



Serving Communities HIE - Participation Agreement

This Participation Agreement for Santa Cruz HIO (the “**Participation Agreement**”) is entered into as of the Effective Date specified below by and between Santa Cruz HIO, a California non-profit public benefit corporation, dba Serving Communities Health Information Organization, (“**SCHIO**”) and the entity whose name and signature appear in the signature section below (“**Participant**”).

1. SCHIO and Participant hereby agree that Participant shall participate as a “Participant” in SCHIO’s program of electronic health information exchange in accordance with the **Terms and Conditions for Data Sharing - Electronic Health Information Exchange** attached hereto, which are hereby incorporated herein by reference (the “**Terms and Conditions**”).

2. This Participation Agreement shall be effective when executed by Participant (the “**Effective Date**”) and shall continue in effect for a three -year term.

3. Notice to Participant shall be sent to Participant at the address indicated below.

4. Notice to SCHIO shall be sent to:	Notices to Participant shall be sent to:
Santa Cruz HIO	Natividad
343 Soquel Ave. #327	1441 Constitution Blvd.
Santa Cruz, CA 95062	Salinas, CA 93906
Attn: President	Attn: President

5. Participant shall pay the fees set forth in the Fee Schedule attached hereto as Schedule A (the “**Fees**”).

6. Attachments: The following documents, schedules and exhibits are attached and incorporated into this Agreement.

Terms and Conditions

Exhibit A: Fees

Exhibit B: Insurance

Exhibit C: Business Associate Agreement

Exhibit D: Data Protection

Exhibit E: TEFCA, Mandatory Flow Down Provisions

Exhibit F: Onboarding Scope of Work



Serving Communities HIE - Participation Agreement

AGREED AND ACCEPTED BY:

“SCHIO”

“Participant”

Santa Cruz HIO, a California non-profit public benefit corporation

Natividad

By: *Daniel J. Chavez*

By: _____

Name: Daniel J. Chavez

Name: _____

Title: Executive Director

Title: _____

Approved as
to Form

Initial
SS

4/3/2025 | 7:27 AM PDT

Chief Deputy

Approved for
Fiscal
Provisions

DocuSigned by:
Patricia Ruiz

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4/3/2025 | 1:54 PM PDT

Auditor Controller Analyst

SCHIO – PARTICIPATION AGREEMENT**TERMS AND CONDITIONS FOR
DATA SHARING – ELECTRONIC HEALTH INFORMATION EXCHANGE****SECTION 1.****INTRODUCTORY AND GENERAL PROVISIONS**

1.1 Introduction. These Terms and Conditions are incorporated by reference into the Participation Agreement.

1.2 Nature of Organization; Organizational Changes.

1.2.1 SCHIO was originally organized for the benefit of healthcare stakeholders to facilitate electronic protected health information (ePHI) exchange for treatment, payment, healthcare operations, public health, population health, and care coordination and other lawful purposes. Under this 2023 version of the Participation Agreement, SCHIO has expanded its services to comply with new laws that require the exchange of ePHI between Covered Entities and encourage the exchange of PII and PI (collectively “Health and Social Services Information”, or “H&SSI”) with non-covered entities for other Permitted Purposes under Applicable Laws and the State of California Health and Human Services Data Exchange Framework and the Office of the National Coordinator for Technology Common Agreement for Nationwide Health Information Interoperability. Other Permitted Purposes include the use of personally identifiable information for the determination of eligibility and delivery of social services to address an individual’s social determinants of health. Participants that onboard to SCHIO and complete testing will be able to meet the minimum data exchange requirements of the California Single Data Sharing Agreement under California’s Data Exchange Framework and the requirements for data exchange under the Federal - Office of the National Coordinator, Trusted Exchange Framework Common Agreement, and their corresponding policies and procedures.

1.2.2 In addition to the California Data Exchange Framework and the ONC Trusted Exchange Framework, SCHIO may enter into exchange agreements with other data exchange frameworks that operate in other states or that provide data exchange services to a network of health and/or social services providers nationally, such as the eHealthExchange. Hereafter, these other exchange agreements shall collectively be referred to as “Standard Exchange Agreements.” By joining these other data exchange networks, SCHIO Participants will be automatically opted in to a network of exchanges that can query, retrieve and exchange health and social services information with other Providers situated in California or in any other state in the United States, when the information is needed for patient care, payment for care, referral, care coordination, case management, social services and other Permitted Purposes. SCHIO will not transmit or retrieve information from any location outside the United States. Prior to entering into any exchange agreement with another HIO, QHIO or QHIN, or other organization, SCHIO will provide all Participants, not less than fifteen (15) days notice. Provided the terms and conditions, including security and privacy policies and procedures are substantially the same as those set forth in this Agreement, and the Standard Exchange Agreements, SCHIO may give notice of its intent to enter into an additional Standard Exchange Agreement by posting the information on its website, www.schio.org or by sending a notice to Participant(s) by email.

1.2.3 For purposes of the ONC, Common Agreement, references to a Participant or to an Upstream Participant shall be to SCHIO and references to a Downstream Participant shall be to a Participant of this SCHIO Participation Agreement. As expressly provided in the Common

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Agreement, this Participation Agreement incorporates by this reference all of the “Required Flow-Downs” of the Common Agreement which are set forth verbatim in Exhibit E. If this Participation Agreement provides for the transmission of information for reasons other than the Exchange Purposes outlined in the Common Agreement Exchange Purposes SOP, the Common Agreement shall not apply. Nonetheless, the exchange of H&SSI regardless of whether the exchange occurs interstate under the Common Agreement or intrastate under the DxF Agreement, the exchange of H&SSI shall be also be governed by the terms and conditions of this SCHIO Participation Agreement and the DxF Single Data Sharing Agreement.

1.2.4 This SCHIO Participation Agreement and the SCHIO Policies and Procedures referenced in this Agreement incorporate the material terms and conditions referenced in the DxF Single Data Sharing Data Exchange Agreement and the TEF Common Agreement. In the event of a conflict between the SCHIO Participation Agreement or Policies and Procedures and the terms and conditions or policies and procedures under the applicable Standard Exchange Agreement, the parties shall apply the more protective policy and procedure under the applicable agreements.

1.3 Description of Services.

1.3.1 SCHIO may aggregate and/or maintain a repository of H&SSI on behalf of Participant and Other Participants. SCHIO provides or arranges for the provision of data transmission and related services to allow Participant and Other Participants to conduct searches for H&SSI, and to exchange H&SSI identified from those searches, from a computer system that facilitates the sharing of H&SSI among Participant and Other Participants. SCHIO’s Services include establishing and applying standards for the exchange of H&SSI which follow state and federal data standards more particularly described in the DxF Policies and Procedures and the Common Agreement policies and procedures. SCHIO has access to and/or is responsible to maintain some or all of such H&SSI in the performance of SCHIO’s Services.

1.3.2 In addition to standard data exchange services offered to Participants, Participant may contract with SCHIO for professional services pursuant to one or more written statements of work. Upon execution by the parties, each such statement of work will be deemed a part of and shall be governed by the Terms and Conditions of this SCHIO Participation Agreement. SCHIO may, as authorized under one or more written statements of work, provide access to reports of aggregated data or de-identified data to Participant on either a one time or ongoing basis, for the purposes of managing health care services for a population of patients, analysis of community health, research, or other lawful purpose.

1.3.3 SCHIO shall use commercially reasonable efforts to provide the System and the Services in accordance with the requirements set forth in the SCHIO Policies and Procedures. SCHIO Policies and Procedures incorporate by this reference, the policies and procedures outlined in the California - Data Exchange Framework, and the Federal program – Trusted Exchange Framework and Common Agreement (“TEFCA”), and any amendments to those policies and procedures or new policies and procedures as if fully restated herein. SCHIO’s Policies and Procedures will automatically incorporate the new or amended Policies and Procedures for any Standard Exchange Agreement to which SCHIO is a signatory. Participants will be notified of the changes to the applicable Policies and Procedures and likely impact to data exchange and SCHIO’s operations as soon as practicable.

1.4 Definitions. For the purposes of this Participation Agreement, the following terms shall have the meanings set forth below.

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1.4.1 “**Acceptance Criteria**” means that (a) the applicable System and Services substantially conform to the Specifications and Documentation and operate without error; and (b) that all System components and Services provided as a system or configuration correctly inter-operate with each other, with Participant’s systems and with related software, data, or other subject matter developed in the course of performing Services.

1.4.2 “**Additional Services**” means products and/or services not expressly described in these Terms and Conditions that SCHIO may offer to Participant, an Other Participant, or any Other HIO from time to time.

1.4.3 “**Information Blocking Rule(s)**” means and refers, as applicable, to the state and federal policies that prohibit any activity or practice that delays or blocks real time access to H&SSI.

1.4.4 “**Applicable Law**” includes in general terms, all laws that apply to the protection, use and disclosure of H&SSI. Applicable Law includes, but is not limited to the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 160, 162 and Subparts A, C, D and E of Part 164, the “**HIPAA Regulations**”), the Health Information Technology for Economic and Clinical Health Act of 2009 (the “**HITECH Act**”) Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (commonly known as “**ARRA**”), Pub. L. No. 111-5 (February 17, 2009), the HHS regulations promulgated on January 25, 2013, entitled the “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act,” the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, the 21st Century CURES ACT, and the California Medical Information Act (“**CMIA**”), California Civil Code Section 56 et seq., and the California Advancing and Innovating Medi-Cal (Cal-AIM) Initiative, California Online Privacy Protection Act, Business and Professions Code Sections 22575 et seq., California Consumer Privacy Act, California Civil Code Section 1798.100 et seq., California Health and Safety Code Section 130290 et seq., the California Health and Human Services Data Exchange Framework: Single Data Sharing Agreement, updated 11/3/2022, and corresponding Policies and Procedures, and the Office of the National Coordinator, Trusted Exchange Framework Common Agreement and corresponding Policies and Procedures, and other applicable laws and regulations, and other applicable laws, that pertain to the privacy and security of personally identifiable healthcare information and any amendments thereto and to the Services offered by SCHIO.

1.4.5 “**Attributable**” means, with respect to any Person and any H&SSI, that such Person has a treatment, payment, or capitation relationship with the individual to which that H&SSI relates.

1.4.6 “**Authorized User**” means Participant or an individual designated to access the System or to use the Hosting Services on behalf of Participant, including without limitation, an employee of Participant and/or a credentialed member of Participant’s medical staff, including travel nurses.

1.4.7 “**Board of Directors**” means the board of directors of SCHIO.

1.4.8 “**Bulk Download**” means a single instance download of H&SSI relating to two (2) or more patients.

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1.4.9 **“Common Agreement for Nationwide Health Information Interoperability” aka “Common Agreement”** means and refers to the standard exchange agreement adopted by the Office of the National Coordinator for Health Information Technology, Trusted Exchange Framework, version 1 adopted January 2022 under Section 4003 of the 21st Century Cures Act. If SCHIO becomes a signatory to the Common Agreement, SCHIO will be a deemed a Participant, and all SCHIO Participants who exchange Information under an approved use case under the Common Agreement will be deemed Subparticipants. References to the Common Agreement includes the QHIN Technical Framework, Standard Operating Procedures and other attachments, exhibits and artifacts incorporated by reference in the Common Agreement, see <https://rce.sequoiaproject.org/wp-content/uploads/2022/01/Common-Agreement-for-Nationwide-Health-Information-Interoperability-Version-1.pdf>

1.4.10 **“DxF Single Data Sharing Agreement,” aka “DxF Agreement”** means and refers to the standard form exchange agreement adopted by CalHHS July 1, 2022, and updated November, 2022 and the DxF Policies and Procedures adopted by the State of California, see, <https://www.chhs.ca.gov/home/data/#data-exchange-framework>.

1.4.11 **“Documentation”** means: (a) all operations, design, user manuals (operational, educational and otherwise) and maintenance and support manuals and all other written materials related to the System or any Service; (b) any report, specifications, or other written work product produced by SCHIO for, or at the request of, Participant that describes the System or any Service.

1.4.12 **“Downstream Subparticipant Agreement”** means this SCHIO Participation Agreement and the Common Agreement Flow Down Provisions set forth in Exhibit E when a Participant requests Exchange Services that are subject to the Common Agreement.

1.4.13 **“Governing Body”** means, as applicable, the governing body charged with enforcing the DxF Agreement and/or TEFCAs or other Standard Exchange Agreement and the corresponding policies and procedures referenced in those agreements.

1.4.14 **“Health and Social Services Information” or “H&SSI”** means any and all information received, stored, processed, generated, used, transferred, disclosed, made accessible, or shared pursuant to this Agreement, including but not limited to: (a) Data Elements as set forth in the applicable Policy and Procedure; (b) information related to the provision of health care services, including but not limited to PHI; and (c) information related to an individual’s eligibility for benefits, enrollment in social services programs, social determinants of health and other personally identifiable information capable of transmission through the SCHIO. Health and Social Services Information may include PHI, PII, de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. § 164.514), anonymized data, pseudonymized data, metadata, digital identities, and schema.

1.4.15 **“HIE Vendor”** means Quality Systems, aka NextGen, formerly Mirth Corporation or such other technology vendor contracted by SCHIO from time to time to perform certified electronic health records technology services.

1.4.16 **“Hosting Services”** means: (a) the hosting, maintenance, and administration of the System and all other computer software necessary to make the System available remotely to Participant and Authorized Users in accordance with the Participation Agreement via a secure password protected site(s) hosted by or on behalf of SCHIO on the internet from servers owned or controlled by SCHIO or the HIE Vendor; (b) the provision and administration of all network infrastructure and telecommunications services necessary to make the System available remotely to

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Participant and its Authorized Users in accordance with this Participation Agreement; (c) hosting all data inputted or delivered into the System by Authorized Users; (d) installing Updates to the System as they become available; and (e) all other Services, functions, and responsibilities identified as such in this Participation Agreement.

1.4.17 **“Individual”** means one or more of the following:

- (i) An individual as defined by 45 CFR 160.103;
- (ii) Any other natural person who is the subject of the information being Requested, Used, or Disclosed;
- (iii) A person who legally acts on behalf of a person described in paragraphs (i) or (ii) of this definition in making decisions related to health care as a personal representative, in accordance with 45 CFR 164.502(g);
- (iv) A person who is a legal representative of and can make health care decisions on behalf of any person described in paragraphs (i) or (ii) of this definition; or
- (v) An executor, administrator, or other person having authority to act on behalf of a deceased person described in paragraphs (i) or (ii) of this section or the individual’s estate under Applicable Law.

1.4.17.1 An Individual may also be referred to as a “Patient” and means any individual who has, is or will receive services from a Participant, regardless of the classification of the Participant as a Covered Entity or Social Services Provider.

1.4.18 **“IP Rights”** means any and all now known or hereafter existing intellectual property rights, including: (a) rights associated with works of authorship throughout the universe, including exclusive exploitation rights, copyrights, moral rights, and mask works; (b) trademarks and trade names; (c) trade secrets; (d) patents, designs, algorithms, and other industrial property rights; (e) other intellectual property and proprietary rights of every kind and nature throughout the universe, whether arising by operation of law, by contract or license, or otherwise; and (f) all registrations, applications, renewals, extensions, combinations, divisions, or reissues of the foregoing.

1.4.19 **“Information Blocking Rule”** shall have the meaning given under the California Data Exchange Framework, Information Blocking Policy and Procedure, OPP-10, or the federal Information Blocking Provisions of 41 U.S.C. 300jj-52 and corresponding regulations under the 21st Century Cures Act and policies and procedures implementing the Common Agreement. applicable.

1.4.20 **“Other HIO”** means a health information organization other than SCHIO that provides health information exchange services and is a signatory to a Standard Exchange Agreement.

