the Participant shall take such actions as may reasonably be requested by the RHIO to assist the RHIO in investigating the nature and severity of the circumstances leading to such incident or report and to report the incident as appropriate.

**4.14** No Reverse Engineering. The Participant shall not (nor shall the Participant authorize or permit any third party to) (i) create or attempt to create by reverse engineering or otherwise any Software or Tools of either the RHIO or the State Designated Entity or (ii) ascertain or attempt to ascertain the design or operation of any Software or Tools of either the RHIO or the State Designated Entity; or (iii) derive or attempt to derive the source code for any Software or Tools of the RHIO or the State Designated Entity.

## **5. THE RHIO'S OPERATIONS AND RESPONSIBILITIES.**

**5.1** Execution of Participation Agreement. The RHIO shall require that all Participants enter into a Participation Agreement prior to being granted access to and use of the RHIO System.

**5.2** Participant Training. The RHIO shall provide such training resources to each Participant as the RHIO determines appropriate, so that the Participant may train all of its Authorized Users in accordance with the RHIO Policies and Procedures.

**5.3** Telephone and/or E-Mail Support. The RHIO shall provide, by telephone and/or e-mail, support and assistance in resolving difficulties in accessing and using the RHIO System, in accordance with the RHIO Policies and Procedures.

### **5.4** Audits and Reports.

**(a)** Participant Audits. The Participant shall be responsible for performing periodic audits, in accordance with the RHIO Policies and Procedures and the SHIN-NY Policy Standards, to confirm compliance with the Participation Agreement, these Terms and Conditions, the RHIO Policies and Procedures, and the SHIN-NY Policy Standards, and proper use of the RHIO System in accordance with the Participation Agreement, these Terms and Conditions and the RHIO Policies and Procedures, and the SHIN-NY Policy Standards and for reporting the findings of such audits to the Audit Subcommittee of the RHIO or such other committee or subcommittee of the Board of Directors as may be established by the RHIO Policies and Procedures, with any findings of noncompliance to be reported to the full Board of Directors of the RHIO.



The RHIO shall also be responsible for providing participants, upon written request, detailed access logs of participant user activity and patient records accessed.

(b) RHIO Audits. Each Participant shall be subject to periodic audit by the RHIO (or a third party engaged by the RHIO for such purposes) to confirm compliance with the Participation Agreement, these Terms and Conditions, the RHIO Policies and Procedures, the SHIN-NY Policy Standards and proper use of the RHIO System in accordance with the Participation Agreement, these Terms and Conditions, the RHIO Policies and Procedures and the SHIN-NY Policy Standards. Such audits shall take place during business hours and upon reasonable notice to Participant. Such audits shall be performed at the expense of the RH IO, and in a manner reasonably designed to minimize interference with Participant's day-to-day operations. The results of such audits shall be reported to the Audit Subcommittee of the RH IO or such other committee or subcommittee of the Board of Directors as may be established by the RHIO Policies and Procedures, with any findings of non-compliance to be reported to the full Board of Directors of the RH IO.

(c) Provision of Additional Information and Reports by Participant to Support Oversight and Enforcement by the RH IO. The Participant shall provide information to the extent necessary for the RH IO to fulfill its reporting, audit and investigation obligations under the SHIN-NY Policy Standards and to continue its participation in the SHIN-NY. Such additional information and reports shall include but not be limited to:

(i) Provision of up to date name, contact and corporate information of the Participant;

(ii) Provision of information to enable the RHIO or the Oversight Entity to conduct an investigation or audit of and to report on potential Participant noncompliance with this Agreement, the RHIO Policies and Procedures, and the SHIN-NY Policy Standards, including but not limited to provision of access to books, records, accounts and other sources of information related to the scope of the investigation; and

(iii) Participation in the RHIO's process for soliciting and accepting complaints from SHIN-NY Stakeholders, including Participants.

**5.5** Viruses and Other Threats. The RH IO shall use reasonable efforts to ensure that the RHIO System does not include, and will not introduce, any program, routine, subroutine, or data which will disrupt the proper operation of any hardware or software used by the Participant in connection therewith, or which will cause any hardware, software or data used by the Participant in connection with the RHIO System to be destroyed, damaged or rendered inoperable.

**5.6** Responsibility for Conduct. As between the Participant, other Qualified Entities, and participants of other Qualified Entities, on the one hand, and the RH IO, on the other hand, the RHIO shall be solely responsible for all acts and omissions of the RHIO with respect to the RHIO System and/or any confidential and/or other information accessed in connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of the RHIO. In addition, as between the Participant, other Qualified Entities, and participants of other Qualified Entities, on the one hand, and the RHIO, on the other hand, the RHIO shall be solely responsible

for all acts or omissions of any other individual who accesses or uses the RHIO System either through the RHIO or by use of any password, identifier or log-on received or obtained from the RHIO if access and/or use was due to the negligent or intentional failure of the RHIO to comply with its obligations under these Terms and Conditions and the Participation Agreement.

**5.7 Responsibility for Other Qualified Entities and Their Participants.** Each Participant acknowledges and agrees that the RH IO shall have no responsibility for the acts or omissions of any other Qualified Entity, any participants of any other Qualified Entity, or any users accessing or utilizing the RHIO System or the SHIN-NY through any other Qualified Entity or any participant of any other Qualified Entity.

