

Participation Agreement

HEALTHIE NEVADA ELECTRONIC HEALTH INFORMATION EXCHANGE PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (“Agreement”) is made and entered into as of the Effective Date set forth on the signature page hereof (“Effective Date”), by and between **HealthIE Nevada**, a Nevada nonprofit corporation (“HealthIE Nevada”), and _____ (“Participant”), with reference to the following facts:

- A. HealthIE Nevada is organized and operated for the purpose of facilitating the secure and appropriate sharing of electronic health records and clinical data among health care providers and other participants in Nevada for treatment, payment, health care operations, public health and research-related purposes, in an atmosphere of transparency and mutual trust.
- B. HealthIE Nevada may in the future participate in other state, regional and national electronic health information exchanges.
- C. The Participant wishes to participate in the electronic health information exchange facilitated by HealthIE Nevada, in accordance with the terms and conditions of this Agreement.

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

1. Definitions. The meanings of all terms used in this Agreement shall be consistent with the defined terms set forth in this Section 1 or elsewhere in this Agreement.

“Authorized User” means an individual, i.e., a natural person, who is authorized by a Participant to use the Services on behalf of that Participant, including without limitation, an employee or contractor of the Participant and/or a credentialed member of the Participant’s medical staff. If the Participant is an individual, e.g., a physician, then that individual is both a Participant and an Authorized User.

“Data Provider” means a Participant that provides information electronically for use through HealthIE Nevada Services.

“Data Recipient” means a Participant that uses the Services to obtain health information electronically. A Data Recipient must be a “covered entity” as defined in the HIPAA Privacy Rule.

“Disclosing Party” is defined in Section 12.3.

“Effective Date” means the start of this Participation Agreement as defined on the signature page

“Fee Schedule” means the then-current Fee Schedule adopted by HealthIE Nevada.



“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 CFR Parts 160 and 164, as amended by the American Recovery and Reinvestment Act, Public Law 111-5. The “HIPAA Privacy Rule” is located at 45 CFR Part 160 and Subparts A and E of Part 164.

“Miscellaneous Charges” are defined in Section 11.2.

“Participant” means a party that has entered into a Participation Agreement with HealthIE Nevada to act as a Data Provider and/or as a Data Recipient and/or as a Financial Contributor.

“Participant’s Required Hardware and Software” is defined in Section 9.3.

“Participant’s Shared Information” with respect to a particular Participant means the Patient Data provided to the System by that Participant.

“Participation Agreement” means a legally binding written agreement pursuant to which a Participant has agreed to act as a Data Provider and/or as a Data Recipient in accordance with terms and conditions that are not inconsistent with the terms and conditions of this Agreement. This Agreement is a Participation Agreement.

“Patient Data” means electronic health, demographic and related information provided by a Data Provider to Data Recipients pursuant to Section 6.2 (Provision of Data).

“Policies and Procedures” means those policies and procedures adopted by HealthIE Nevada to describe in detail the Services and the System and the terms and conditions pursuant to which they shall be operated.

“Proprietary Information” is defined in Section 12.1.

“Serious Breach of Confidentiality or Security” means an event or occurrence that (1) adversely affects (a) the viability of the System or the Services, (b) HealthIE Nevada’s program of electronic health information exchange, (c) the trust among Participants, (d) HealthIE Nevada’s or other Participants’ legal liability, and/or (2) gives rise to a reporting obligation on the part of Participant, HealthIE Nevada or any other person or entity, under applicable state or federal law.

A Serious Breach of Confidentiality or Security includes (1) the acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of the protected health information by posing a significant risk of financial, reputational, or other harm to the individual and (2) an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of Protected Health Information such that the use or disclosure poses a significant risk of financial, reputational, or other harm to the affected individual. None of the following are a “breach”: (i) The unintentional acquisition, access, or use of Protected Health Information by a workforce member acting under the authority of a



Covered Entity or Business Associate, (ii) the inadvertent disclosure of Protected Health

Information from a person authorized to access Protected Health Information at a Covered Entity or Business Associate to another person authorized to access Protected Health

Information at the Covered Entity or Business Associate, and (iii) if the Covered Entity or Business Associate has a good faith belief that the unauthorized individual, to whom the impermissible disclosure was made, would not have been able to retain the information.

“Services” means the HealthIE Nevada electronic health information delivery and aggregation services and/or software.

“Service Agreement” means the agreement of fees and services in Attachment 2.

“System” means HealthIE Nevada’s electronic health information exchange Infrastructure supplied by Optum Insight.

The terms “Protected Health Information”, “Covered Entity” and “Business Associate” shall have the meanings set forth in Privacy Rule, located at 45 CFR Part 160 and Subparts A and E of Part 164.