1.4.21 **“Other Participant”** means a person or entity that has entered into a legally binding “participation agreement” between SCHIO and an Other Participant that contains terms and conditions substantially similar to those set forth in this Participation Agreement (including its indemnification provisions and provisions relating to the privacy and security of H&SSI), but is not a party to this Participation Agreement. Unless otherwise stated, Other Participant shall include Other HIO(s).

1.4.22 **“Participant”** means a person or entity that has signed this SCHIO Participation Agreement and/or both the Common Agreement and the DxF Agreement. A person or

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entity that is not a mandatory participant under the Data Exchange Framework, may still receive data exchange services if eligibility criteria set forth in the SCHIO Policies and Procedures are satisfied.

1.4.23 **“Personnel”** or “Authorized User” means and includes a party’s employees, subcontractors and subcontractors’ employees who have access to the System or H&SSI.

1.4.24 **“Participant Type”** means the category(ies) of Participants to which a particular Participant is assigned by SCHIO based upon that Participant’s role in the health care industry and classification under HIPAA. Participants shall be generally classified as Other HIO, Provider, Health Plan, and Social Services Provider or Individual. Access to H&SSI will be based on Participant Type as further outlined in the Policies and Procedures, the particular use case or Exchange Purpose and Applicable Law.

1.4.25 **“Permitted Use”** means any use or disclosure of H&SSI permitted or required by Applicable Laws, including, use and disclosure for purposes of treatment, payment, coordination of care, case management, healthcare operations (to the extent permitted under the Common Agreement and/or the DxF Agreement), public health reporting and surveillance, emergency medical services, health oversight activities, the determination of eligibility for Social Security disability and other public benefits, referrals to health care or social services, eligibility and delivery of social services, research, to perform Bulk Downloads of H&SSI that is Attributable to Participant, individual access, among other permitted uses. Permitted Use shall be deemed to automatically include the Permitted Uses outlined in DxF Agreement and the Common Agreement and any other lawful use, unless prohibited under the DxF Agreement or Common Agreement or Applicable Law.

1.4.26 **“Policies and Procedures”** means, collectively, the written policies and procedures adopted by SCHIO in accordance with Section 2.1 (Development and Dissemination of Policies and Procedures) for the operation and use of the System and the Hosting Services.

1.4.27 **“Required Flow Downs”** means the Required Flow Downs set forth in the Common Agreement that a Signatory is required to incorporate in its Participant-QHIN Agreements and that SCHIO as a Signatory is required to incorporate in its “Subparticipant Agreements” with Downstream Participants. The Common Agreement Required Flow Downs are as set forth in **Exhibit F**

1.4.28 **“Serious Breach of Privacy or Security”** is a use or disclosure of or access to H&SSI in the System other than in compliance with this Participation Agreement that materially compromises the privacy, security or integrity of H&SSI (as defined in the Participant Business Associate Agreement) or other individually identifiable information, or that, pursuant to Applicable Laws or regulations, must be reported to affected individuals and/or government officials pursuant to federal or state data breach notification rules, or that Participant or SCHIO reasonably believes exposes it or Other Participants to potential data breach notification requirements or other legal liability.

1.4.29 **“Services”** means the health information exchange and related technology and professional services SCHIO will provide to Participant, including the Hosting Services.

1.4.30 **“Specifications”** means the technical specifications describing the System and Services to be provided by SCHIO under this Participation Agreement. .

1.4.31 **“Standard Exchange Agreement”** means an agreement such as, and including, the national Data Use and Reciprocal Support Agreement (“DURSA”) or the California

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Data Use and Reciprocal Agreement (“CalDURSA”), the CalHHS Data Exchange Framework Single Data Exchange Agreement, aka, DxF Agreement or the ONC Trusted Exchange Framework – Common Agreement and/or similar applicable agreements, as amended from time to time.

1.4.32 **“System”** means the technology, including but not limited to technological platforms, interfaces, and software provided or made available by SCHIO to provide the Exchange Services.

1.4.33 **“Terms and Conditions”** means the terms and conditions set forth in this document, as the same may be amended, repealed, and/or replaced from time to time as provided herein, and which are incorporated by reference into this Participation Agreement.

1.4.34 **“System Updates”** means all error corrections, software maintenance releases, patches, updates, upgrades and new versions of the System or software that SCHIO makes available to Participant or any Other Participant.

SECTION 2.

DEVELOPMENT AND ADMINISTRATION OF PARTICIPATION AGREEMENTS

2.1 Development and Dissemination of Policies and Procedures. SCHIO shall adopt, implement and enforce policies and procedures, hereafter “SCHIO Policies and Procedures” that describe minimum standards applicable to Participant and Other Participants as it relates to technological configurations, privacy and security standards, data elements, code version and standards, data quality, Permitted Use cases, and any other matter it deems necessary or relevant to the use of the System and compliance with the Standard Exchange Agreements. . Participant shall comply with the applicable provisions of the SCHIO Policies and Procedures as amended or modified from time to time, which are incorporated herein by this reference as if fully restated. References to the SCHIO Terms and Conditions shall be deemed to mean and include the Schedules and Exhibits attached to this Participation Agreement and the SCHIO Policies and Procedures as amended or modified from time to time.

2.2 Changes to Policies and Procedures. SCHIO may modify the SCHIO Policies and Procedures from time to time to address changes in Services, onboarding, data use, quality, accessibility, availability and security, among other things. Such changes shall be effective and shall be binding upon all Participants within thirty (30) days of written notice, unless a longer or shorter period is required for notice under the DxF Agreement or the Common Agreement.

2.3 Changes to Services. SCHIO may change or alter the Services it offers, (including discontinuing any of the Services) upon not less than sixty (60) days written notice. Changes that will require a Participant to make changes to the Participant’s system shall be scheduled in advance and the parties shall work together to determine a mutually convenient schedule to complete the System changes. However, if the amendment, repeal, or replacement is required in order for SCHIO and/or Participant to comply with Applicable Laws, or if a change to the Services is required to maintain the security or integrity of the System or Database, SCHIO may implement the change within such shorter period of time it deems reasonably necessary in its sole discretion.

2.4 Administration of Participation Agreements.

2.4.1 Participation Agreement Required. SCHIO shall limit access to the System to (a) SCHIO Personnel (provided that no such SCHIO Personnel shall conduct or permit any Bulk Downloads except solely for a Participant’s immediate receipt or delivery), and (b) Authorized

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Users of Participant, Other Participants, and the Governing Body if required under the applicable Standard Exchange Agreement.

2.4.2 Terms and Conditions. Other Participants shall be required to execute this agreement as a standard form, upon Terms and Conditions substantially similar to those set forth herein (including the indemnification provisions and provisions relating to the privacy and security of H&SSI). SCHIO may make exceptions, provided that such exceptions do not, either individually or in the aggregate, materially reduce the obligations, or result in materially fewer or lower obligations, of an Other Participant to SCHIO or Participant, or of SCHIO to an Other Participant, as compared to the obligations set forth herein between SCHIO and Participant.

SECTION 3.**TERM AND TERMINATION OF PARTICIPATION AGREEMENT**

3.1 Term of Participation Agreement. This Participation Agreement shall take effect upon the Effective Date indicated on the first page and shall remain in full force and effect, between Participant and SCHIO for a period of three (3) years from the date of execution. Either party, SCHIO or Participant, may request an extension via a written Amendment. herein (the “Term”).

3.2 Participant’s Termination of Participation Agreement. Participant may terminate this Participation Agreement early upon not less than thirty (30) days’ written notice in the event: (a) Participant objects to a material change to the SCHIO Policies and Procedures, the System or the Services; (b) upon SCHIO’s failure to perform a material obligation or other responsibility arising out of this Participation Agreement, and that failure continues uncured for a period of thirty (30) days after Participant has given SCHIO written notice of that failure and requested that SCHIO cure that failure; provided that, if a shorter period of notice is required by Applicable Law, the Participant may terminate this Participant Agreement if the failure continues uncured for such shorter period; (c) upon a Serious Breach of Privacy or Security, when such Serious Breach of Privacy or Security continues uncured for a period of ten (10) days after Participant has given SCHIO written notice of that failure; or (d) upon SCHIO’s failure to cure a breach of the Participant Business Associate Agreement within the timeframe specified therein.

3.3 Termination of Participation Agreement Without Cause. Either party may terminate this Participation Agreement at any time without cause by giving the other party not less than 180 days’ prior written notice.

3.4 SCHIO’s Termination of Participation Agreement. SCHIO may terminate this Participation Agreement upon Participant’s failure to perform a material obligation or responsibility arising out of this Participation Agreement, if that failure continues uncured for a period of thirty (30) days after SCHIO has given Participant written notice of that failure and requested that Participant cure that failure; provided that, if a shorter period of notice is required by Applicable Law, SCHIO may terminate this Participant Agreement if the failure continues uncured for such shorter period.

3.5 Effect of Termination of Participation Agreement. Subject to Section 3.7, upon any termination of this Participation Agreement, Participant shall cease to be a Participant in SCHIO’s program of electronic health information exchange, and all licenses granted herein shall automatically terminate, and thereafter, neither Participant nor its Authorized Users shall have any rights to use the System or the Services.

3.6 Suspension of Participation. Whenever SCHIO has the right under this Participation Agreement to terminate this Participation Agreement, it may instead suspend Participant’s access to and

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use of the Services until the cause for termination has been cured. A suspension shall not constitute a waiver of SCHIO's right to terminate this Participation Agreement at any time during the pendency of an uncured breach.

3.7 Transition Rights. Upon any termination or expiration of the Participation Agreement (except SCHIO's termination in accordance with Section 3.4, Participant will have the right, for a period of ninety (90) days following the date of each full or partial termination (each a "**Transition Period**"), to continue to use the System and Services under the terms of this Participation Agreement. During such Transition Period, SCHIO shall continue to perform the Services and shall make available to Participant all other services necessary to ensure a smooth transition and conversion of the System, Services, and H&SSI to Participant or a new system or provider, including providing all H&SSI in a format reasonably-requested by Participant and reasonably producible by SCHIO. Such services will be at no charge to Participant in excess of the periodic charges payable under this Participation Agreement at the date of termination or expiration, plus time and expense at SCHIO's prevailing rate. The Transition Period shall be deemed part of the Term. Participant may terminate the Transition Period at any time upon notice to SCHIO. During such Transition Period, this Participation Agreement and the Business Associate Agreement will remain in full force and effect at Participant's election. At the end of the Transition Period, this Participation Agreement will terminate.

3.8 Survival of Provisions. The following entitled Sections shall survive any termination of this Participation Agreement: 1.4 (Definitions), 3.7 (Transition Rights), 3.8 (Survival of Provisions), 6.2 (Permitted and Prohibited Uses and Disclosures of H&SSI), 7 (Participant Business Associate Agreement), 8.12 (Safeguarding H&SSI), 8.13 (Availability of Records), 8.14 (Federal Reporting Requirements), 8.16 (Cooperation with Audits), 10 (Proprietary and Confidential Information), 11 (Representations and Warranties), 12 (Liability, Indemnification, and Insurance), 14 (Miscellaneous Provisions), any term or condition that expressly survives under a Standard Exchange Agreement.

SECTION 4.**AUTHORIZED USERS**

4.1 Identification of Authorized Users. Participant shall adopt and implement policies and procedures for the selection and identification of Authorized Users and their access to and use of the System and the Services, a copy of which shall be provided to SCHIO upon written request. Such policies and procedures shall comply with the requirements therefor set forth in the SCHIO Policies and Procedures, and shall describe, without limitation, the process by which Participant shall uniquely identify each individual as an Authorized User prior to allowing that individual to use the System and the Services and to verify the credentials of each Authorized User prior to enabling that Authorized User to use the System and the Services. Participant shall comply with such policies and procedures in all material respects.

4.2 Certification of Authorized Users. On or before the time that Participant identifies an Authorized User, Participant shall, upon request by SCHIO, confirm that to the best of Participant's knowledge:

4.2.1 the Authorized User has completed a training program that meets or exceeds the training requirements set forth in the SCHIO Policies and Procedures;

4.2.2 Participant will implement procedural and technological safeguards that limit an Authorized Users access to H&SSI to no more than that which is lawfully permitted and

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reasonably necessary for the performance of Participant's activities in accordance with the Participant Type under which Participant is registered with SCHIO;

4.2.3 the Authorized User has agreed not to disclose to any other person the Authorized User's System log on information including username and password; and

4.2.4 the Authorized User has acknowledged in writing that his or her failure to comply with these Terms and Conditions may result in the withdrawal of privileges to use the Services and the System and may constitute cause for disciplinary action by Participant.

4.3 Passwords and Other Security Mechanisms. Based on the information provided by Participant about its Authorized Users, SCHIO shall issue a user name and password to Participant for each of its Authorized Users and Participant shall supervise and train its Authorized Users on the proper use and access to the System. Participant shall immediately notify SCHIO of the termination or change of an Authorized User's access rights. Participant shall remain liable and indemnify SCHIO of and from any and all claims for damages or penalties arising out of or in connection with an Authorized User (or terminated Authorized User's) access to and use of the System and H&SSI. SCHIO shall cancel or modify the log on credentials for Participant's Authorized Users in accordance with Participant's written notification.

4.4 No Use by Other than Authorized Users. Participant shall restrict access to the System and, if applicable, use of the Services, only to the Authorized Users that Participant has identified to SCHIO in accordance with Section 4.1 (Identification of Authorized Users).

4.5 Termination of Authorized Users. Participant shall require that all of its Authorized Users use the System and the Services only in accordance with these Terms and Conditions, including without limitation those governing the privacy and security of protected health information. Participant shall discipline appropriately any of its Authorized Users who fail to act in accordance with these Terms and Conditions in accordance with Participant's disciplinary policies and procedures.

4.6 Training of Authorized Users. Participant shall provide appropriate and adequate training to all of Participant's Authorized Users, in the material requirements of Applicable Laws governing the privacy and security of protected health information.

SECTION 5.**GENERAL OBLIGATIONS OF PARTICIPANTS**

5.1 Participant's Performance of Obligations, Generally. Participant shall, in accordance with the terms of this Participation Agreement, diligently perform all of its obligations arising under these Terms and Conditions, the SCHIO Policies and Procedures and Applicable Law and shall, promptly following written Notice of any material breach thereof by SCHIO, cure such breach.

5.2 System Security. Participant shall implement security measures with respect to the System and the Services which meet or exceed those set forth in the SCHIO Policies and Procedures.

5.3 Software and Hardware Provided by Participant. Participant, at its sole cost and expense, shall procure all equipment and software necessary for it to securely access the System, use of the Services, and provide to SCHIO all information required to be provided by Participant. Participant's required hardware and software shall conform to SCHIO's then-current specifications for System interface, as set forth in the SCHIO Policies and Procedures.

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5.4 Malicious Software, Viruses, and Other Threats. Participant shall use commercially reasonable efforts to ensure that its connection to and use of the System, including without limitation the medium containing any data or other information provided to the System, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or “malware,” viruses, worms, and Trojan Horses) which will disrupt the proper operation of the System or any part thereof or any hardware or software used by SCHIO in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the System or any part thereof or any hardware, software or data used by SCHIO or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable or inaccessible.

SECTION 6.**PARTICIPANT’S USE OF SYSTEM AND SERVICES****6.1 Grant of Rights to Use System and Services.**

6.1.1 Grant by SCHIO. SCHIO hereby grants to Participant, and Participant shall be deemed to have accepted, a non-exclusive, personal, nontransferable, limited right to access and to use the System and the Services pursuant to this Participation Agreement subject to Participant’s full compliance with these Terms and Conditions, SCHIO Policies and Procedures, and Applicable Law. SCHIO retains all other rights to the System and all the components thereof. Participant shall not obtain any IP Rights or other rights to the System except for the limited rights to access the System for Permitted Uses as expressly granted by these Terms and Conditions.