**5.8 Intellectual Property Rights.** Subject to (i) compliance by the Participant with the provisions of the Participation Agreement, these Terms and Conditions, the RH IO Policies and Procedures, and the SHIN-NY Policy Standards, and (ii) compliance by the State Designated Entity with the Qualified Entity Participation Agreement executed between the State Designated Entity and the RHIO, the RHIO warrants that it has all rights and licenses necessary to make the RHIO System available to the Participant without violating any intellectual property rights of any third party.

**5.9 Confidential HIV-Related Information.**

(a) In the event that the RHIO should have access to confidential HIV-related information, as that term is defined in Public Health Law section 2780(7) and 10 NYCRR section 63.1(g), the RH IO acknowledges and agrees that such confidential HIV-related information may only be disclosed in accordance with Public Health Law Article 27-F and part 63 of Title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York. The RHIO agrees to comply with Public Health Law section 2780 et seq. and 10 NYCRR part 63 with respect to the use and disclosure of confidential HIV-related information received from Participants, if any, in the course of providing services for Participants.

(b) The RHIO represents and warrants that only its employees and contractors who have received education and training on the confidentiality and disclosure requirements of HIV confidentiality shall have access to confidential HIV-related information. The RHIO shall maintain documentation of evidence of such training and shall provide the same to Participants upon request.

**5.10 Grant of Rights by RH IO.** Throughout the term of this Participation Agreement, the RH IO grants to each Participant and each Participant shall be deemed to have accepted, a nonexclusive, personal, nontransferable, limited right to have access to and to use the RHIO System and the SHIN-NY for the purposes of complying with the obligations described in these Terms and Conditions, subject to the Participant's full compliance with the RH IO Policies and Procedures, the SHIN-NY Policy Standards, and these Terms and Conditions. The RHIO retains all other rights to the RHIO System and all the components thereof. No Participant shall obtain any rights to the RHIO System except for the limited rights to use the RHIO System expressly granted by these Terms and Conditions and the RHIO Policies and Procedures.

**5.11 Cooperation in the Event of Suspension or Termination of RHIO Participation in the SHIN-NY.**

(a) In the event that the RHIO is suspended or terminated from participation in the SHIN-NY, the Participant shall take such actions as may be reasonably requested by the RHIO to help the RHIO cure the reason for the suspension or comply with the terms of the termination.

(b) The RHIO and the Participant agree to comply with any commercially reasonable measures taken by the State Designated Entity to stop unauthorized access or use of the SHIN-NY, including but not limited to enforcing sanctions to the extent and in the manner required by the SHIN-NY Policy Standards.

## **6. PROPRIETARY INFORMATION.**

**6.1** Scope of Proprietary Information. In the performance of their respective responsibilities pursuant to the Participation Agreement, the RHIO and Participants may come into possession of certain Proprietary Information of the other. For the purposes hereof, “Proprietary Information” of a party means all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements of the party, whether written or verbal, that are confidential in nature; provided, however, that Proprietary Information shall not include any information that (a) is in the public domain; (b) is already known or obtained by any other party other than in the course of the other party’s performance pursuant to the Participation Agreement; (c) is independently developed by any other party; and/or (d) becomes known from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of the Participation Agreement, or any other confidentiality or nondisclosure agreement by such other party.

**6.2** Nondisclosure of Proprietary Information. The RHIO and the Participant each (i) shall keep and maintain in strict confidence all Proprietary Information received from the other, or from any of the other’s employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under the Participation Agreement; (ii) shall not use, reproduce, distribute or disclose any such Proprietary Information except as necessary to carry out its duties under the Participation Agreement or as required by law; and (iii) shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure, except in connection with the performance of their respective obligations under the Participation Agreement.

## **7. DISCLAIMERS, EXCLUSIONS OF WARRANTIES, LIMITATIONS OF LIABILITY**

**7.1** Carrier lines. The Participant acknowledges that access to the RHIO System is provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, “carrier lines”) owned, maintained, and serviced by third-party carriers, utilities, and internet service providers, all of which are beyond the RHIO’s control. The RHIO

assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at user's risk and is subject to all applicable laws, rules and regulations.

## **7.2 NO WARRANTIES.**

(a) ACCESS TO THE RHIO SYSTEM AND THE INFORMATION OBTAINED BY A DATA RECIPIENT THROUGH THE SYSTEM ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE RHIO SYSTEM OR THE INFORMATION IN THE RHIO SYSTEM, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE RHIO SYSTEM.