6.1.2 No Services to Third Parties. Except as expressly permitted by this Participation Agreement, Participant shall limit its use of the System and Services only for Participant’s own account in connection with its internal operations or for Permitted Uses, and shall not use any part of the System or the Services to provide separate services or sublicenses to any third party for a fee, including without limitation providing any service bureau services or equivalent services to a third party.

6.1.3 No Use for Comparative Studies. Participant shall not use the System or the Services to aggregate data to compare the performance of Participant with Other Participants, Authorized Users, or Other HIOs, without the express written consent of SCHIO and, the Other Participants, the Other HIOs, and Authorized Users being compared. In this regard, use of H&SSI for “Healthcare Operations” shall be limited as set forth in the Data Exchange Framework Policies and Procedures.”

6.2 Permitted and Prohibited Uses and Disclosures of H&SSI. Participant may use and disclose H&SSI acquired through the use of the System and the Services for a Permitted Use; provided, however, that Participant shall not use or disclose H&SSI in any manner prohibited by Applicable Law, this Participation Agreement, the SCHIO Policies and Procedures or the Participant Business Associate Agreement. Notwithstanding anything to the contrary, the foregoing does not preclude Participant from using H&SSI Attributable to Participant for any lawful purpose.

6.3 Provision of Data. Participant shall participate in and maintain its connection to the System’s record locator and service-based federated network and provide through the System the H&SSI specified for the applicable Participant Type as outlined in the SCHIO Policies and Procedures, and as otherwise agreed. Participant shall respond to queries for H&SSI in real time. Failure to respond to H&SSI

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queries in real time unless an exception to the Information-Data Blocking policies applies, shall be deemed a material breach of this Agreement.

6.4 Measures to Assure Accuracy of Data: Applicable Policies and Procedures. Participant shall use reasonable care and implement policies and procedures to ensure the accuracy and completeness of the H&SSI it provides through the System.

6.5 Grant of License to Use H&SSI. Subject to the terms of this Participation Agreement and the Participant Business Associate Agreement, Participant grants to SCHIO a fully-paid, non-exclusive, nontransferable, royalty-free right and license during the Term: (a) to permit Other Participants to access through the System and use all H&SSI provided by Participant in accordance with Applicable Law, the SCHIO Policies and Procedures, and these Terms and Conditions; and (b) to use such H&SSI to carry out SCHIO's duties under the SCHIO Policies and Procedures and these Terms and Conditions, including without limitation system administration, testing, problem identification and resolution, management of the System, and data aggregation activities, and otherwise as SCHIO determines is necessary and appropriate, in each case, in accordance with and as permitted by Applicable Laws.

6.6 Compliance with SCHIO Policies and Procedures; Limitation on Access and Use by SCHIO. SCHIO and Participant shall comply with the standards for the privacy and security of H&SSI, including without limitation, protected health information described in HIPAA and medical information described in the CMIA, as provided in the SCHIO Policies and Procedures, which are incorporated herein by reference. SCHIO shall access and use H&SSI only for the purpose of providing Services to Participant and as permitted or required by Applicable Law.

SECTION 7.

PARTICIPANT BUSINESS ASSOCIATE AGREEMENT

7.1 Generally. SCHIO acknowledges it is acting as a business associate (as defined by HIPAA) of Participant. SCHIO shall enter into a Participant Business Associate Agreement with Participant either in the form attached hereto as Schedule C to this Participation Agreement which is incorporated herein by this reference (the "**Participant Business Associate Agreement**" or "BAA") or a Participant's form that contains terms and conditions that are substantially the same as SCHIO's standard BAA form.

SECTION 8.

SCHIO'S OPERATIONS AND RESPONSIBILITIES

8.1 SCHIO's Performance of Obligations, Generally. SCHIO shall, in accordance with the terms of the Participation Agreement, diligently perform all of its obligations arising under the Terms and Conditions and the SCHIO Policies and Procedures. Without limiting the generality of the foregoing, SCHIO shall perform all of its obligations arising under the Terms and Conditions and the SCHIO Policies and Procedures in a manner that complies with all Applicable Laws. Promptly following notice from Participant of a material breach thereof, SCHIO shall undertake commercially reasonable efforts to cure that breach. SCHIO shall use commercially reasonable efforts to ensure that SCHIO Personnel will have the proper skill, training and background to perform his or her assigned tasks and that all Services will be performed in accordance with this Participation Agreement and in a businesslike and professional manner.

8.2 Monitoring of Other Participants. SCHIO shall regularly monitor and take prompt and appropriate action whenever it becomes aware of an Other Participant's failure to comply with the requirements set forth in the applicable Participation Agreement or the SCHIO Policies and Procedures.

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In the event SCHIO determines that a Participant or Other Participant has breached a material term or condition of this Agreement or the SCHIO Policies and Procedures, SCHIO shall notify the Participant or Other Participant of such breach in writing. Participant shall respond to the notification in writing and outline what action will be taken to cure the breach. SCHIO may notify (or may be required to notify) the Governing Body appointed under the Common Agreement or the Data Exchange Framework of a breach of this Agreement or respective policies and procedures. Participant shall cooperate with SCHIO and the Governing Body to resolve a dispute or in the investigation of a Breach or Security Incident.

8.3 Hosting Services. During the Term, SCHIO shall provide Hosting Services for the System, H&SSI, and all other Services. Participant and each Authorized User have the right to access and use the System via the Hosting Services provided the Participant is in good standing. SCHIO shall cause the Hosting Services to be performed from data centers located in the United States that meet or exceed NIST (SP) 800-209 enterprise security standards..

8.4 Acceptance Testing. SCHIO shall notify Participant in writing when SCHIO has implemented and configured the System and each interface (including each new interface, replacement, or material change to an interface), whether initially provided or provided at a later date during the Term, so that it is ready for production use and has performed all of the development, implementation, and configuration-related Services as required under this Participation Agreement. After such notification, Participant will have the right to conduct acceptance testing to determine whether each of the System and Services (and the overall system and configuration composed of the System and Services) meet the applicable Acceptance Criteria. Notwithstanding anything to the contrary, SCHIO shall not store or make available any H&SSI provided by Participant, unless and until Participant, has given prior written notice of its final acceptance of the System and Services (including interfaces).

8.5 Maintenance and Support of System. During the Term, SCHIO shall provide to Participant (a) maintenance and support services for the System and Services standard for the industry and (b) as SCHIO determines is appropriate from time to time, additional service, security, and other updates for the System and Services.

8.6 Support.

8.6.1 SCHIO shall provide first-level user support and assistance in resolving difficulties in accessing and using the System and the Services. The support will be available by telephone, facsimile and/or email during normal week-day business hours and after-hours by answering service. If SCHIO is unable to resolve the Participant's issue, it will obtain support from the HIE Vendor.

8.6.2 SCHIO shall use commercially reasonable efforts to enforce the service level commitments made by the HIE Vendor, and to ensure that the HIE Vendor's support services are available to the Participant in accordance with SCHIO's contract with the HIE Vendor.

8.7 Training. SCHIO shall provide training to Participant and/or Authorized Users regarding Participant's and/or the Authorized Users' rights and obligations under this Participation Agreement, and the access and use of the System and Services, including such user manuals and other resources SCHIO determines appropriate to support the System and Services, including without limitation training for new or additional Authorized Users when added by Participant. If there is a material change to the System or Services, SCHIO shall provide Participant and its Authorized Users with appropriate and adequate training to use the System or Services that have experienced such material change.

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8.8 Access to H&SSI. SCHIO shall limit access to H&SSI to SCHIO employees and subcontractors, Participant, Other Participants, and Other HIOs and in any event only in compliance with these Terms and Conditions, and Applicable Law.

8.9 Background Screening. SCHIO shall complete (or require its subcontractors to complete) a pre-employment background check for all SCHIO Personnel that will have access to H&SSI. Such background checks will include a criminal background investigation within thirty (30) days prior to the first day of employment. SCHIO represents, warrants, and covenants that only those SCHIO Personnel who pass the background check will be permitted access to H&SSI.

8.10 Federal Exclusion Lists. SCHIO and Participant each represents and warrants that it and its Personnel have not: (a) been listed by any federal or state agency as excluded, debarred, suspended or otherwise ineligible to participate in federal and/or state programs; or (b) been convicted of any crime relating to any federal and/or state program. SCHIO and Participant will not enter into and shall promptly terminate its agreement with any person or entity whose name appears on the Officer of Inspector General (“OIG”) List of Excluded Individuals and Entities (“LEIE”) and the System for Award Management (“SAM”) list of parties excluded from participation in federal health care programs (collectively the “Lists”) upon discovery of the same. In addition, any employee or contractor of SCHIO who becomes so excluded during the Term will be immediately removed by SCHIO upon SCHIO’s becoming aware of such sanction or exclusion and will be thereafter excluded from the provision of Services under this Participation Agreement.

8.11 Certain Restrictions Applicable to SCHIO Personnel. SCHIO may not use any offshore subcontractor (i.e., one located outside of the United States) to perform any of SCHIO’s obligations under these Terms and Conditions or this Participation Agreement if the subcontractor would have access to H&SSI, unless: (a) SCHIO has provided prior written notice to Participant of the use of the subcontractor; (b) SCHIO has entered into a separate written agreement with the subcontractor that requires the subcontractor to agree to and abide by a written agreement and Business Associate Subcontractor Agreement as required under HIPAA; and (c) SCHIO has obtained Participant’s prior written consent.

8.12 Safeguarding H&SSI. SCHIO shall, and shall cause SCHIO Personnel to, comply with the requirements set forth in the attached Exhibit D. Without limiting the foregoing, SCHIO and Participant shall adopt, implement and routinely test policies and procedures to protect H&SSI as required by Applicable Law.

8.13 Retention of Records. For six (6) years after any termination of this Participation Agreement or longer or shorter period specified by Applicable Law or under a Standard Exchange Agreement, the Secretary, the Comptroller General of the United States (“Comptroller General”) and/or their designee will have access to all books and records of SCHIO directly pertaining to the subject matter of this Participation Agreement, in accordance with the criteria developed by the U.S. Department of Health and Human Services as provided in Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. §1395x(v)(1)(A), et seq. (“ORB”). During that six (6) year period, upon request of the Secretary, the Comptroller General and/or their designee, SCHIO shall make available (at reasonable times) this Participation Agreement and all books, documents and records of SCHIO that are necessary to verify the nature and extent of the costs of Services provided by SCHIO under this Participation Agreement. Notwithstanding the foregoing, access to SCHIO’s books, records and documents will be discontinued and become null and void upon a finding by a court or quasi-judicial body of competent jurisdiction that this Participation Agreement is outside the scope of the regulatory or statutory definition of those agreements included within the purview of Section 952 of ORB or the rules and regulations promulgated thereunder.

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8.14 Federal Reporting Requirements. For four (4) years or such longer or shorter period if specified by Applicable Law or applicable Standard Exchange Agreement, after any termination of this Participation Agreement, SCHIO shall maintain its books, documents and records showing the nature and extent of the cost of Services furnished under this Participation Agreement in compliance with Section 1861(v)(1)(I) of the Social Security Act. If requested, SCHIO shall grant access thereto to the Secretary, the Comptroller General and/or their designee.

8.15 SSAE No. 16 Audits. SCHIO shall, and shall cause its HIE Vendor to, annually have an SSAE No. 16 SOC 1 “Type 2” and SOC 2 “Type 2” audit (or its equivalent or successor) performed by an independent third party with respect to the controls and systems utilized by SCHIO and subcontractors hosting H&SSI in delivering Services. SCHIO shall, and shall cause its HIE Vendor to, have subsequent SSAE No. 16 audits performed in accordance with the foregoing, as required for SCHIO’s previous SSAE No. 16 audit reports (and those of its HIE Vendor) to remain accurate with respect to SCHIO’s (and that HIE Vendor’s) controls and systems as SCHIO may change them from time to time. At Participant’s request at any time, SCHIO shall provide a copy of the report of each such audit to Participant. SCHIO shall have the audits described above performed and the corresponding reports prepared and delivered at SCHIO’s expense. If any SSAE No. 16 audit reveals any deficiencies or failures with respect to any of SCHIO’s controls or systems (or those of its HIE Vendor) used in delivering any Services, then SCHIO shall, and shall cause its HIE Vendor to, remedy all material deficiencies or failures promptly, and in no event later than as required by Applicable Law or a governmental authority.

8.16 Cooperation with Audits. If Participant requires assistance with an audit by a Person (other than a party) in connection with a Breach of Privacy or Security, SCHIO shall: (a) use commercially reasonable efforts to provide the information requested by the auditor; and (b) if requested by Participant, request assistance and cooperation from Other Participants.

SECTION 9.**FEES AND MISCELLANEOUS CHARGES**

9.1 Miscellaneous Charges. Participant also shall pay SCHIO’s charges for all goods or services that SCHIO provides at Participant’s written request that are not specified in the Fee Schedule (“**Miscellaneous Charges**”), provided the parties mutually agree in a prior writing to such Miscellaneous Charges.

9.2 Payment. Participant shall pay all undisputed Fees in accordance with the Fee Schedule in effect as of the Effective Date and any Miscellaneous Charges thirty (30) days from date certified invoice received by the County Auditors Office. Invoices may be presented in advance of the due date, and shall be due on the first day of the month of service. Invoices may be sent by email if the Participant has provided an email address for invoices.

9.3 Fee Changes. SCHIO may change the annual Fees set forth in the Fee Schedule on an annual basis, provided that SCHIO gives Participant at least ninety (90) days’ prior written notice (the “**Fee Notice**”). Effective July 1, 2019, no change to the annual Fees may result in a percentage increase greater than the lowest charged to any Other Participant in the same fee scale category. Once notified, should Participant reject the fee increase within the notice period, SCHIO may terminate this Agreement. Any other changes to Fees will require Participant’s consent.

9.4 Suspension of Service. Failure to pay undisputed Fees and Miscellaneous Charges within sixty (60) days following the due date of such unpaid undisputed, invoice may result in suspension of Participant’s access to the System and/or use of the Services on ten (10) days’ prior written notice.

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9.5 Taxes. The Fees charged to Participant do not include taxes. Pursuant to a separate invoice, Participant shall pay all applicable sales or other use tax, if any, when due, if ever, on the Services which are the subject of this Participation Agreement.

9.6 Other Charges and Expenses. Participant shall be solely responsible for any other charges or expenses Participant incurs to access the System and use the Services, including without limitation, telephone and equipment charges, and fees charged by third-party vendors of products and services.

SECTION 10.**PROPRIETARY AND CONFIDENTIAL INFORMATION**

10.1 Scope of Proprietary and Confidential Information. In the performance of their respective responsibilities pursuant to these Terms and Conditions, SCHIO and Participant may come into possession of certain Proprietary and Confidential Information of the other. For the purposes hereof, “**Proprietary and Confidential Information**” 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, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements of SCHIO or Participant, as the case may be, whether written or verbal, that are confidential in nature; provided, however, that Proprietary and Confidential Information shall not include any information that:

(a) is in the public domain, including the name, title and role, and business contact information of a party’s employees and contractors when such disclosure is reasonably necessary to the exercise of a party’s rights or the performance of a party’s duties under this Agreement;

(b) is already known or obtained by any other party other than in the course of the other party’s performance pursuant to these Terms and Conditions, and without breach of any confidentiality, nondisclosure or other agreement by such other party;

(c) is independently developed by any other party without reference to the other party’s Proprietary and Confidential Information;

(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 these Terms and Conditions, or any other confidentiality or nondisclosure agreement by such other party; or

(e) is H&SSI.

10.2 H&SSI. As between SCHIO and Participant, Participant (or Participant and Other Participants collectively if the H&SSI is not Attributable to Participant or an Other Participant alone) is the owner of any and all updates or modifications to or derivatives of any H&SSI made by or for SCHIO, and all IP Rights in the foregoing, whether or not provided to any other party under this Participation Agreement. Such updates or modifications to or derivatives of H&SSI made by or for SCHIO will constitute H&SSI under this Participation Agreement. Upon Participant’s request (including in connection with investigations, audits, and compliance with Applicable Laws) and at the end of the Term of this Participation Agreement, SCHIO shall promptly provide to Participant, upon payment of SCHIO’s actual cost, an electronic copy of all H&SSI relating to individuals with whom Participant has a then-current treatment relationship and all H&SSI relating to individuals to whom Participant has been attributed by a payer. SCHIO shall provide such H&SSI in HL7 or other agreed upon format. Neither party shall withhold any H&SSI as a means of resolving any dispute. SCHIO shall not use H&SSI for any purpose

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other than that of rendering the Services to Participant, Other HIOs, for its internal operations or to comply with Applicable Law. SCHIO shall not sell, assign, lease, or otherwise exploit H&SSI. SCHIO shall not possess or assert any lien or other right against or to H&SSI.

10.3 Nondisclosure of Proprietary and Confidential Information. SCHIO and Participant each:

10.3.1 shall keep and maintain in strict confidence all Proprietary and Confidential Information received from the other, from Other HIOs, or their employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under these Terms and Conditions;

10.3.2 shall not use, reproduce, distribute or disclose any such Proprietary and Confidential Information except as permitted by these Terms and Conditions; and

10.3.3 shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure.

10.4 Equitable Remedies. All Proprietary and Confidential Information represents a unique intellectual product of the party disclosing such Proprietary and Confidential Information (the “**Disclosing Party**”). The unauthorized disclosure of said Proprietary and Confidential Information would have a detrimental impact on the Disclosing Party. The damages resulting from said detrimental impact would be difficult to ascertain but would result in irreparable loss. It would require a multiplicity of actions at law and in equity in order to seek redress against the receiving party in the event of such an unauthorized disclosure. The Disclosing Party shall be entitled to equitable relief in preventing a breach of this Section 10 (Proprietary and Confidential Information) and such equitable relief is in addition to any other rights or remedies available to the Disclosing Party.

10.5 Notice of Disclosure. Notwithstanding any other provision hereof, nothing in this Section 10 (Proprietary and Confidential Information) shall prohibit or be deemed to prohibit a party hereto from disclosing any Proprietary and Confidential Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that such party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction, and such disclosures are expressly permitted hereunder; provided, however, that a party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction shall provide the other party with written Notice thereof within five (5) calendar days, or, if sooner, at least three (3) business days before such disclosure will be made so that the other party may seek a protective order or other appropriate remedy. In no event shall a party be deemed to be liable hereunder for compliance with any such subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction. Notwithstanding the foregoing, or anything to the contrary in these Terms and Conditions: (a) Participant shall not be deemed to be in possession of H&SSI or to have any right to access H&SSI at any time that Participant does not have a treatment relationship with, or has not been attributed by a payer to, the patient that is the subject of that H&SSI; and (b) SCHIO shall not be deemed to be in possession of H&SSI or to have any right to access H&SSI at any time that SCHIO is not providing Services with respect to Participant or any Other Participant that has such a treatment relationship with or attribution to the patient that is the subject of such H&SSI.

10.6 Participant Discussions. Notwithstanding Participant’s obligations under this Section 10 (Proprietary and Confidential Information) or any other confidentiality and nondisclosure obligations under this Participation Agreement, the parties shall have the right to discuss with any one or more Other

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Participants matters related to the System, Services, SCHIO's performance, SCHIO's capabilities, desired enhancements, improvements, and changes, and other matters related to SCHIO.

SECTION 11.**REPRESENTATIONS AND WARRANTIES**

11.1 Authority. SCHIO represents, warrants, and covenants that:

11.1.1 it has the full corporate right, power and authority to enter into this Participation Agreement and perform its obligations thereunder;

11.1.2 when executed and delivered, this Participation Agreement will constitute a legal, valid and binding obligation enforceable against SCHIO in accordance with its terms;

11.1.3 SCHIO shall not, and shall cause SCHIO Personnel to not, store any H&SSI outside of the System, except as specifically described in Section 2.3.1; and

11.1.4 SCHIO shall not, and shall cause SCHIO Personnel to not, combine or permit the combination of de-identified data with other data, or otherwise use de-identified data in a manner that would contribute to or assist in the re-identification of any patient, Participant, Other Participant, or Authorized User and limit use of de-identified H&SSI to the Permitted Purposes outlined in the Business Associate Agreement and/or the SCHIO Policies and Procedures.

11.2 Participant Warranties.

11.2.1 Execution of the Agreement. Each Participant has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals or consents in order for it to execute this Agreement. The representatives signing this Agreement on behalf of the Participants affirm that they have been properly authorized and empowered to enter into this Agreement on behalf of the Participant. The Parties agree to execute this Agreement in electronic form and to the use of electronic signatures.

11.2.2 Compliance with this Agreement. Except to the extent prohibited by Applicable Law, each Participant shall comply fully with all provisions of this Agreement and the other Standard Exchange Agreements when applicable. To the extent that a Participant delegates its duties under this Agreement to a third party (by contract or otherwise) and such third party will have access to H&SSI, that delegation shall be in writing and require the third party, prior to exchanging H&SSI with any Participants, to agree to the same restrictions and conditions that apply through this Agreement to a Participant. If a Governmental Participant determines, after reasonable diligence, that any action or inaction relative to an obligation, including conformance to changes in the Specifications or SCHIO Policies and Procedures, will cause it to violate Applicable Law, the Governmental Participant may terminate this Agreement immediately upon sending written notice to SCHIO and the Governance Entity.

11.2.3 Accuracy of H&SSI. When acting as a Submitter, each Participant represents that at the time of transmission, the H&SSI it provides is an accurate representation of the data contained in, or available through its System and is (i) sent from a System that employs security controls that meet industry standards so that the H&SSI being transmitted is intended to be free from malicious software, and (ii) provided in a timely manner and in accordance with the SCHIO Policies

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and Procedures. Other than those representations elsewhere in this Agreement, the Submitter makes no other representation, express or implied, about the H&SSI.

11.2.4 **Express Warranty of Authority to Exchange H&SSI.** To the extent each Participant discloses H&SSI to SCHIO and another Participant, the Participant represents and warrants that it has sufficient authority to disclose such H&SSI.

11.2.5 **Third-Party Technology.** All Participants acknowledge that other Participants use technology solutions, applications, interfaces, software, platforms, clearinghouses, and other IT resources to support exchange of H&SSI that may be provided by third parties.

11.2.6 (“Third-Party Technology”). Each Participant shall have agreements in place that require third-party technology vendors (i) to provide reliable, stable, and secure services to the Participant and (ii) to adhere to the same or similar privacy and security standards applicable to the Participant pursuant to this Agreement. However, all Participants acknowledge that Third-Party Technology may be interrupted or not available at times and that this could prevent a Participant from transmitting H&SSI. In the event H&SSI is unavailable due to an unscheduled downtime, Participant shall notify SCHIO and provide regular updates as to the expected time and date the Participant’s system will be restored to normal. SCHIO may notify Other Participants of the downtime and expected return to operations.

11.3 **No Conflict.** SCHIO represents and warrants that its entry into and performance under this Participation Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions, or constitute a default under, any other agreement to which it is bound.

11.4 **Compliance with Applicable Laws.** SCHIO represents, warrants, and covenants that SCHIO shall, and shall cause SCHIO Personnel to, comply with all Applicable Laws, accrediting agency standards, and orders of governmental authorities in its performance under this Participation Agreement. In the event any requirement under any Applicable Laws affecting the operation of the System or Services changes after the Effective Date, SCHIO shall develop, implement, and provide, Updates as required to cause the operation of the System and Services in accordance with this Participation Agreement and to be consistent with such Applicable Laws as changed. SCHIO shall implement and provide such Updates to Participant before the date of required implementation for such changes. The System and Services shall include functionality to enable Participant to readily manage H&SSI in the System in compliance with Applicable Laws.

11.4.1 **Enforcement Action.** Participant hereby grants to the Governing Body the power to enforce any portion of this Agreement through measures set forth in the respective governing body’s policies and procedures. Participant acknowledges SCHIO is an intermediary and is obligated to cooperate with the Governing Body in the investigation of a violation of a Standard Exchange Agreement, Security Incident or Breach. SCHIO is authorized to provide any information requested by the Governing Body (unless protected by order issued by a court or other legally appointed judicial body with jurisdiction of the parties.) In addition, SCHIO may take such measures as it deems reasonable to protect the rights of Individuals’ or enforce this SCHIO Agreement, including the suspension or termination of a Participant’s right to exchange H&SSI under this Agreement.

11.5 **Services.** SCHIO represents and warrants that:

11.5.1 all Services will be performed in a businesslike, competent, and professional manner in accordance with standards and practices generally applicable to such Services and deliverables; provided, however, that where this Participation Agreement specifies a particular

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standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance;

11.6 Title; Intellectual Property. SCHIO represents and warrants that:

11.6.1 all software, data, or other subject matter developed or provided in the course of performing Services is either originally developed by SCHIO Personnel or is licensed by SCHIO from third parties with sufficient right to grant the licenses set forth herein; and

11.6.2 none of the System or Services, or Participant's exercise of its license rights under this Participation Agreement, will infringe any IP Rights of any person or entity.

11.7 Viruses. SCHIO shall immediately provide Participant written notice in reasonable detail upon becoming aware of the existence of any Disabling Code in the System or Services. Without limiting the foregoing, SCHIO shall require the HIE Vendor to use reasonable efforts to prevent the introduction and proliferation of any Disabling Code in Participant's computer systems or networks as a result of the implementation or use of the System or Services or in any SCHIO systems used to provide the System or Services. In the event SCHIO or Participant discovers the existence of any Disabling Code (whether intentionally or unintentionally introduced), SCHIO shall use commercially reasonable efforts, in cooperation with Participant, to effect the prompt removal of the Disabling Code from the System and Services, Participant's computer systems and networks, and the repair of any files or data corrupted thereby. "Disabling Code" means any virus, worm, trap door, back door, timer, counter or other limiting routine, instruction or design that would erase or alter data or programming or cause the System, Service, or Participant network, equipment, or data to become inaccessible, inoperable or incapable of being used in the full manner for which it was designed, licensed or created.

11.8 Carrier Lines. By using the System and the Services, Participant acknowledges that access to the System is to be 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 SCHIO's reasonable control. SCHIO 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 to the extent solely attributable to transmission on the Carrier Lines, and use of the Carrier Lines is at Participant's risk and is subject to all Applicable Laws.

11.9 No Other Warranties. EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS AND CONDITIONS, ACCESS TO THE SYSTEM, USE OF THE SERVICES, AND THE INFORMATION OBTAINED BY PARTICIPANT PURSUANT TO THE USE OF THOSE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND PARTICIPANT AND SCHIO IS EACH SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE SYSTEM OR THE INFORMATION IN THE SYSTEM, INCLUDING INACCURATE OR INCOMPLETE INFORMATION INCLUDING H&SSI. EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS AND CONDITIONS, EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE SYSTEM.

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11.10 Other HIOs. By using the System and the Services, Participant acknowledges that other HIOs, QHIOs, or QHINs (Other HIOs) may have access to H&SSI exchanged through or maintained in the System under the terms and conditions of a Standard Exchange Agreement. SCHIO shall ensure that Other HIOs are required to comply with the SCHIO Policies and Procedures concerning use of H&SSI, and Confidential Information; however, the actions of such Other HIOs are beyond the control of SCHIO. Accordingly, but except as set forth in the applicable Standard Exchange Agreement and provided SCHIO causes such Other HIOs to limit their access to H&SSI solely for Permitted Purposes, SCHIO does not otherwise 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 such Other HIO's actions or failures to act; provided that SCHIO shall enforce the Terms and Conditions of or terminate the Standard Exchange Agreement with the Other HIO in the event of a breach by the breaching Other HIO(s).

11.11 Unauthorized Access; Lost or Corrupt Data. Except in the case of a breach of this Participation Agreement by a party: (a) neither party is responsible for unauthorized access to the other party's transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft, or destruction of the data files, programs, procedures, or information through the System, whether by accident, fraudulent means or devices, or any other method; and (b) each party is solely responsible for validating the accuracy of all output and reports and protecting that party's data and programs from loss by implementing appropriate security measures, including routine backup procedures.

11.12 Inaccurate Data. SCHIO neither initiates the transmission of any H&SSI nor does it monitor the specific content of H&SSI being transmitted. Without limiting any other provision of these Terms and Conditions, SCHIO shall have no responsibility for or liability related to the accuracy, content, currency, completeness, access to or delivery of any H&SSI, that is not caused by SCHIO or SCHIO Personnel and is beyond SCHIO's reasonable control.

11.13 Patient Care. Participant and Participant's Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, care coordination, utilization management, and quality management for their respective Patients resulting from or in any way related to the use of the System or the Services or the H&SSI made available thereby.

SECTION 12.**LIABILITY, INDEMNIFICATION AND INSURANCE****12.1 Liability.**

12.1.1 Each party to this Participant Agreement is solely responsible for its own acts and omissions, and those of its employees and agents, and its contractors, provided, however, that SCHIO shall be liable for the acts or omissions of the HIE Vendor only to the extent of the amount of recovery actually obtained from the HIE Vendor by applying commercially reasonable efforts, and the proceeds of insurance otherwise available to SCHIO in connection with any liability arising from the acts or omissions of the HIE Vendor.

12.1.2 Except as otherwise provided elsewhere herein, to the maximum extent permitted by Applicable Laws: (a) in no event shall SCHIO or Participant be liable to the other 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 any kind of data, including H&SSI, 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 SCHIO or Participant has been apprised of the possibility or likelihood of such damages occurring; and (b) the aggregate liability of SCHIO or

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Participant, and their respective officers, directors, employees, and other agents, with respect to the subject of these Terms and Conditions, regardless of theory of liability, shall be limited to fees actually paid or due and payable by Participant in accordance with this Agreement for the twelve (12)-month period immediately preceding the event first giving rise to the claim.

12.1.3 The limitations and exclusions set forth herein shall not apply to: (a) damages attributable to intentional torts, unlawful conduct or gross negligence; (b) Fees and Miscellaneous Charges for which a party is responsible; (c) third party claims that are subject to indemnification; (d) intentional misappropriation or intentional infringement of a party's IP Rights.

12.2 Indemnification for Data Breaches.

12.2.1 If, as the result of any act or omission of SCHIO or SCHIO Personnel, a Patient is required by law to be notified of unauthorized access, disclosure, or use of the Patient's Data, SCHIO shall bear and pay, and compensate and reimburse Participant for, all costs associated with such notification and related communication and for the costs of providing any legally required credit monitoring and identity theft protection service to the affected person.

12.2.2 If, as the result of any act or omission of the Participant or any Authorized User of the Participant, an Individual is required by law to be notified of unauthorized access, disclosure, or use of H&SSI, the Participant shall bear and pay, and compensate and reimburse SCHIO, an Other Participant or Other HIO required to make the notification for all reasonable costs of such notification and actual communication and for the costs of providing any legally required credit monitoring and identity theft protection service to the affected person. The provisions hereof shall be for the benefit of SCHIO and any Other Participant or Other HIO legally required to make such notification.