(b) THE DATA PROVIDER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES REGARDING THE PATIENT DATA OF THE DATA PROVIDER THROUGH THE RHIO SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF ACCURACY, COMPLETENESS, FITNESS FOR A PARTICULAR USE AND ANY OTHER EXPRESS OR IMPLIED WARRANTIES. EACH DATA RECIPIENT ACKNOWLEDGES AND AGREES THAT ANY DATA ACCESSED BY THE DATA RECIPIENT OR ITS AUTHORIZED USERS IS PROVIDED ON AN "AS-IS" AND "WHERE-IS" BASIS, AND THE DATA RECIPIENT SHALL TAKE ALL REASONABLE EFFORTS NECESSARY TO INFORM AUTHORIZED USERS OF THEIR RESPONSIBILITY TO REVIEW, UPDATE AND CONFIRM THE ACCURACY OF ANY INFORMATION ACCESSED THROUGH THE RHIO SYSTEM. USE OF THE RHIO SYSTEM IS NOT A SUBSTITUTE FOR A HEALTH CARE PROVIDER'S STANDARD PRACTICE OR PROFESSIONAL JUDGMENT. ANY DECISIONS WITH RESPECT TO THE APPROPRIATENESS OF DIAGNOSES OR TREATMENTS OR THE VALIDITY OR RELIABILITY OF INFORMATION IS THE SOLE RESPONSIBILITY OF THE PATIENT'S HEALTH CARE PROVIDER. NOTHING IN THIS SECTION (b) IS INTENDED TO LIMIT A DATA PROVIDER'S OBLIGATIONS UNDER SECTION (a) HEREOF.

**7.3 Other Participants, Other Qualified Entities, and Participants of Other Qualified Entities.** By using the RHIO System, each Participant acknowledges that other Participants, other Qualified Entities, and the participants of other Qualified Entities have access to the information in the RHIO System. Such other Participants, other Qualified Entities, and the participants of other Qualified Entities have agreed to comply with the SHIN-NY Policy Standards, concerning use of the information made available through the RH IO; however, the actions of such other parties are beyond the control of the RH IO. Accordingly, the RHIO does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the system resulting from any action or failure to act of any Participant, other Qualified Entity or other participants of other Qualified Entities, except where the RH IO has been notified in writing of such action or failure to act and has failed to take action to prevent further improprieties by such Participant, other Qualified Entity or participants of any other Qualified Entities.

**7.4 Unauthorized Access; Lost or Corrupt Data.** The RHIO is not responsible for unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the RHIO System or for unauthorized access to, or alteration, theft, or destruction of the Participant's data files, programs, procedures, or information through the RHIO System, whether by accident, fraudulent means or devices, or any other method, except to the extent that such access, alteration, theft or destruction was due to the negligent acts or omissions or willful misconduct of the RH IO. As between the Participant and the RH IO, the Participant is solely responsible for validating the accuracy of all output and reports and protecting the Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. The Participant waives any claims against the RH IO for damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, or the use of third-party software, except to the extent that such damages arise as a result of the negligent acts or omissions or willful misconduct of the RH IO. The RHIO is not responsible for the content of any information transmitted or received through the RHIO System, except to the extent that the content of such information is distorted or corrupted as a result of the negligent acts or omissions or willful misconduct of the RHIO.

**7.5 Inaccurate Data.** All data which is accessed through the RHIO System originates from Data Providers and the participants of other Qualified Entities, and not from the RH IO. All such data is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. The RHIO neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of the RHIO Policies and Procedures or the SHIN-NY Policy Standards, the RHIO shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content or delivery of any data either provided by a Data Provider or a participant of another Qualified Entity, or used by a Data Recipient, pursuant to the RHIO Policies and Procedures or the SHIN-NY Policy Standards, except to the extent that the content of such information is distorted or corrupted as a result of the negligent actions or omissions or willful misconduct of the RHIO.

**7.6 Patient Care.** Without limiting any other provision of the Participation Agreement, as between the RH IO, on the one hand, and the Participant, on the other hand, the Participant shall be solely responsible for all decisions and actions taken or not taken by the Participant or the Participant's Authorized Users involving patient care, utilization management, and quality management for its patients resulting from or in any way related to the use of the RH IO System or the data made available thereby. Participant shall not have any recourse against the RHIO, and Participant hereby waives any claims against the RHIO, for any loss, damage, claim or cost relating to or resulting from its own use or misuse of the RHIO System or the data made available thereby, except to the extent that such loss, damage, claim or cost arises as a result of the negligent acts or omissions or willful misconduct of the RHIO.

**7.7 Limitation of Liability.** Notwithstanding anything in the Participation Agreement to the contrary, to the maximum extent permitted by applicable laws, rules and regulations, the aggregate liability of the RHIO and the RHIO's officers, directors, employees and other agents to the Participant under the Participation Agreement, regardless of theory of liability, shall be limited to the amount of insurance coverage available to the RHIO with respect to such liability plus any amounts for which the RH IO is entitled to indemnification by third parties, such as technology vendors.

## **8. Insurance; Indemnification**

**8.1 Insurance.** Each Participant and the RHIO shall obtain and maintain, throughout the term of this Participation Agreement, insurance coverage as determined by the Board of Directors of the RHIO and specified in the RHIO Policies and Procedures.

**8.2 RHIO Indemnification and Liability.** Each Participant shall (x) indemnify and hold harmless the RHIO and its directors, officers and employees (the "RHIO Indemnified Parties") from and against any losses, damages or liabilities (including reasonable costs and expenses, and excluding attorneys' fees, in each case, incurred by the RHIO Indemnified Parties in connection with any third party claim, action, lawsuit, proceeding or investigations) ("Losses") awarded or otherwise paid by the RHIO Indemnified Parties to any third party (whether pursuant to a court order, or as part of a settlement approved by the Participant) arising out of any action, suit, proceeding or other claim, or any threat thereof (whether civil, criminal, administrative, arbitral, investigative or otherwise) against any RHIO Indemnified Party, and (y) shall be liable to RHIO Indemnified Parties for any direct damages (including reasonable costs and expenses, and excluding attorneys' fees, in each case, incurred by the RHIO Indemnified Parties in connection with any third party claim, action, lawsuit, proceeding or investigations), not to include any indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, including without limitation lost or prospective profits, whether based in contract, warranty, negligence, strict liability or other tort or otherwise, regardless of the foreseeability or the cause thereof ("Damages") suffered by RHIO Indemnified Parties, in each case to the extent:

(a) arising out of any breach by the Participant of its Business Associate Agreement with the RHIO or failure of the Participant to comply with law, the SHIN-NY Policy Standards, or the RHIO Policies and Procedures in connection with its performance under this Agreement;

- (b) relating to a violation of HIPAA or HITECH by the Participant;
- (c) relating to the gross negligence of any Participant Indemnified Party in connection with this Agreement or the RHIO Services;
- (d) relating to any taxes, interest, penalties, fines or other amounts, civil or criminal, in connection with this Agreement or the RHIO Services that are assessed against the RHIO and that are not the obligation of the RH IO; or
- (e) relating to any theft or misappropriation of Patient Data by any Participant Indemnified Party.

**8.3 Indemnification Procedure.** If any claim is commenced against the RHIO (the “Indemnified Party”), prompt notice thereof shall be given by the Indemnified Party to the Participant (the “Indemnifying Party”). The parties shall agree upon the party who will be responsible for the defense of such claim; provided, however, that if the parties cannot agree upon the party who will be responsible for the defense of such claim within 15 days after receipt by the Indemnifying Party of such notice, (1) the Indemnifying Party shall immediately take control of the defense of such claim and shall engage attorneys acceptable to the Indemnified Party (which acceptance shall not be unreasonably withheld) to defend such claim; and (2) the Indemnified Party shall cooperate with the Indemnifying Party (and its attorneys) in the defense of such claim. The Indemnified Party may, at its own cost and expense, participate (through its attorneys or otherwise) in such defense. If the Indemnifying Party does not assume control over the defense of a claim as provided in this Section 8.3, the Indemnified Party may defend the claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party. If the Indemnifying Party assumes control over the defense of a claim as provided in this Section 8.3, the Indemnifying Party may not settle such claim without the consent of the Indemnified Party if the settlement provides for relief other than the payment of monetary damages or for the payment of monetary damages for which the Indemnified Party will not be indemnified in full pursuant to this Article VIII.

**8.4 Sole Recourse; Assignment of Insurance Rights.**

(a) Except as otherwise set forth in this Section 8.4, in each case, the aggregate liability of the Participant to the RHIO Indemnified Parties for any Losses or Damages incurred by the RHIO Indemnified Parties arising under or in connection with this Agreement or the RHIO Services will be limited to (1) in the event that the Losses or Damages are subject to insurance coverage, (i) the insurance proceeds actually recovered by the Participant, its officers, directors and employees (the “Participant Indemnified Parties”), plus (ii) any amounts actually received by the Participant Indemnified Parties from third-party service providers, vendors and suppliers, in each case in respect of the claim giving rise to such Losses or Damages; or (2) in the event that the Losses or Damages are not subject to insurance coverage, (i) One Million Dollars (\$1,000,000), plus (ii) any amounts actually received by the Participant Indemnified Parties from third-party service providers, vendors and suppliers in respect of the claim giving rise to such Losses or Damages; provided, however, that in either event any Losses or Damages caused by the intentional acts or omissions of a Participant Indemnified Party shall not be subject to such limitation. Except as otherwise provided, this

Section 8.4 shall constitute the sole and exclusive recourse of the RHIO Indemnified Parties with respect to any Losses or Damages incurred by the RHIO Indemnified Parties or any other liability of the Participant to the RH IO Indemnified Parties, in connection with this Agreement, regardless of the theory under which any claim for Losses, Damages or such other liability is made.

(b) To the extent that the Participant is liable to the RHIO Indemnified Parties under Section 8.2 for any Losses or Damages, the Participant will use commercially reasonable efforts, at its sole expense, to secure all available insurance proceeds for the benefit of the RHIO Indemnified Party from the Participant's insurers. This obligation includes, where warranted, retention of specialized insurance counsel to assist in securing such proceeds.

(c) With respect to any Losses or Damages to which Section 8.2 applies, the Indemnifying Party hereby assigns to the Indemnified Party the rights to proceeds of any insurance maintained by the Indemnifying Party covering such Losses or Damages. Notwithstanding the obligations of the Indemnifying Party set forth in Section 8.4.2, the Indemnified Party at any time may elect, at its sole discretion and expense, to assume from the Indemnifying Party responsibility for pursuing insurance recovery, in its own name or as assignee of rights held by the Indemnifying Party, with respect to any rights to insurance proceeds assigned to the Indemnified Party pursuant to this Section 8.4.3; provided, however, that if the Indemnifying Party, prior to such election, has failed to comply with its obligations pursuant to Section 8.4.2, the Indemnifying Party shall, notwithstanding the limitations set forth in Section 8.4.1, be liable to the Indemnified Party for all reasonable costs incurred by the Indemnified Party in pursuing insurance recovery on its own behalf, including any attorneys' fees. If the Indemnified Party elects to assume responsibility for pursuing insurance proceeds from one or more of the Indemnifying Party's insurers pursuant to this Section 8.4.3, the Indemnifying Party shall assist and cooperate with the Indemnified Party in the pursuit of such proceeds to the fullest extent that is commercially reasonable.