12.3 Indemnification for Third-Party Claims. SCHIO and Participant (each, an "Indemnitor") shall indemnify, defend and hold (i) the other party, and its officers, directors, agents and contractors, and (ii) Other Participants and/or Other HIOs, and their respective officers, directors, agents and contractors (each, an "Indemnitee"), harmless from and against actual costs of defense as they are incurred, in any action or proceeding, including the reasonable fees of professionals and attorneys, damages (including punitive damages) awarded in a final judgment in any litigation, arbitration or administrative proceeding, or any other expense reasonably incurred by the Indemnitee, arising out of or resulting from a claim against the Indemnitee by a third party (a "Claim") based on:

12.3.1 the Indemnitor's breach of this Participation Agreement, the Participant Business Associate Agreement, or the SCHIO Policies and Procedures, or

12.3.2 the Indemnitor's negligent or willful acts or omissions resulting in damages for personal injury (including death), or

12.3.3 in the case of SCHIO as Indemnitor, a Serious Breach of Privacy or Security involving such third party's H&SSI while being transmitted through or stored in SCHIO's Systems, or

12.3.4 in the case of Participant as Indemnitor, a Serious Breach of Privacy or Security of H&SSI resulting in the unauthorized access, disclosure, corruption, modification or loss of H&SSI by Participant's employees, agents or contractors.

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12.4 Rules for Indemnification. Any indemnification shall include payment of all reasonable, actual costs incurred defending the underlying third party Claims, whether or not such third party Claims are meritorious, including any settlement by or judgment against the Indemnatee and actual costs incurred to enforce the indemnity provisions set forth herein. In the event that a lawsuit regarding a Claim covered by indemnification hereunder is brought against the Indemnatee, the Indemnitor shall, at its sole cost and expense, defend the Indemnatee, if Indemnatee demands indemnification by written notice given to the Indemnitor within a period of time wherein the Indemnitor is not prejudiced by lack of notice. Upon receipt of such notice, the Indemnitor shall have control of such Claims, except that: (a) the Indemnitor may not settle such Claims without the express prior written consent of the Indemnatee, which consent shall not be unreasonably withheld, conditioned or delayed; and (b) if, in the reasonable judgment of the Indemnatee the Indemnitor does not have adequate resources to defend the Claims, then the Indemnatee may retain control of the defense and settlement thereof. The indemnification obligations of the parties shall not, as to third parties, be a waiver of any defense or immunity otherwise available, and the Indemnitor, in indemnifying the Indemnatee, shall be entitled to assert in any action every defense or immunity that the Indemnatee could assert on its own behalf.

12.5 Insurance. Each party shall procure and maintain insurance in accordance with Schedule B (Insurance).

SECTION 13.**TRANSPARENCY, OVERSIGHT, ENFORCEMENT AND ACCOUNTABILITY**

13.1 Transparency. SCHIO shall develop, implement and provide Participant, Other Participants, and Other HIOs with general information concerning the ongoing operations of the System and the Services, including, without limitation, the efficiency, effectiveness, and security thereof.

13.2 Enforcement and Accountability. If an Other Participant fails to materially comply with these Terms and Conditions and/or the SCHIO Policies and Procedures, then Participant may temporarily or permanently suspend the sharing of H&SSI with the Other Participant or Other HIO (as applicable), upon giving notice to SCHIO and the Other Participant or the Other HIO (as applicable).

SECTION 14.**MISCELLANEOUS PROVISIONS**

14.1 Applicable Law. The interpretation of this Participant Agreement including these Terms and Conditions, SCHIO Policies and Procedures, and Schedules and Exhibits, and the resolution of any disputes arising thereunder shall be governed by the laws of the State of California. If any action or other proceeding is brought on or in connection with these Terms and Conditions or this Participation Agreement, the venue of such action shall be exclusively in Monterey County, in the Superior Court of the State of California, or the United States District Court serving the Northern District of California or the jurisdiction specified in the applicable Standard Exchange Agreement.

14.2 Arbitration of Disputes. Any action or other proceeding brought on or in connection with this Participation Agreement, of whatever nature and irrespective of the facts or circumstances or the legal theories advanced shall be resolved by binding arbitration at the request of either party. A single neutral arbitrator shall be appointed. The arbitration shall be administered by JAMS Arbitration, Mediation, and ADR Services and in accordance with the JAMS Comprehensive Arbitration Rules and Procedures. Such arbitration shall occur in Santa Cruz, California. The arbitrator shall apply California substantive law and

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federal substantive law where state law is preempted. The Federal Arbitration Act, 9 U.S.C. § 1-16, shall also apply.

14.3 Binding Nature and Assignment. This Participation Agreement will be binding on, and will inure to the benefit of Participant and SCHIO, and their respective successors and permitted assigns. Neither party may assign this Participation Agreement, by operation of law or otherwise, without the prior written consent of the other party, which shall not be unreasonably withheld, conditioned or delayed, except that either party may assign the Participation Agreement in whole or in part to an affiliate or to a successor in interest. Any attempted assignment or transfer in violation of the foregoing will be null and void.

14.4 Third-Party Beneficiaries. Except for the rights of Other Participants or Other HIOs expressly stated in this Participation Agreement, there shall be no third-party beneficiaries of this Participation Agreement. To the extent consistent with SCHIO's agreements with the HIE Vendor, Participant shall be a third-party beneficiary of the HIE Vendor's obligations, and no limitation of liability under this Participant Agreement shall serve to limit the liability of the HIE Vendor under its agreements with SCHIO.

14.5 Supervening Circumstances. Neither Participant nor SCHIO shall be deemed in violation of any provision of this Participation Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. This Section 14.5 (Supervening Circumstances) shall not apply to obligations imposed under Applicable Laws, obligations to pay money, or failures or delays in performance that could have been prevented by reasonable disaster recovery or business continuity measures.

14.6 Severability. Any provision of this Participation Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Participation Agreement, and such other provisions shall remain in full force and effect.

14.7 Notices. Any and all notices required or permitted under these Terms and Conditions shall be in writing, sent by United States mail, overnight delivery service, to the address provided by Participant to SCHIO or such different addresses as a party may designate in writing from time to time. The initial addresses for Notice are set forth on the first page of this Participation Agreement.

14.8 Waiver. No provision of this Participation Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other, different or subsequent breach.

14.9 Independent Contractors. In the performance of their respective responsibilities under this Participation Agreement, SCHIO and Participant are and shall be, at all times, acting as the independent contractor of the other, and not as an employee, agent, or partner of, or joint venture with the other.

14.10 Complete Understanding. This Participant Agreement, including the Other Standard Exchange Agreements and Exhibits referenced herein, contains the entire understanding of the parties, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Participation Agreement. All modifications or amendments to these Terms and Conditions shall be in writing and signed by the parties.

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14.11 Media Releases. The parties agree that no public or private announcements, media releases, press conferences or similar publicity relating to any aspect of this Participation Agreement will be made without the prior written consent of the other party. A party will not, without the prior written consent of the other party, use in advertising, publicity or otherwise the names, trade names, service marks, trade dress or logo of the other party (or any of its entities); provided however, that SCHIO may list Participant's name and logo as an identified participant in the System on its website or educational media or marketing materials. Unless otherwise agreed, the right to use a party's trade name or trademark shall automatically terminate upon termination of this Participation Agreement.

14.12 Execution and Multiple Copies or Counterparts of Agreement; Acceptance of Facsimile and Scanned Signatures. The parties agree to execute this Agreement in electronic form and to the use of electronic signatures. This Participation Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. When executed, this Participation Agreement may be delivered scanned email attachment or pdf, and said copies shall be treated in all respects as an original.

14.13 Acknowledgement of Participant's Corporate Integrity Program. The parties acknowledge that Participant may be subject to a Corporate Compliance Program. SCHIO further acknowledges that notwithstanding anything contained herein, Participant shall not be required to engage in any conduct that may violate any policies, procedures, or directives of the Corporate Compliance Program.

14.14 Schedules and Exhibits. The Schedules and Exhibits attached hereto are hereby incorporated as part of this Participation Agreement by this reference.

14.15 Time of the Essence. SCHIO acknowledges and agrees that time is of the essence in the performance of each party's obligations under this Participation Agreement.

14.16 Interpretation. Each party acknowledges and agrees that it has had the opportunity to have this Participation Agreement (including these Terms and Conditions and the SCHIO Policies and Procedures) reviewed by legal counsel. No rule to the effect that ambiguities are to be resolved against the drafting party shall be applied in the construction or interpretation of this Participation Agreement or the Terms and Conditions or the SCHIO Policies and Procedures.

14.17 Conflicting Provisions. In the event of any conflict between the provisions of this Participation Agreement and the provisions of the Business Associate Agreement, the provisions of the Business Associate Agreement shall govern. In the event of a conflict between the terms and condition of this SCHIO Participation Agreement and/or SCHIO Policies and Procedures and those of a Standard Exchange Agreement (and respective Policies and Procedures), the applicable Standard Exchange Agreement (and respective Policies and Procedures) shall apply except to the extent the conflict involves the use, protection or disclosure of H&SSI, in which case the more protective provision shall apply.

SCHIO PARTICIPATION AGREEMENT

Exhibit A

Fee

Participant will pay SCHIO Participation and Other Miscellaneous Fees as follows:

Description of Services: Bi-Directional exchange of clinical data

First year Fee: \$50,000

Second year Fee: \$50,000

Third year Fee: \$75,000

This Agreement and Exhibit A pertain to Natividad Medical Center only.

Any additional services shall be set forth in a separate statement of work.

Fees shall be due and payable thirty (30) days from date certified invoice received by the County Auditors Office for the Services ordered by Participant, unless a different payment schedule is indicated below. The annual Fee for Services may change from time to time as specified in the Participation Agreement.

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Exhibit B

Insurance

General Requirements. On the Effective Date or within ten (10) business days of written request, each party shall provide the other evidence of all insurance required hereunder. Notwithstanding any term or condition to the contrary, : (a) if SCHIO fails to provide Participant with any such certificates, Participant may withhold payment of any amounts that are otherwise due to SCHIO until up the date such certificates are provided to SCHIO, and/or terminate this Participant Agreement immediately upon written notice; and (b) if Participant fails to so provide SCHIO with any such certificates, SCHIO may withhold Services to Participant until up to the date such certificates are provided to SCHIO, and/or terminate this Participation Agreement immediately upon written notice. Notwithstanding any other provisions of the Participation Agreement, the provisions of this Schedule (Insurance) will survive termination of the Participation Agreement.

All policies of insurance will be written as primary insurance policies and not written as policies contributing to, or to be used in excess of the other party's insurance policies or any self-insurance program in which the other may participate with respect to such System and Services. In the event of any termination, expiration, non-renewal or cancellation of any of such insurance policies, the insured party shall give written notice thereof to the other party not more than ten (10) days following the insured party's receipt of such notification.

Types and Amounts of Insurance to be Carried by SCHIO. During the Term, SCHIO shall obtain and maintain the following minimum insurance coverages or self-insurance:

- Commercial General Liability insurance, including premises liability, products/completed, operations, advertising injury, and contractual liability coverage, with a minimum combined single limit of Two Million U.S. Dollars (\$2,000,000) per occurrence and minimum general annual aggregate limit of Four Million U.S. Dollars (\$4,000,000), including bodily injury (including death) and property damage, covering all of SCHIO's operations under this Participation Agreement (which shall be provided on an "occurrence" form);
- Comprehensive professional liability insurance covering the liability for financial loss due to error, omission or negligence of SCHIO, with a minimum amount of Five Million U.S. Dollars (\$5,000,000) and not less than Five Million U.S. Dollars (\$5,000,000) in the annual aggregate. Such coverage shall be maintained for a period of not less than three (3) years after the expiration or termination of this Participation Agreement;
- Fidelity/crime coverage and blanket employee dishonesty and computer fraud insurance for loss arising out of or in connection with fraudulent or dishonest acts committed by the employees of SCHIO, acting alone or in collusion with others, in a minimum amount of One Million U.S. Dollars (\$1,000,000) and annual aggregate minimum of at least One Million U.S. Dollars (\$1,000,000); and
- Network Security Liability and Privacy Liability including coverage for expenses associated with data breach, cyber-crime, cyber-security and the investigation, remediation, notification costs, credit monitoring, call center expenses, public relations expenses, and legal costs in connections with such loss in an amount not less than Ten Million U.S. Dollars (\$10,000,000) per occurrence and Ten Million U.S. Dollars (\$10,000,000) annual aggregate, which SCHIO shall cause the HIE Vendor to carry or alternatively, receive written confirmation from the HIE Vendor that it is carrying such coverage and, with respect to any future contract with the HIE Vendor and

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amendments and addenda to the contract in effect as of the Effective Date, that the contract is without any limitation on the HIE Vendor's liability to SCHIO, in addition to coverage for the foregoing expenses to be carried by SCHIO in an amount of Five Million U.S. Dollars (\$5,000,000) per occurrence and Five Million U.S. Dollars (\$5,000,000) annual aggregate or the minimum amount required under the applicable Standard Exchange Agreements taken together, whichever is more.

If, in any of the foregoing cases, SCHIO has procured a claims-made based policy (or policies) and such policy (or policies) are cancelled or not renewed, SCHIO agrees to exercise any option contained in said policy (or policies), or otherwise obtain tail coverage, that extends the reporting period for a period of at least three (3) years after the termination or expiration of this Participation Agreement.

None of the foregoing requirements as to the type and limits of insurance to be maintained by SCHIO are intended to and should not be construed as limiting in any manner, SCHIO's obligations under this Participation Agreement or as limiting the liability of SCHIO hereunder.

Subcontractors. SCHIO shall require any subcontractor that has access to H&SSI or that performs software coding for the System, to carry, or SCHIO shall carry on behalf of said subcontractors, at a minimum, the following limits of insurance:

- Commercial General Liability Insurance, including independent contractors coverage, premises liability, products/complete operations, advertising injury, and contractual liability coverage, with a minimum combined single limit of One Million U.S. Dollars (\$1,000,000) per occurrence and minimum general annual aggregate limit of Two Million U.S. Dollars (\$2,000,000), including bodily injury (including death) and property damage, covering all of subcontractors' operations under this Participation Agreement (which shall be provided on an "occurrence" form); and
- Comprehensive professional liability insurance covering the liability for financial loss due to error, omission or negligence of subcontractors, with a minimum amount of One Million U.S. Dollars (\$1,000,000) and not less than Two Million U.S. Dollars (\$2,000,000) in the annual aggregate. Such coverage shall be maintained for a period of not less than three (3) years after the expiration or termination of this Participation Agreement;
- If the subcontractor stores or controls H&SSI, Network Security Liability and Privacy Liability including expenses associated with data breach, cyber-crime, cyber-security and related thereto the investigation, remediation, notification costs, credit monitoring, call center expenses, public relations expenses and legal costs in an amount not less than One Million U.S. Dollars (\$1,000,000) per occurrence and Two Million U.S. Dollars (\$2,000,000) annual aggregate, in addition to coverage for the foregoing expenses to be carried by subcontractors in an amount of One Million U.S. Dollars (\$1,000,000) per occurrence and Three Million U.S. Dollars (\$3,000,000) annual aggregate.

Policy Requirements. To the extent practicable, Participant will be listed on all such insurance policies obtained by SCHIO (except Worker's Compensation) as "Additional Insureds" up to the amount required of SCHIO in this Schedule (Insurance). SCHIO shall similarly require certain Subcontractors to list Participant as "Additional Insureds" if SCHIO does not carry on behalf of such Subcontractors the insurance required in this Schedule (Insurance). Each insurance policy shall: (i) be issued by companies that have an A. M. Best rating of not less than "A-", and are in a size category which is not lower than "VIII"; (ii) be primary and noncontributory with any of Participant's insurance; and (iii) not be cancelled or non-renewed except upon at least thirty (30) days' prior written notice to Participant.

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Types and Amounts of Insurance to be Carried by Participant. During the Term, Participant shall obtain and maintain insurance or an endorsement to its insurance policy, or shall obtain and maintain equivalent self-insurance, providing coverage for claims arising out of or relating to a network security and cyber liability coverage for claims for damages, costs and expenses arising out of a breach of privacy or security of H&SSI as a result of the negligence or willful misconduct of Participant or, its employees, agents, or subcontractors in the minimum amount required under the DxF Agreement or the Common Agreement, if specified. If not specified, then the minimum limit shall be Two Million per occurrence, and Two Million annual aggregate.

The provisions of this Schedule (Insurance) will not be deemed to limit the liability of Participant hereunder, or limit any rights that SCHIO, Other Participants or Other HIOs may have, including, rights of indemnity or contribution.

SCHIO PARTICIPATION AGREEMENT

Exhibit C

Participant Business Associate Agreement

The parties agree that, under this agreement, SCHIO (“**Business Associate**”) shall have all the rights and obligations of a “**Business Associate**,” as defined in HIPAA (defined below) and shall be referred to herein as such, and **Participant**, shall have all the rights and obligations of a “**Covered Entity**,” as defined in HIPAA or other Participant and shall be referred to herein as such. As used herein, the “**Agreement**” refers to the SCHIO Participation Agreement between the parties. For Participants who are Other HIOs, references herein to “**Business Associate**” shall mean and refer to the Other HIO. For Participants who are not Covered Entities or Other HIOs, this BAA shall apply to those Participants that have signed the CalHHS DxF Agreement.

1. Definitions. All capitalized terms not defined herein shall have the meaning ascribed to them by HIPAA (defined below), including Business Associate, Covered Entity, Limited Data Set, Data Aggregation and Designated Record Set.

(a) “**Breach**” shall mean the unlawful or unauthorized access to, viewing, acquisition, use or disclosure of PHI.

(b) “**Covered Entity**” shall have the meaning given at 45 CFR 160.103. If the Participant is also a signatory to the DxF Agreement, for purposes of this BAA, such Participant shall be deemed a Covered Entity.

(b) “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-005) and the rules, guidance and regulations promulgated thereunder, as amended from time to time, including 45 Code of Federal Regulations, Parts 160 and 164.

(d) “**H&SSI**” shall have the meaning given under DxF Agreement.

(c) “**Patient**” shall have the same meaning as the term “individual” under HIPAA and shall include a person who qualifies as a personal representative.

(d) “**Personal Information**” shall have the meaning given to such term in California Civil Code section 1798.29.

d) “Protected Health Information” (“PHI”) shall have the meaning given to such term under HIPAA and shall include any information, whether oral or recorded in any form or medium, limited to the information created or received by Business Associate from or on behalf of Covered Entity (i) that relates to the past, present or future physical or mental health condition of the patient, the provision of health care to patient, or the past, present or future payment for the provision of health care to patient; and (ii) that identifies the patient or with respect to which there is a reasonable basis to believe the information can be used to identify the patient.

(e) “**Secretary**” shall mean the Secretary of the U.S. Department of Health and Human Services or her/his designee.

(f) “**Security Incident**” shall mean any accidental, malicious or natural act that: (i) results in a Breach of any PHI or PII or credit card or banking information; or (ii) adversely impacts the functionality of the Covered Entity’s electronic health record system; or (iii) permits unauthorized access to the Covered

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Entity's network; or (iv) involves the loss or loss of control of a Covered Entity owned or managed information technology resource; or (v) involves the use of Covered Entity's technology resources for illegal purposes or to launch attacks against other individuals or organizations; or (vi) impacts the integrity of Covered Entity's files or databases including, but not limited to: (1) interface failures; (2) inadequate testing or change control procedures; or (3) other failures which result in the deletion or unauthorized changes to an electronic database. A "Security Incident" shall not include any attempted access to system operations in an information system by a Packer Internet Groper (PING) program.

(g) "State" shall mean the state in which the Covered Entity is located.

(h) "Subpart E" shall mean 45 Code of Federal Regulations, Part 164, Subpart E, which consists of Sections 164.500 et seq., as amended from time to time.

2. Permitted Uses and Disclosures by Business Associate

(a) **For Covered Entity.** Except as otherwise limited in the Agreement or this Schedule, Business Associate; (i) shall create, maintain, transmit, access, use or disclose PHI or PII only to perform functions, activities, or services as specified in the Agreement or required under Applicable Law, and (ii) shall not use or disclose PHI or PII in a manner that would violate HIPAA or Applicable Law if done by Covered Entity. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

(b) **Minimum Necessary.** Business Associate shall use only the minimum amount of PHI and PII necessary to perform the specified functions, activities or services, in accordance with Covered Entity's minimum necessary policies and procedures. In the event of inadvertent access by Business Associate to more than the minimum necessary amount of Covered Entity's PHI or PII, Business Associate will: (i) treat all such PHI or PII in accordance with the Agreement and this Schedule; (ii) promptly notify Covered Entity, in accordance with paragraph 3(d) below, of such access; and (iii) take all necessary actions to prevent further unauthorized access to PHI or PII beyond the minimum necessary amount.

(c) **Management of Business Associate.** Except as otherwise limited in the Agreement or this Schedule, Business Associate may use or disclose PHI or PII for its proper management and administration or to carry out its legal responsibilities, provided that (i) the disclosure is permitted or required by law, or (ii) the Business Associate obtains reasonable assurances from any subcontractor or person to whom the information is disclosed that such information shall remain confidential and be used or further disclosed solely as required by law or for the purpose of assisting Business Associate to meet Business Associate's obligations under the Agreement. Business Associate shall require any person to whom PHI or PII is disclosed under this subsection to notify Business Associate of any instance of which it is aware in which the confidentiality or security of the PHI has been breached.

(d) **Data Aggregation.** Except as otherwise permitted in the Agreement and this Schedule, Business Associate may use PHI to provide Data Aggregation services only as permitted by the Agreement and Applicable Law. .

(e) **Compliance with State Laws.** Business Associate may use, disclose and access PHI only as permitted by State law, unless such State law conflicts with HIPAA and is preempted by HIPAA in accordance with 45 Code of Federal Regulations Sections 160.201 et seq.

3. Obligations of Business Associate

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(a) **Use.** Business Associate shall not use or disclose PHI or PII other than as permitted or required by the Agreement, including this Schedule or as required by law.

(b) **Safeguards.** Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI or PII other than as provided for by the Agreement and this Schedule. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, security, integrity and availability of PHI or PII that it receives, maintains, transmits or creates on behalf of Covered Entity and that comply with the requirements of HIPAA.

(c) **Mitigation.** Business Associate shall promptly mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI or PII by Business Associate in violation of the Agreement and this Schedule.

(d) **Notify Covered Entity.** Business Associate shall promptly notify Covered Entity of any Security Incident or Breach in writing in the most expedient time possible, and not to exceed thirty (30) days from the date of discovery of the Breach or shorter timeframe specified by applicable Standard Exchange Agreement. Notice shall be given to the Participant's Chief Privacy Administrator or his/her designee as indicated in Section 9 hereof and the Governing Body if required under the applicable Standard Exchange Agreement. Business Associate shall cooperate in good faith with Covered Entity in the investigation of any Breach or Security Incident.

(e) **Breach Notification.** Following notification to Covered Entity of a Breach, Business Associate shall promptly cooperate with Covered Entity in determining which entity shall provide Breach notification, if it is determined notification is required under Applicable Law. If the parties agree that Business Associate shall provide Breach notification, Business Associate shall do so in a timely manner and provide Covered Entity with documentation of Business Associate's actions, including documentation of the names and addresses of the Patient's and Other Participants, if any, to whom the notifications were provided.

(f) **Access.** If Business Associate holds PHI in Designated Record Sets as determined by Covered Entity, Business Associate shall provide prompt access to the PHI to Covered Entity whenever so requested by Covered Entity, in order to meet the requirements of HIPAA and State Law, as applicable. If requested, such access shall be in electronic format. If a Patient requests Business Associate (i) to inspect or copy his or her PHI or PII, or (ii) requests its disclosure to a third party, the Business Associate shall promptly notify Covered Entity's privacy official of such request.

(g) **Amendments.** If Patient requests an amendment to his or her PHI or PII, directly to Business Associate, Business Associate shall promptly notify Covered Entity's privacy official of such request. Business Associate shall not be required to correct H&SSI.

(h) **Internal Records.** Business Associate shall promptly make its internal practices, books, records, including its policies and procedures, relating to the use, disclosure, or security of PHI and PII that the Business Associate received from, maintained or created for or on behalf of Covered Entity, available to Covered Entity, the Governing Body or the Secretary, in a reasonable time and manner designated by Covered Entity or the Secretary, to enable the Secretary to determine compliance with HIPAA or in the case of a Governing Body, the applicable Standard Exchange Agreement(s).

(i) **Accountings.** Business Associate shall document all disclosures of PHI and PII and information related to such disclosures as required under HIPAA and any applicable Standard Exchange Agreements in order that it may provide an accounting of such disclosures as and to the extent required by HIPAA. Business Associate shall provide the accounting information required under HIPAA and any

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applicable Standard Exchange Agreement to Covered Entity, if so requested by Covered Entity, in the time and manner required by Applicable Law.

(j) Preservation. Business Associate shall cooperate with Covered Entity and its medical staff to preserve and protect the confidentiality of PHI and PII accessed or used pursuant to the Agreement and shall not disclose or testify about such information during or after the termination of the Agreement, except as required or permitted by Applicable Law.

(k) Destruction. If, during the term of the Agreement, Business Associate wishes to destroy the PHI or PII, it shall notify Covered Entity in writing about its intent to destroy data at least thirty (30) days prior to the date of destruction, and shall comply with the requirements for destruction of PHI and PII set forth in Section 5(a) of this Schedule. If Covered Entity requests the return of any PHI or PII, Business Associate shall comply, to the extent feasible and as reasonably requested.

(l) Security Compliance. Business Associate shall comply with the security standards for the protection of electronic PHI set forth in 45 Code of Federal Regulations Part 164, Subpart C and any applicable Standard Exchange Agreements. SCHIO's written privacy and security policies and procedures shall be made available to Covered Entity, upon Covered Entity's request.

(m) Subcontractors. Business Associate shall ensure that any agent or subcontractor that creates, receives, maintains or transmits PHI or PII on behalf of a Covered Entity or Business Associate agrees in a written contract with Business Associate to restrictions and conditions that apply to Business Associate with respect to such information that are at least as protective as the Agreement and this BAA. In performing services under this BAA, Business Associate shall use agents, employees and/or subcontractors that are domiciled only within the United States of America and its territories.

4. Effect of Breach of Obligations. If Business Associate commits a material breach of any of its obligations, Covered Entity shall have the option to do the following:

(a) Cure. Provide Business Associate an opportunity to cure the breach, to the extent curable, within thirty (30) days or reasonable time mutually agreed to by the Parties. If Business Associate does not cure the breach or end the violation as and within the time set forth above, or if the breach is not curable, Covered Entity may terminate its obligations to Business Associate, including, but not limited to, its future payment obligations and obligations to provide information, materials, equipment or resources to Business Associate; or

(b) Termination. Immediately terminate the Agreement, if Covered Entity reasonably determines that Business Associate (1) has acted with gross negligence in performing its obligations; (2) is in violation of the law; (3) willfully has violated or is violating the privacy and security provisions of this BAA; or (4) is unable to provide, if requested, written assurances to Covered Entity of its ability to protect the confidentiality and security of PHI or PII. Such termination of the Agreement shall be without prejudice to other legal remedies available to Covered Entity.

5. Effect of Termination

(a) Disposition of PHI. Upon termination of the Agreement and subject to Section 5(b) below, Business Associate shall promptly return to Covered Entity a copy of all PHI and PII, including derivatives thereof, and shall take all reasonable steps to promptly destroy all other PHI and PII held by Business Associate by: (i) shredding; (ii) securely erasing, or (iii) otherwise modifying the information in those records to make it unreadable or undecipherable through any means. This provision shall apply to PHI and PII in the possession of subcontractors or agents of Business Associate. At Covered Entity's

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request, Business Associate shall certify in writing that it has complied with the requirements of this Section.

(a) Infeasible; Survival. If the return or destruction of PHI and PII is infeasible, Business Associate shall promptly notify Covered Entity of the conditions that make such return or destruction infeasible. Upon mutual determination by the parties that return or destruction of PHI and PII is infeasible, the obligations of the Business Associate under this Schedule shall survive the termination of this Agreement. Business Associate shall limit the further use or disclosure of all PHI and PII to the purposes that make its return or destruction infeasible. If Business Associate subsequently wishes to destroy PHI and PII, Business Associate shall notify Covered Entity in writing about its intent to destroy PHI and PII at least ten (10) days before such date of destruction, and shall comply with Section 5(a) above. If Covered Entity requests the return of any PHI and PII, Business Associate shall comply as reasonably requested.

6. Amendment. The parties agree to promptly modify or amend this BAA to permit parties to comply with any new laws, rules or regulations that might modify the terms and conditions herein.

7. General. The Agreement, including this BAA and attachments hereto are intended to be construed in harmony with each other, but in the event that any provision in this BAA conflicts with the provisions of the Agreement, or its other attachments, the provisions in this BAA shall be deemed to control and such conflicting provision or part thereof shall be deemed removed and replaced with the governing provision herein to the extent necessary to reconcile the conflict, except that the indemnity and insurance provisions of this Schedule (if any) and the Agreement are to be read as separate, concurrent obligations such that Business Associate shall comply with each obligation and one shall not replace the other.

8. Audits. Upon reasonable notice to Business Associate, Covered Entity shall have the right to inspect and audit Business Associate’s privacy and security controls relating to Business Associate’s compliance with the terms of the Agreement, this BAA and HIPAA. Business Associate may impose reasonable restrictions upon Covered Entity’s access to Business Associate’s premises information systems, including but not limited to limiting access only to those information systems which contain Covered Entity’s PHI and PII and limiting access to ensure Business Associate’s compliance with existing confidentiality obligations to its other customers. Such audits shall occur no more often than once per year or after any Breach or Security Incident and only upon a good faith belief by Covered Entity that Business Associate is not in compliance with its obligations under the Agreement, this BAA or HIPAA relating to Covered Entity’s PHI or PII. All audits shall be conducted with the least interruption to Business Associate’s normal business operations as feasible. Covered Entity shall be responsible for all costs incurred in order to perform the audit.

9. Notice. Notices required herein shall be directed to the Executive Director and legal counsel to the address designated below. Notice shall be in writing and sent via first class mail, and email if such information is provided below:

<p>Notice to Santa Cruz HIO:</p> <p>Santa Cruz HIO 343 Soquel Ave #327 Santa Cruz, CA 95062 Support@schio.org</p>	<p>Notice to Participant:</p> <p><u>Natividad</u> <u>Attn: President</u> <u>1441 Constitution Blvd.</u> Salinas, CA 93906</p>
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Exhibit D**Safeguarding H&SSI**

The following obligations are in addition to SCHIO's other obligations under the Participation Agreement. SCHIO shall, and shall cause SCHIO Personnel to, comply with the requirements set forth below.

1. SCHIO shall store H&SSI on secure computers located in a physically secure data center "Hosted Environment" provided the operator of the Hosted Environment has established, and agreed to continuously maintain and comply with environmental, safety and facility procedures, data security practices and other safeguards against the destruction, loss, alteration, or unauthorized access or disclosure of H&SSI in the possession of SCHIO that are: (a) in conformance with the requirements set forth in the Participation Agreement; (b) in conformance with, and sufficient for Participant to meet, applicable Laws, and the security best practices outlined in National Institutes of Technology ("NIST") and International Standards Organization ("ISO"); and (c) no less rigorous than those maintained by SCHIO for its own information of a similar nature.