(d) To the extent that the assignment of rights to insurance proceeds contemplated by Section 8.4.3 is deemed to invalidate or diminish the availability of insurance proceeds under any of the Indemnifying Party's insurance policies to cover Losses or Damages to which Section 8.4.1 applies, the Parties mutually intend that Section 8.4.3 not be enforced or enforceable.



## Exhibit A

### **Terms of Business Associate Agreement**

All capitalized terms not defined herein shall have the meanings given to them in the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations, as may be amended from time to time (hereinafter, the “HIPAA Regulations”), or the Health Information Technology for Economic and Clinical Health Act of 2009 (hereinafter, “HITECH”), and its implementing regulations, as may be amended from time to time.

#### **1. PERMITTED USES AND DISCLOSURES OF PHI**

**1.1 Permitted Uses and Disclosures by the RHIO.** Except as otherwise specified herein and pursuant to 42 U.S.C. § 17934, the RHIO may make any and all uses and disclosures of protected health information (“PHI”) (i) necessary to perform its obligations under the Participation Agreement between the parties (the “Participation Agreement”); (ii) necessary to perform its obligations under the Qualified Entity Participation Agreement between the RHIO and the New York eHealth Collaborative (the “QEPA”); and (III) otherwise permitted under the SHIN-NY Policy Standards (as such term is defined at 10 N.Y.C.R.R. 300.1, provided that such uses or disclosures would not violate the HIPAA Regulations if made by Participant, which may include disclosure of PHI (i) to its employees, subcontractors and agents, as set forth below, (ii) as directed by Participant, or (iii) as otherwise permitted by the terms of this Business Associate Agreement. All other uses and disclosures of PHI are prohibited. Unless otherwise limited herein, the RHIO may use PHI of Participant for the following purposes:

- a. Disclosure for Management, Administration. The RHIO may use or disclose PHI for proper management and administration of the RHIO as set forth in 45 C.F.R. § 164.504(e)(4). The RHIO shall take appropriate corrective action in the event any employee or workforce member uses or discloses PHI in contravention of this Business Associate Agreement.
- b. Disclosure to Third Parties for Performance of Agreement. The RHIO may use or disclose the PHI in its possession to third parties for the purpose of performing its duties under the Participation Agreement, this Business Associate Agreement and the QEPA . All third party recipients of PHI shall provide written assurances of confidential handling of such PHI, which shall include adherence to the same restrictions and conditions on use and disclosure as apply to the RHIO herein. The Parties acknowledge that such written assurances may differ in form, but will not differ in substance, from this Business Associate Agreement.
- c. As Required by Law/Legal Process. The RHIO may use or disclose PHI to fulfill any present or future legal responsibilities of the RH IO, provided that the disclosures are (i) required by law, as defined in 45 C.F.R. § 164.103, or (ii) required to carry out the legal responsibilities of the RHIO, as provided in 45 C.F.R. § 164.504(e)(4). To the extent permitted by applicable law, prior to disclosing PHI as required by law to a law

enforcement, regulatory, administrative, or oversight agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, the RHIO shall notify Participant of such pending disclosure and provide reasonable time for Participant to oppose such disclosure, should Participant deem such opposition necessary; provided, however, that if Participant does not respond to the RHIO regarding such opposition prior to the date on which such disclosure must be made, the RHIO may, in its own discretion, disclose PHI as required by law.

- d. Aggregation of Data. The RHIO may aggregate the PHI in its possession with the PHI of other covered entities and provide Participant with data analyses relating to the Health Care Operations of Participant in accordance with 45 C.F.R. § 164.504 (e)(2)(i)(B).
- e. Use of De-identified Data. The RHIO may de-identify PHI and utilize de-identified PHI for purposes other than research, provided that the RHIO (i) de-identifies the PHI pursuant to the HIPAA requirements set out in 45 C.F.R. § 164.514(b) and (ii) provides Participant with appropriate documentation if required by 45 C.F.R. § 164.514 (b)(1)(ii). De-identified information does not constitute PHI and, with the exception of paragraph 1.1(f) below, is not subject to the terms of this Business Associate - Agreement.
- f. Use of De-Identified Data for Research Purposes. The RHIO agrees that, to the extent permitted under the SHIN-NY Policy Standards and the QEPA, it will obtain prior approval by Participant for the use or disclosure of de-identified PHI for research purposes.
- g. Miscellaneous Impermissible Uses or Disclosures. The RHIO may not use or disclose PHI for Medicaid audits, professional licensing reviews, or fraud and abuse investigations unless required under paragraph 1.1(c) of this Business Associate Agreement or, with respect to public health reporting activities, unless otherwise authorized by federal and state law.