- Without limiting the foregoing: (a) SCHIO shall employ technology meeting industry standards for firewalls and other security technology to help prevent SCHIO computers and systems from being accessed by unauthorized persons; (b) SCHIO shall use the HTTPS standard or other standard accepted in the industry for data transmissions, and shall ensure that all H&SSI is encrypted while in transmission between SCHIO's Hosted Environment and Participant's electronic health record or computer system or other device (as applicable) and at while at rest, using 128 bit SSL or greater encryption; (c) SCHIO shall provide and maintain the ability to transfer files via secure FTP, encrypted email, or HTTPS; and (d) SCHIO shall provide and maintain encrypted passwords for access to SCHIO systems.
- SCHIO shall perform commercially reasonable monitoring of the Services and all SCHIO equipment and software for security and performance.
- SCHIO shall develop and maintain procedures for the recovery of lost or altered H&SSI, and SCHIO shall correct, at Participant's request, any loss or unauthorized or inappropriate destruction or alteration of any H&SSI caused by the act or omission of SCHIO or any SCHIO Personnel.

2. SCHIO will perform daily an incremental backup of all H&SSI. SCHIO will perform a full backup (complete data copy) of all H&SSI at least once per week in accordance with industry standards.

3. SCHIO represents, warrants, and covenants that the System and Services will only be provided from secure locations within the United States of America. SCHIO shall ensure that any H&SSI possessed by it will not be accessed by anyone at a location outside the United States of America.

4. Audit Logging. SCHIO represents and warrants that the System and Services shall automatically record and log access to H&SSI by any person, through any portion of the system, and will upon reasonable notice, provide Participant with reports showing the following with respect to each such access:

- Date/time of patient record access
- Unique username of accessing person
- Name of accessing person and identifying initials (RN, MD, RT, etc.) associated with the username
- Specific data elements/fields accessed

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- Duration of access
- Patient name
- Patient MRN
- Patient DOB
- IP address used to access the record
- Record of any platform-based printing activity (e.g., excluding screen grabs).

In addition, SCHIO shall, upon reasonable notice, and upon Participant's request, promptly make available to Participant's personnel access to all of the foregoing audit logs and related information pertaining to access to or use of H&SSI.

5. Media Disposal. Unless otherwise instructed by Participant in writing, SCHIO shall dispose of all electronic media that stores information using shredding or other secure means in accordance with NIST 800-88 Standard to clear, purge and destroy any device that stores information on media, whether that media be hard disk, random access memory or other forms of memory. Upon Participant's reasonable request, SCHIO will provide Participant with a written report of all electronic media used in the provision of Services to Participant which has been disposed of in the previous twelve (12) months. Such reports will identify the media disposed of including serial number of the unit and media, if a serial number is available, the method of destruction, and the date the media were disposed of.

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**Exhibit E
Common Agreement
Required Flow Downs**

(*This Exhibit includes the Required Flow Downs of the Common Agreement)

Table:

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6. Cooperation and Non-Discrimination

6.1 Cooperation (**Required Flow-Down**). Signatory understands and acknowledges that numerous activities with respect to this Common Agreement will likely involve other QHINs and their respective Participants and Subparticipants, as well as employees, agents, third-party contractors, vendors, or consultants of each of them. To the extent not in violation of Applicable Law, Signatory shall, and shall also require that its Participants and their Subparticipants incorporate the following obligations into all Framework Agreements to which they are a party, if any:

- (i) Respond in a timely manner, as may be further provided in an SOP, to inquiries from the RCE or

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other QHINs about possible issues related to their exchange of information under the Common Agreement;

(ii) Participate collaboratively in discussions coordinated by the RCE to address differing interpretations of requirements in this Common Agreement, the QTF, or any SOP prior to pursuing the Dispute Resolution Process;

(iii) Make reasonable efforts to notify the RCE and other QHINs, as appropriate, when persistent and widespread connectivity failures are occurring with Signatory or its Participants or their Subparticipants, so that all those affected can investigate the problems and identify the root cause(s) of the connectivity failures;

(iv) Work cooperatively, including, without limitation, facilitating contact between other QHINs or their Participants or their Subparticipants and Signatory's Participants or their Subparticipants, to address the root cause(s) of persistent and widespread connectivity failures;

(v) Provide information (or require its Participants to provide information or to require their Subparticipants to do so) to other QHINs in support of collaborative efforts to resolve issues or Disputes, provided that such information is subject to Signatory's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information;

(vi) Provide information to aid the efforts of other QHINs or their respective Participants or Subparticipants to understand, contain, and mitigate a TEFCA Security Incident at the request of such other QHINs or their respective Participants or Subparticipants, provided that such information is subject to Signatory's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information; and

(vii) Subject to Signatory's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information, disclose to the RCE information that Signatory, or its Participants or their Subparticipants, may have that relates to the following:

(a) cybersecurity risk information sharing programs; or

(b) specific, identified security flaws in the operation of the QHIN or its Participants or their Subparticipants that may require the QHIN or its Participants or their Subparticipants to take specific steps to protect the security of their information technology systems and would not otherwise fall into subsection (a). In no case shall Signatory be required to disclose TI or other information in violation of Applicable Law. In seeking cooperation, Signatory shall make all reasonable efforts to accommodate the other QHIN's(') schedules and reasonable operational concerns. The costs of cooperation to Signatory shall be borne by Signatory and shall not be charged to the RCE or other QHINs. Nothing in this Section 6.1 shall modify or replace the TEFCA Security Incident notification obligations under Section 12.3 and, if applicable, Section 10.5.3 of this Common Agreement.

6.2 Non-Discrimination.

6.2.1 Prohibition Against Exclusivity (**Required Flow-Down**). Neither Signatory nor the RCE shall prohibit or attempt to prohibit any QHIN, Participant, or Subparticipant from joining, exchanging

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with, conducting other transactions with, or supporting any other networks or exchange frameworks, using services other than the Connectivity Services, concurrently with the QHIN's, Participant's, or Subparticipant's participation in exchange activities conducted under the Framework Agreements.

6.2.2 No Discriminatory Limits on Exchange of TI (**Required Flow-Down**). Signatory shall not impede the exchange of information as permitted or required under the applicable Framework Agreements or limit interoperability with any other QHIN, Participant, Subparticipant, or Individual in a discriminatory manner. As used in this Section 6.2.2, a "discriminatory manner" means action that is inconsistently taken or not taken with respect to any similarly situated QHIN, Participant, Subparticipant, Individual, or group of them, whether it is a competitor, or whether it is affiliated with or has a contractual relationship with any other entity, or in response to an event. Notwithstanding the foregoing, limitations, load balancing of network traffic, or other activities, protocols, or rules shall not be deemed discriminatory to the extent that they: (i) satisfy the requirements of the exception set forth in 45 CFR 171.205; and/or (ii) are based on a reasonable and good-faith belief that the other entity or group has not satisfied or will not be able to satisfy the applicable terms hereof (including compliance with Applicable Law) in any material respect, including, if applicable, any Required Flow-Down(s). One QHIN suspending its exchange activities with another QHIN in Accordance with Section 16.4.2 shall not be deemed discriminatory.

7. Confidentiality and Accountability

7.1 Confidential Information (**Required Flow-Down**). Signatory and RCE each agree to use all Confidential Information received pursuant to this Common Agreement only as authorized in this Common Agreement and any applicable SOP(s) and solely for the purposes of performing its obligations under this Common Agreement or the proper exchange of information under the Common Agreement and for no other purpose. Each Party may act as a Discloser and a Recipient, accordingly. A Recipient will disclose the Confidential Information it receives only to its employees, subcontractors, and agents who require such knowledge and use in the ordinary course and scope of their employment or retention and are obligated to protect the confidentiality of the Discloser's Confidential Information in a manner substantially equivalent to the terms required herein for the treatment of Confidential Information. Otherwise, a Recipient agrees not to disclose the Confidential Information received to anyone except as permitted under this Common Agreement.

8.2 Utilization of the RCE Directory Service (**Required Flow-Down**). The RCE Directory Service shall be used by Signatory and its Participants and their Subparticipants to create and maintain operational connectivity under the Common Agreement. The RCE is providing Signatory with access to, and the right to use, the RCE Directory Service on the express condition that Signatory only use and disclose information contained in the RCE Directory Service as necessary to advance the intended use of the RCE Directory Service or as required by Applicable Law. For example, Signatory is permitted to disclose information contained in the RCE Directory Service to the workforce members of its Participant's or Subparticipant's health information technology vendor who are engaged in assisting the Participant or Subparticipant with establishing and maintaining connectivity via this Common Agreement and other Framework Agreements. Further, Signatory shall not use the information contained in the RCE Directory Service for marketing or any form of promotion of its own products and services, unless such use or disclosure is primarily part of an effort by Signatory to expand, or otherwise improve, connectivity via the Common Agreement, and any promotion of Signatory's own products or services is only incidental to that primary purpose. In no event shall Signatory use or disclose the information contained in the RCE Directory Service in a manner that should be reasonably expected to have a detrimental effect on ONC, the RCE, other QHINs and/or their Participants or Subparticipants, or any other individual or organization. For the avoidance of doubt, information contained in the RCE Directory is Confidential Information except to the extent such information meets one of the exceptions to the definition of Confidential Information.

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9.2 Uses (Required Flow-Down). Signatory may Use TI in any manner that: (i) is not prohibited by Applicable Law; (ii) is consistent with Signatory's Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 11 and 12 of this Common Agreement, if applicable.

9.3 Disclosures (**Required Flow-Down**). Signatory may Disclose TI provided such Disclosure: (i) is not prohibited by Applicable Law; (ii) is consistent with Signatory's Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 11 and 12 of this Common Agreement, if applicable.

9.4 Responses (**Required Flow-Downs**). Signatory must support all Exchange Purposes and must Respond to all Exchange Purposes that are identified as "required" in the Exchange Purposes SOP. Signatory must provide all Required Information that is relevant for a required Exchange Purpose, as may be further specified in an implementation SOP for the applicable Exchange Purpose, in Response to a Request 32 transmitted via QHIN-to-QHIN exchange, unless providing the Required Information is prohibited by Applicable Law or this Common Agreement or if not providing the Required Information is consistent with all Applicable Law and this Common Agreement.

9.4.1 Exceptions to Required Responses. Notwithstanding the foregoing, Signatory is **permitted but not required** to Respond to a Request transmitted via QHIN- to-QHIN exchange in the circumstances set forth in 9.4.1(i)-(vi) below, provided the Response: (a) is not prohibited by Applicable Law; (b) is consistent with Signatory's Privacy and Security Notice, if applicable; and (c) is in accordance with this Common Agreement.

- (i) If Signatory is a Public Health Authority;
- (ii) If Signatory utilizes the Government Benefits Determination Exchange Purpose, including such an agency's agent(s)/contractor(s);
- (iii) If the reason asserted for the Request is Individual Access Services and the information would not be required to be provided to an Individual pursuant to 45 CFR § 164.524(a)(2), regardless of whether Signatory is a NHE, a Covered Entity, or a Business Associate;
- (iv) If the Requested information is not Required Information, provided such response would not otherwise violate the terms of this Common Agreement;
- (v) If Signatory is a federal agency, to the extent that the Requested Disclosure of Required Information is not permitted under Applicable Law (e.g., it is Controlled Unclassified Information as defined at 32 CFR Part 2002, and the party requesting it does not comply with the applicable policies and controls that the federal agency adopted to satisfy its requirements); or

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- (vi) If the Exchange Purpose is authorized but not required at the time of the Request, either under this Common Agreement or the Exchange Purposes SOP.

9.5 Special Legal Requirements (**Required Flow-Down**). If and to the extent Applicable Law requires that an Individual either consent to, approve, or provide an authorization for the Use or Disclosure of that Individual's information to Signatory, such as a more stringent state law relating to sensitive health information, then Signatory shall refrain from the Use or Disclosure of such information in connection with this Common Agreement unless such Individual's consent, approval, or authorization has been obtained consistent with the requirements of Applicable Law and Section 11 of this Common Agreement, including without limitation communicated pursuant to the process described in the QTF. Copies of such consent, approval, or authorization shall be maintained and transmitted pursuant to the process described in the QTF by whichever party is required to obtain it under Applicable Law, and Signatory may make such copies of the consent, approval, or authorization available electronically to any QHIN, Participant, or Subparticipant in accordance with the QTF and to the extent permitted by Applicable Law. Signatory shall maintain written policies and procedures to allow an Individual to revoke such consent, approval, or authorization on a prospective basis. If Signatory is an IAS Provider, the foregoing shall not be interpreted to modify, replace, or diminish the requirements set forth in Section 10 of this Common Agreement for obtaining an Individual's express written consent.

10. Individual Access Services (**Required Flow-Downs, if Offering Individual Access Services**) Nothing in the Privacy and Security Notice or in the Individual's written consent collected by Signatory who is an IAS Provider pursuant to Section 10.2 and Section 10.3 may contradict or be inconsistent with any applicable provision of Sections 10 or 11.

10.1 Individual Access Services (IAS) Offering(s) (Required Flow-Down). Signatory may elect to offer Individual Access Services to any Individual in accordance with the requirements of this section and in accordance with all other provisions of this Common Agreement. Nothing in this Section 10 shall modify, terminate, or in any way affect an Individual's right of access under the HIPAA Privacy Rule at 45 CFR 164.524 with respect to any QHIN, Participant, or Subparticipant that is a Covered Entity or a Business Associate. Nothing in this Section 10 of this Common Agreement shall be construed as an exception or excuse for any conduct by the Signatory that meets the definition of information blocking in 45 CFR 171.103.

10.2 Individual Consent (**Required Flow-Down**). The Individual requesting Individual Access Services shall be responsible for completing Signatory's own supplied form for obtaining Individual express consent in connection with the Individual Access Services, as set forth below. Signatory may implement secure electronic means (e.g., secure e-mail, secure web portal) by which an Individual may submit such written consent.

10.3 Written Privacy and Security Notice and Individual Consent (**Required Flow-Downs**).

10.3.1 If Signatory offers Individual Access Services, it must develop and make publicly available a written privacy and security notice (the "Privacy and Security Notice"). The Privacy and Security Notice must:

- (i) Be publicly accessible and kept current at all times, including updated versions;
- (ii) Be shared with an Individual prior to the Individual's use/receipt of services from Signatory;

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(iii) Be written in plain language and in a manner calculated to inform the Individual of such privacy practices;

(iv) Include a statement regarding whether and how the Individual's TI may be accessed, exchanged, Used, and/or Disclosed by Signatory or by other persons or entities to whom/which Signatory Discloses or provides access to the information, including whether the Individual's TI may be sold at any time (including the future);

(v) Include a statement that Signatory is required to act in conformance with the Privacy and Security Notice and must protect the security of the information it holds in accordance with Section 10 of this Common Agreement;

(vi) Include information regarding whom the Individual may contact within Signatory for further information regarding the Privacy and Security Notice and/or with privacy-related complaints;

(vii) Include a requirement by Signatory to obtain express written consent to the terms of the Privacy and Security Notice from the Individual prior to the access, exchange, Use, or Disclosure (including sale) of the Individual's TI, other than Disclosures that are required by Applicable Law;

(viii) Include information on how the Individual may revoke consent;

(ix) Include an explanation of the Individual's rights, including, at a minimum, the rights set forth in Section 10.4, below;

(x) Include a disclosure of any applicable fees or costs related to IAS including the exercise of rights under Section 10.4 of this Common Agreement; and

(xi) Include an effective date. The implementation of such Privacy and Security Notice requirements shall be set forth in the IAS SOP. If Signatory is a Covered Entity, then a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520 and meets the requirement of 10.3.1(iv) above can satisfy the Privacy and Security Notice requirements. Nothing in this Section 10.3 reduces a Covered Entity's obligations under the HIPAA Rules.

10.3.2 If Signatory is an IAS Provider, it must collect the Individual's written consent as required under Section 10.3.1(vii) of this Common Agreement at the outset of the Individual's first use of the Individual Access Services and with any material change in the applicable Privacy and Security Notice.

10.4 Individual Rights (**Required Flow-Down**). Individuals have, and must be clearly informed of, the following rights:

(i) The right to require that all of their Individually Identifiable information maintained by Signatory as an IAS Provider be deleted unless such deletion is prohibited by Applicable Law; provided, however, that the foregoing shall not apply to Individually Identifiable information contained in audit logs.

(ii) The right to an export of their Individually Identifiable information in a computable format, including the means to interpret such information.

The rights described in this Section 10.4 shall control over any inconsistent provisions in Section 11.

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10.5 Additional Security Requirements for IAS Providers (**Required Flow-Downs**). In addition to meeting the applicable security requirements set forth in Section 12, if Signatory is an IAS Provider it must further satisfy the requirements of this Subsection.

10.5.1 Scope of Security Requirements. If Signatory is an IAS Provider it must comply with the applicable security requirements set forth in this Common Agreement and the security SOPs for all Individually Identifiable information they hold, regardless of whether such information is TI.

10.5.2 Encryption. If Signatory is an IAS Provider it is required to encrypt all Individually Identifiable information held by Signatory, both in transit and at rest, regardless of whether such data are TI.

10.5.3 TEFCA Security Incident Notice to Affected Individuals. Each Signatory that is an IAS Provider must notify each Individual whose TI has been or is reasonably believed to have been affected by a TEFCA Security Incident involving the IAS Provider. Such notification must be made without unreasonable delay and in no case later than sixty (60) days following Discovery of the TEFCA Security Incident. The notification required under this section must be written in plain language and shall include, to the extent possible:

(i) A brief description of what happened, including the date of the TEFCA Security Incident and the date of its Discovery, if known;

(ii) A description of the type(s) of Unsecured TI involved in the TEFCA Security Incident (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(iii) Any steps Individuals should take to protect themselves from potential harm resulting from the TEFCA Security Incident;

(iv) A brief description of what the Signatory involved is doing to investigate the TEFCA Security Incident, to mitigate harm to Individuals, and to protect against any further TEFCA Security Incidents; and

(v) Contact procedures for Individuals to ask questions or learn additional information related to the TEFCA Security Incident, which shall include a telephone number (toll-free), e-mail address, and website with contact information and/or a contact form for the IAS Provider. To the extent Signatory is already required by Applicable Law to notify an Individual of an incident that would also be a TEFCA Security Incident, this section does not require duplicative notification to that Individual.

10.6 Survival for IAS Providers (**Required Flow-Down**). The following minimum provisions and their respective minimum time periods shall continue to apply to Signatory to the extent that it is an IAS Provider and survive expiration or termination of the applicable Framework Agreement under which Individual Access Services were provided for the time periods and to the extent described below.

10.6.1 The following Section 10 provisions shall survive the expiration or termination of the applicable Framework Agreement until expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under Subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual for whom Individual Access Services were provided, even if the information to which the provisions apply is not ePHI:

(i) The terms of the consent under Section 10.2, Individual Consent, and the terms of the Privacy

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and Security Notice under Section 10.3.1, which sets forth requirements that apply to the Privacy and Security Notice;

(ii) Section 10.3.2, which requires Signatory to collect the Individual's written consent with respect to any material change in the applicable Privacy and Security Notice;

(iii) Section 10.4, Individual Rights; and

(iv) Section 10.5, Additional Security Requirements for IAS Providers. 10.6.2 Section 10.5.3, TEFCA Security Incident Notice to Affected Individuals, shall survive for a period of six (6) years following the expiration or termination of the applicable Framework Agreement.

10.7 Provisions that Apply to Subcontractors and Agents of IAS Providers (Required Flow- Down). To the extent that Signatory is an IAS Provider and uses subcontractors or agents with respect to the provision of such Individual Access Services, it shall include in a written agreement with each such subcontractor or agent a requirement to comply with the following:

(i) To act in accordance with each of the applicable consents required of Signatory under Section 10.2;

(ii) To act in accordance with each of Signatory's applicable Written Privacy and Security Notices pursuant to Section 10.3;

(iii) To act in accordance with Section 10.4 when directed to do so by Signatory;

(iv) With respect to the information for which the subcontractor or agent provides services to Signatory in its role as an IAS Provider, the agent or subcontractor shall implement the applicable security requirements set forth in this Common Agreement (other than Sections 12.1.5, 12.1.6 and 12.3) and the security SOPs for all such Individually Identifiable information, regardless of whether such information is TI, to the same extent as they apply to Signatory; provided, however, that for purposes of the Flow-Down Provisions of this Section 10.7, if the IAS Provider is a Participant or Subparticipant, only Sections 12.1.4 and 12.2 shall apply;

(v) To encrypt all Individually Identifiable information both in transit and at rest, regardless of whether such data are TI pursuant to Section 10.5.2; and

(vi) To notify Signatory that is an IAS Provider for which it provides services with respect to each Individual whose TI has been or is reasonably believed to have been affected by a TEFCA Security Incident involving the subcontractor or agent in the manner and within the timeframe specified pursuant to Section 10.5.3. Each agreement between Signatory and a subcontractor or agent with respect to the provision of Individual Access Services shall also provide that subsections (i) through

(v) above shall continue in effect after termination or expiration of such agreement at least until expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual to whom the information relates. Each such agreement shall also provide that subsection (vi) above shall survive for at least six (6) years following the termination or expiration of such agreement.

11. Privacy

11.1 Compliance with the HIPAA Privacy Rule (**Required Flow-Down**). If Signatory is a NHE (but not to the extent that it is acting as an entity entitled to make a Government Benefits Determination under Applicable Law, a Public Health Authority, or a Government Health Care Entity), then it shall comply

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with the provisions of the HIPAA Privacy Rule listed below with respect to all Individually Identifiable information that Signatory reasonably believes is TI as if such information is Protected Health Information and Signatory is a Covered Entity. Such compliance shall be consistent with Section 13.2 (Compliance with Specific Obligations) and enforced as part of its obligations pursuant to this Common Agreement.

11.1.1 From 45 CFR § 164.502, General Rules **(Required Flow-Down):**

- Subsection (a)(1) – Dealing with permitted Uses and Disclosures, but only to the extent Signatory is authorized to engage in the activities described in this subsection of the HIPAA Privacy Rule for the applicable Exchange Purpose.
- Subsection (a)(2)(i) – Requiring Disclosures to Individuals
- Subsection (a)(3) – Business Associates
- Subsection (a)(5) – Dealing with prohibited Uses and Disclosures
- Subsection (b) – Dealing with the Minimum Necessary standard
- Subsection (c) – Dealing with agreed-upon restrictions
- Subsection (d) – Dealing with deidentification and re-identification of information
- Subsection (e) – Dealing with Business Associate contracts
- Subsection (f) – Dealing with deceased persons' information
- Subsection (g) – Dealing with personal representatives
- Subsection (h) – Dealing with confidential communications
- Subsection (i) – Dealing with Uses and Disclosures consistent with notice
- Subsection (j) – Dealing with Disclosures by whistleblowers

11.1.2 45 CFR § 164.504, Organizational Requirements **(Required Flow-Down).**

11.1.3 45 CFR § 164.508, Authorization Required **(Required Flow-Down).** Notwithstanding the foregoing, the provisions of Sections 10.2 and 10.3 shall control and this Section 11.1.3 shall not apply with respect to an IAS Provider that is a NHE.

11.1.4 45 CFR § 164.510, Uses and Disclosures Requiring Opportunity to Agree or Object **(Required Flow-Down).** Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.510(3) - Emergency circumstances; provided, however, that an IAS Provider is not prohibited from making such a Disclosure if the Individual has consented to the Disclosure pursuant to Section 10 of this Common Agreement.

11.1.5 45 CFR § 164.512, Authorization or Opportunity to Object Not Required **(Required Flow-Down).** Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.512(c) - Standard: Disclosures about victims of abuse, neglect or domestic violence; § 164.512 Subsection (d) - Standard: Uses and disclosures for health oversight activities; and § 164.512 Subsection (j) - Standard: Uses and disclosures to avert a serious threat to health or safety; provided, however, that an IAS Provider is not prohibited from making such a Disclosure(s) if the Individual has consented to the Disclosure(s) pursuant to Section 10 of this Common Agreement.

11.1.6 From 45 CFR § 164.514, Other Requirements Relating to Uses and Disclosures **(Required Flow-Down):**

- Subsections (a)-(c) – Dealing with de-identification requirements that render information not Individually Identifiable for purposes of this Section 11 and TEFCA Security Incidents
- Subsection (d) – Dealing with Minimum Necessary requirements
- Subsection (e) – Dealing with Limited Data Sets

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11.1.7 45 CFR § 164.522, Rights to Request Privacy Protections **(Required Flow- Down)**.

11.1.8 45 CFR § 164.524, Access of Individuals **(Required Flow-Down)**, except that an IAS Provider that is a NHE shall be subject to the requirements of Section 10 with respect to access by Individuals for purposes of Individual Access Services and not this Section 11.1.8.

11.1.9 45 CFR § 164.528, Accounting of Disclosures **(Required Flow-Down)**.

11.1.10 From 45 CFR § 164.530, Administrative Requirements **(Required Flow- Down)**:

- Subsection (a) – Dealing with personnel designations
- Subsection (b) – Dealing with training
- Subsection (c) – Dealing with safeguards
- Subsection (d) – Dealing with complaints
- Subsection (e) – Dealing with sanctions
- Subsection (f) – Dealing with mitigation
- Subsection (g) – Dealing with refraining from intimidating or retaliatory acts
- Subsection (h) – Dealing with waiver of rights
- Subsection (i) – Dealing with policies and procedures
- Subsection (j) – Dealing with documentation

11.2 Written Privacy Policy **(Required Flow-Down)**. Signatory must develop, implement, make publicly available, and act in accordance with a written privacy policy describing its privacy practices with respect to Individually Identifiable information that is Used or Disclosed pursuant to this Common Agreement. Signatory can satisfy the written privacy policy requirement by including applicable content consistent with the HIPAA Rules into its existing privacy policy, except as otherwise stated herein with respect to IAS Providers. This written privacy policy requirement does not supplant the HIPAA Privacy Rule obligations of a QHIN, Participant, or a Subparticipant that is a Covered Entity to post and distribute a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520. If Signatory is a Covered Entity, then this written privacy practices requirement can be satisfied by its Notice of Privacy Practices. If Signatory is an IAS Provider, then the written privacy practices requirement must be in the form of a Privacy and Security Notice that meets the requirements of Section 10.3 of this Common Agreement. QTF and applicable SOPs, to the extent that such requirements are not already included in the HIPAA Security Rule, with respect to all Individually Identifiable information that is TI as if such information were Protected Health Information and Signatory were a Covered Entity or Business Associate. Notwithstanding anything else in this Section 12, none of these requirements shall apply to any federal agency or Public Health Authority.

12.1.4 Participants and Subparticipants **(Required Flow-Down)**. Signatory shall require in its Participant-QHIN Agreements that its Participants implement and maintain, and require their Subparticipants to implement and maintain, appropriate security controls for TI that are commensurate with risks to the confidentiality, integrity, and/or availability of the TI. If any Participant or Subparticipant is a NHE, it shall be required to comply with the HIPAA Security Rule provisions with respect to all Individually Identifiable information that the Participant or Subparticipant reasonably believes is TI as if such information were Protected Health Information and the Participant or Subparticipant were a Covered Entity or Business Associate. Signatory shall further require that its Participants implement and maintain, and that its Participants require their Subparticipants to implement and maintain, any additional security requirements that may be set forth in an SOP applicable to Participants and Subparticipants. Such compliance shall be enforced as part of the Participants' and Subparticipants' obligations pursuant to the

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Framework Agreements.

12.2 TI Outside the United States (**Required Flow-Down**). Signatory shall not Use TI outside the United States or Disclose TI to any person or entity outside the United States except to the extent such Use or Disclosure is permitted or required by Applicable Law and except to the extent the Use or Disclosure is conducted in conformance with the HIPAA Security Rule, regardless of whether Signatory is a Covered Entity or Business Associate. Signatory shall evaluate the risks of any extraterritorial Uses and/or Disclosures of TI, if applicable, as part of an annual security assessment and prior to any new or substantially different type of non-U.S. Use(s) or Disclosure(s). Such security assessment shall include a risk assessment to evaluate whether the Uses or Disclosures of Individually Identifiable information that is reasonably believed to be TI by or to persons or entities outside the United States satisfies the requirements of the HIPAA Security Rule. The foregoing does not modify or eliminate any provision of Applicable Law that does not permit a Signatory 44 to Disclose Individually Identifiable information to a person or entity outside the United States or that imposes conditions or limitations on such Disclosure.

13. General Obligations

13.1 Compliance with Applicable Law and the Framework Agreements (**Required Flow-Down**). Signatory shall comply with all Applicable Law and shall implement and act in accordance with any provision required by this Common Agreement, including all applicable SOPs and provisions of the QTF.

13.2.2 Responsibility of Signatory (**Required Flow-Down**). Signatory shall be responsible for taking reasonable steps to confirm that all of its Participants are abiding by the Required Flow-Downs and all applicable SOPs. In the event that Signatory becomes aware of a material non-compliance by one of its Participants, then Signatory shall promptly notify the Participant in writing. Such notice shall inform the Participant that its failure to correct any such deficiencies within the timeframe established by Signatory shall constitute a material breach of the Participant-QHIN Agreement, which may result in early termination of said agreement.

13.3 Flow-Down Rights to Suspend (Required Flow-Downs).

13.3.1 Suspension Rights Granted to RCE. Each Participant-QHIN Agreement, Participant-Subparticipant Agreement, and Downstream Subparticipant Agreement shall include a grant of authority to the RCE to suspend each party's right to engage in any QHIN-to-QHIN exchange activities if: (i) there is an alleged violation of such agreement or of Applicable Law by the party/parties; (ii) there is a cognizable threat to the security of the information that the RCE reasonably believes is TI transmitted pursuant to such agreement or to the infrastructure of the QHIN; or (iii) such suspension is in the interests of national security as directed by an agency of the United States government.

13.4 Survival for Participants and Subparticipants (**Required Flow-Downs**). The following are the minimum survival provisions and respective minimum time periods that shall be included in each of the Framework Agreements other than this Common Agreement. Signatory shall include at least the following survival provisions in all of its Participant-QHIN Agreements and shall require its Participants to include the following minimum survival provisions and minimum survival time periods in all their Participant-Subparticipant Agreements as Required Flow-Downs so that such provisions will also be included as minimum survival provisions and minimum survival time periods in all Downstream Subparticipant Agreements.

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13.4.1 Section 7.1, Confidential Information, shall survive for a period of six (6) years following the expiration or termination of the applicable Framework Agreement.

13.4.2 Section 10.6, Survival for IAS Providers, to the extent that the Participant or Subparticipant is an IAS Provider, shall survive following the expiration or termination of the applicable Framework Agreement for the respective time periods set forth in Section 10.6.

13.4.3 Section 11, Privacy, to the extent that the Participant or Subparticipant is subject to Section 11, said Section shall survive the expiration or termination of the applicable Framework Agreement until the expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under Subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual to whom the information covered by Section 11 relates.

13.4.4 Section 12.1.4, Participants and Subparticipants, to the extent that the Participant or Subparticipant is subject to Section 12.1.4, said Section shall survive the expiration or termination of the applicable Framework Agreement until the expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under Subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual to whom the information covered by Section 12.1.4 relates.

13.4.5 The requirements of Section 12.3.2, Vertical Reporting of TEFCA Security Incident(s), shall survive for a period of six (6) years following the expiration or termination of the applicable Framework Agreement.

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Exhibit F

Onboarding Scope of Work

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Onboarding will be covered under separate project
plan*