## **2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

**2.1 Responsibilities of the RHIO.** With regard to the uses or disclosures of PHI permitted by this Business Associate Agreement, the RHIO hereby agrees to the following:

### **PROTECTION OF PHI**

- a. Report Unauthorized Use. The RHIO agrees to report to Participant any use or disclosure of PHI by the RHIO or its third party agents in violation of this Business Associate Agreement of which the RHIO becomes aware, and any remedial action to be taken by the RHIO with respect to such unauthorized

use or disclosure. The RHIO shall make said report to designated Privacy Officer of Participant, in writing, within 5 business days of having been made aware of the unauthorized use or disclosure.

- b. Safeguard PHI. The RHIO agrees to use commercially reasonable efforts to maintain the confidentiality and security of PHI regardless of media (including written, oral, and electronic) and to prevent unauthorized use or disclosure of such PHI by implementing and maintaining appropriate protection policies and procedures.
- c. Mitigate. The RHIO agrees to mitigate, to the extent possible and commercially reasonable, any deleterious effects from any unauthorized use or disclosure of PHI by the RHIO or its third party agents.
- d. Bind Subcontractors and Agents. The RHIO agrees to require all of its sub-contractors and agents that receive, use, maintain, transmit or have access to PHI under this Business Associate Agreement to agree, in writing, to substantially the same restrictions and conditions on the use or disclosure of PHI that apply to the RHIO pursuant to this Business Associate Agreement. The Parties acknowledge that such agreement by the RHIO's subcontractors and agents may differ in form, but will not differ in substance, from this Business Associate Agreement.
- e. Minimum Necessary Disclosure. The RHIO agrees to disclose to its subcontractors, agents, or other third parties, and request from Participant, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- f. Return or Destroy. Subject to paragraph 3.4 below, within 45 days of the termination of this Business Associate Agreement, the RHIO agrees to return to Participant or destroy the PHI in its possession and retain no copies (which for purposes of this Business Associate Agreement shall mean destruction of all backup tapes or other media).
- g. Breach Notification. In accordance with 42 U.S.C. § 17932(b)&(d) and 45 C.F.R. § 164.410, and subject to the possibility of delay afforded by 42 U.S.C. § 17932(g) and 45 C.F.R. § 164.412, the RHIO shall without unreasonable delay, and in no case later than 60 days after discovery by the RHIO thereof, notify Participant of any breach of Participant's unsecured PHI. If the RHIO is functioning as agent of Participant within the federal common law of agency, the RHIO shall notify Participant of any breach no later than 5 business days after discovery thereof by the RHIO. "Breach" as used in this paragraph shall have the meanings provided in 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402. If the RHIO determines that a breach has occurred, the RHIO shall provide Participant with the rationale, and all documentation in support thereof, for its assessment of whether the information was "compromised," as provided in 45 C.F.R. § 164.402. If the RHIO determines that a breach has *not* occurred, in that an acquisition, access,

use, or disclosure of PHI in a manner not permitted under the HIPAA Regulations *has taken place*, and has been reported to Participant as required by paragraph 2.1(a) of this - Business Associate Agreement, but has been determined by the RHIO *not to compromise the security or privacy of the PHI*, the RHIO shall nevertheless provide Participant, within the applicable notification period specified above, with the rationale, and all documentation in support thereof, for its assessment resulting in a finding that the disclosure did not “[compromise] the security or privacy of the protected health information,” as provided in 45 C.F.R. § 164.402.

- h. RHIO to Bear Costs Related to Breach. The RHIO shall bear all costs related to its assessment of risk to determine whether the RHIO has had a breach of PHI under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402. If the breach was caused or resulted from the acts or omissions of the RH IO, its subcontractors or agents, the RHIO shall assume responsibility for preparing and sending, without unreasonable delay but in no event more than sixty (60) days after the RHIO’s discovery of the breach, the notice required by 42 U .S.C. § 17932 and 45 C.F.R. §§ 1 64.404& 164.406, including if applicable, but not limited to: written notice, substitute notice, additional notice in urgent situations, and notification to media; provided, however, that the content of any notice shall be subject to the prior written approval of Participant. If the breach was not caused and did not result from the acts or omissions of the RH IO, its subcontractors or agents, the RH IO’s sole responsibility with respect to the notices required by 42 U.S.C. § 17932 and 45 C.F.R. §§ 164.404 & 164.406 is to provide Participant, to the extent known to the RHIO, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the RHIO to have been, accessed, acquired, or disclosed during such breach. The Parties agree to cooperate in the drafting of any notification required under this subsection.
- i. Miscellaneous HITECH Provisions. The RHIO acknowledges applicability of the business associate contract requirements and additional security and privacy requirements imposed by the HITECH Act upon the RHIO pursuant to 42 U.S.C. §§ 17931 & 17934. The RHIO also acknowledges obligations imposed upon the RHIO and Participant by 42 U.S.C. § 17935(d) and its implementing regulations, as may be amended from time to time.

## SECURITY REQUIREMENTS

- j. Implement Safeguards. The RHIO agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, uses, maintains, or transmits on behalf of Participant.

- k. Bind Subcontractors and Agents. The RHIO agrees to require all of its subcontractors and agents to which it provides electronic PHI to agree, in writing, to implement reasonable and appropriate safeguards to protect such PH I.
- l. Report Security Incident. The RHIO agrees to report to Participant any security incident involving PHI experienced by the RHIO or its subcontractors and agents of which the RHIO becomes aware, and any remedial or other action to be taken by the RHIO with respect to such incident. The RHIO shall make said report to the designated Privacy Officer of Participant, in writing, within 5 business days of having been made aware of the security incident.
- m. Application of HITECH Security Provisions. Pursuant to 42 U.S.C. § 17931, sections 164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations shall apply to the RH IO. Civil and criminal penalties may also apply to the RHIO in the case of any violation by the RHIO of the applicable security provisions of the Social Security Act, 42 U.S.C. §§ 1320d-5 & 1320d-6, and their implementing regulations.

#### ACCESS AND AVAILABILITY OF PHI

- n. Access for Viewing, Inspection, and Copying by Individual Subject of PHI. The RHIO agrees to make PHI maintained by the RHIO in a Designated Record Set available to Participant for subsequent inspection and copying by the Individual subject thereof in accordance with applicable law (including, but not limited to, the HIPAA Regulations, 45 C.F.R. § 164.524).
- o. Amendment by Subject of PHI. Upon 30 days' written notice by Participant, the RHIO agrees to make PHI maintained by the RHIO in a Designated Record Set available to Participant for subsequent amendment by the Individual subject thereof and incorporate any amendments to PHI in accordance with applicable law (including, but not limited to, the HIPAA Regulations, 45 C.F.R. § 164.526).
- p. Access by the U.S. Department of Health and Human Services (HHS). Subject to attorney-client and any other applicable legal privileges, and pursuant to 45 C.F.R. § 164.504 (e)(2)(ii)(H), the RHIO agrees to make available to the Secretary of H HS all records, books, agreements, policies, and procedures relating to the use or disclosure of PHI so that HHS may determine Participant's compliance with the HIPAA Regulations. Subject to the legal privileges referred to above and as otherwise permitted by law, the RHIO shall, within 30 business days of receipt of such request, notify Participant of any request for access by HHS and shall provide Participant with a copy of the HHS request for access and all materials to be disclosed pursuant thereto.

- q. Access for Accounting Purposes. The RHIO agrees to document such disclosures of PHI and information related to such disclosures as would be required for Participant to respond to a request by an Individual for an accounting of disclosures of PHI. The RHIO agrees to provide to Participant, within 30 days of receiving a request in writing therefrom, such information as is requested by Participant to permit Participant to respond to a request by an Individual for an accounting of the disclosures of the Individual's PHI in accordance with 45 C.F.R. § 164.528.
- r. Application of the Privacy Rule. To the extent the RHIO is to carry out one or more of Participant's obligation(s) under Subpart E of 45 C.F.R. Part 164, the RHIO shall comply with the requirements of Subpart E that apply to Participant in the performance of such obligation(s).

**APPLICABILITY OF CERTAIN STATE & FEDERAL CONFIDENTIALITY LAWS & REGULATIONS**

- s. New York State Confidentiality Laws and Regulations. The RHIO agrees to comply with all applicable federal and state laws and regulations governing the confidentiality of information provided by Participant including, without limitation, New York Public Health Law §§ 18 (Access to Patient Information) & 2780 *et seq.*; New York Mental Hygiene Law §§ 22.05 & 33.13; New York Civil Rights Law § 79-1; New York General Business Law §§ 399-ddd (Confidentiality of Social Security Account Number), 399-h, & 899-aa; New York Civil Practice Law and Rules (CPLR) §§ 2302(a), 4504, 4507, 4508, & 4510 and CPLR R. 3122(a); chapter 5 of title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR); 10 NYCRR § 63.6(k); Federal Rules of Evidence R. 501; and 21 C.F.R. § 1304.24(d).
- t. Breach Notification Under New York Law. Pursuant to New York General Business Law § 899-aa(2)&(3) and in conformity with paragraph 2.1(a) of this Business Associate Agreement, the RHIO shall, within 5 business days of discovery thereof, notify Participant of any "breach of the security of the system," as defined in New York General Business Law § 899-aa(1)(c), that involves PHI containing individuals' "private information," as defined in New York General Business Law § 899-aa(1)(b), that was, or was reasonably believed to be, acquired from the RHIO by a person without valid authorization.
- u. The RHIO to Bear Costs Related to Breach. Notwithstanding any other provision of this Agreement to the contrary, the RHIO shall bear all costs related to its breach of private information under New York General Business Law § 899-aa, including any and all applicable damages or losses identified in New York General Business Law § 899aa(6). If the breach was caused or resulted from the acts or omissions of the RH IO, its subcontractors or agents, the RHIO shall assume responsibility for preparing and sending the notice required by New York General Business

Law § 899-aa(5), including if applicable, but not limited to: written notice, electronic notice, telephone notification, substitute notice, and notification to major statewide media; provided, however, that the content of any notice shall be subject to the prior written approval of Participant. If the breach was not caused and did not result from the acts or omissions of the RHIO, its subcontractors or agents, the RHIO's sole responsibility with respect to the notices required by New York General Business Law § 899-aa(5) is to provide to Participant, to the extent known to the RHIO, the information necessary for such notices, to the extent required under this subsection.

- v. Disposal of PHI Under New York Law. In the event the RHIO chooses to destroy the PHI in its possession in compliance with paragraph 2.1(f) of this Business Associate Agreement, and that PHI contains “personal identifying information” as defined in New York General Business Law § 399-h(1)(d), the RHIO shall dispose of such information in conformity with New York General Business Law § 399-h(2).

**2.2 Responsibilities of the Participant.** With regard to the use or disclosure of PHI by the RHIO, Participant hereby agrees as follows:

- a. Inform the RHIO of Changes in Privacy Notice. Upon request, Participant agrees to furnish the RHIO with a copy of the Notice of Privacy Practices that Participant provides to Individuals pursuant to 45 C.F.R. § 164.520 and to inform the RHIO of any subsequent changes thereto, if such changes affect the RHIO's permitted or required uses and disclosures of PHI.
- b. Inform the RHIO of Changes in Authorizations. Participant agrees to inform the RHIO of any changes in, or withdrawal of, any authorizations provided to Participant by Individuals in accordance with 45 C.F.R. § 164.508 and pursuant to which Participant has disclosed PHI to the RHIO, if such changes affect the RHIO's permitted or required uses and disclosures of PHI.
- c. Inform the RHIO of Opt-out Election. Participant agrees to inform the RHIO of any opt-outs exercised by any Individual from marketing or fundraising activities of Participant pursuant to 45 C.F.R. § 164.514(f), if such opt-outs affect the RHIO's permitted or required uses or disclosures of PHI.
- d. Notify the RHIO of Additional Limitations. Participant agrees to notify the RHIO, in writing and in a timely manner, of any arrangements permitted or required of Participant under 45 C.F.R. parts 160 and 164 that may affect in any manner the use or disclosure of PHI by the RHIO under this Business Associate Agreement, including, but not limited to,

restrictions on use or disclosure of PHI agreed to by Participant as provided for in 45 C.F.R. § 164.522.

- e. Miscellaneous HITECH Provisions. Participant acknowledges applicability of the additional privacy and security requirements imposed by the HITECH Act upon Participant pursuant to 42 U.S.C. §§ 17921 *et seq.*

### 3. TERM AND TERMINATION

**3.1 Term.** This Business Associate Agreement shall become effective on the Effective Date of the Participation Agreement and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this section 3. In addition, the provisions and requirements of Paragraphs 2.1 (**Responsibilities of the RHIO**), solely with respect to PHI the RHIO retains in accordance with paragraph 3.4 where it is not feasible to return or destroy such PHI) and 3.4 (**Effect of Termination**) shall survive termination of this Business Associate Agreement indefinitely.

**3.2 Termination by the Parties.** Pursuant to 45 C.F.R. § 164.504(e) and 42 U.S.C. § 17934(b), the Parties hereby acknowledge and agree that in the event one party has or obtains - substantial and credible evidence that the other party has violated a material term of this Business Associate Agreement, non-breaching party shall have the right to investigate such violation, and breaching party shall cooperate fully with non-breaching party with respect to such investigation. As provided for under 45 C.F.R. § 164.504(e), non-breaching party may terminate this Business Associate Agreement and any related agreements without penalty or recourse to - non-breaching party if non-breaching party determines that breaching party has violated a material term of this Business Associate Agreement. Non-breaching party shall: (i) provide - breaching party with written notice of the existence of a material breach; and (ii) afford - breaching party an opportunity to cure said material breach, to the satisfaction of non-breaching party, within 30 days of receipt of non-breaching party's written notice. Failure to cure is grounds for the immediate termination of this Business Associate Agreement by non-breaching party, if such termination is feasible. Termination of this Business Associate Agreement by - either party shall be in writing.

**3.3 Automatic Termination.** This Business Associate Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Participation Agreement.

**3.4 Effect of Termination.** Upon the event of termination pursuant to this section 3, the RHIO agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii), if it is feasible to do so. Prior to doing so, the RHIO further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the RHIO to return or destroy said PHI, the RHIO will notify Participant in writing within 45 days of the termination of this Business Associate Agreement. Said notification shall include: (i) a statement that the RHIO has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. The RHIO further agrees to extend any and all protections, limitations, and restrictions contained in this Business Associate Agreement to the RHIO's use or disclosure of any



PHI retained after the termination of this Business Associate - Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is not feasible for the RHIO to obtain from subcontractors or agents any PHI in the possession of subcontractors or agents, the RH IO shall provide a written explanation to Participant and require subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Business Associate Agreement to subcontractors' or agents' use or disclosure of any PHI retained after termination of this Business Associate Agreement, and to limit any further uses or disclosures to the purposes that make return or destruction of the PHI infeasible.

## **Exhibit B**

### **Terms of Qualified Service Organization Agreement**

The RHIO and the Participant do hereby enter into a Qualified Service Organization Agreement, whereby the RHIO agrees to provide to the Participant the services described in the Participation Agreement between the parties (the “Participation Agreement”) and the RHIO Policies and Procedures (as such term is defined in the Participation Agreement).

Furthermore, the RHIO:

1. Acknowledges that in receiving, storing, processing or otherwise dealing with any information about patients in any alcohol and drug abuse treatment program operated by the Participant, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and
2. Undertakes to resist in judicial proceedings any efforts to obtain access to any information pertaining to patients in any alcohol and drug abuse treatment program operated by the Participant otherwise than as expressly provided for in the federal confidentiality regulations, 42 C.F.R. Part 2.