2. Amendments to Agreement and Policies and Procedures.

2.1 Amendments Required by Law. HealthIE Nevada may amend, or repeal and replace, this Agreement or the Policies and Procedures upon notice to the Participant at any time that HealthIE Nevada determines that such change is required to comply with applicable laws and regulations.

2.2 Other Amendments. HealthIE Nevada may amend, or repeal and replace, this Agreement or the Policies and Procedures at any time that HealthIE Nevada determines it is desirable to do so; provided, that HealthIE Nevada shall notify the Participant of any material changes to this Agreement or the Policies and Procedures at least forty five (45) days prior to the implementation of the change.

2.3 Termination Based on Objection to Change. If a change to this Agreement or the Policies and Procedures, other than a change made pursuant to Section 2.1 (Amendments Required by Law) affects a material right or obligation of the Participant, and the Participant objects to that change, the Participant may terminate this Agreement by giving HealthIE Nevada written notice within fifteen (15) days following HealthIE Nevada’s notice of the change. Such termination of this Agreement shall be effective as of the effective date of the change to which the Participant objects; provided, however, that following receipt of the Participant’s notice of its objection to the change, HealthIE Nevada may decide in its discretion to refrain from implementing the change to which the Participant has objected, in which event this Agreement shall not be terminated and shall continue in force and effect.



3. Term and Termination.

3.1 Term. The term of this Agreement (the “Term”) shall commence on the Effective Date, and shall continue through and until the termination of this Agreement pursuant to this Section 3 (Term and Termination).

3.2 Termination Upon Cessation of Business. HealthIE Nevada may terminate this Agreement by notice to the Participant at any time that HealthIE Nevada ceases to provide the Services.

3.3 Termination Upon Anniversary. Either HealthIE Nevada or the Participant may terminate this Agreement at any time without cause effective as of the next anniversary of the Effective Date, by giving not less than forty five (45) days prior notice to the other.

3.4 Termination Upon Material Breach. Either HealthIE Nevada or the Participant (the “Terminating Party”) may terminate this Agreement upon the failure of the other party (the “Breaching Party”) to perform a material responsibility arising out of this Agreement, and that failure continues uncured for a period of thirty (30) days after the Terminating Party has given the Breaching Party notice of that failure and requested that the Breaching Party cure that failure. Without limiting the generality of the foregoing, either party may terminate this Agreement upon a failure by the other party to correct a Serious Breach of Confidentiality or Security within ten (10) business days following notice thereof from the other.

3.5 Effect of Termination. Upon any termination of this Agreement, the Participant shall cease to be a Participant in HealthIE Nevada’s health information exchange and thereupon and thereafter neither the Participant nor its Authorized Users shall have any rights to use the System or the Services. Certain provisions of this Agreement shall continue to apply to the former Participant and its Authorized Users following that termination, as described in Section 3.6 (Survival of Provisions).

3.6 Survival of Provisions. The following provisions of this Agreement shall survive any termination hereof: Section 4.4 (Responsibility for Conduct of Participant and Authorized Users), Section 8 (Protected Health Information), Section 12 (Proprietary Information), Section 13.8 (Limitation on Liability) and Section 14.2 (Indemnification).

4. Authorized Users.

4.1 Identification of Authorized Users. The Participant shall provide HealthIE Nevada with a list identifying all that Participant’s Authorized Users, in accordance with the requirements described in the Policies and Procedures. The Participant shall restrict access to the System and, if applicable, use of the Services, only to the Authorized Users that the Participant has so identified to HealthIE Nevada. The Participant shall inform HealthIE Nevada in writing within two (2) business days whenever an Authorized User is added or removed.



4.2 Certification of Authorized Users. The Participant shall certify to HealthIE Nevada that each of the Participant's Authorized Users:

- a) Has completed a training program conducted by the Participant as described in the Policies and Procedures;
- b) Will be permitted by the Participant to use the Services and the System only as reasonably necessary for the performance of the Participant's activities as described in the Policies and Procedures;
- c) Has agreed not to disclose to any other person any passwords and/or other security measures issued to the Authorized User pursuant to Section 4.3 (Passwords and Other Security Mechanisms); and
- d) Has acknowledged in writing that the Authorized User's failure to comply with this Agreement and the Policies and Procedures may result in the withdrawal of privileges to use the Services and the System.

4.3 Passwords and Other Security Mechanisms. HealthIE Nevada shall issue a user name and password and/or other security measures, as described in the Policies and Procedures, to each Authorized User that shall permit the Authorized User to access the System and use the Services. HealthIE Nevada shall provide each such user name and password and/or other security measures to the Participant and the Participant shall be responsible to communicate that information to the appropriate Authorized User. When the Participant informs HealthIE Nevada of the removal of any Authorized User, HealthIE Nevada shall deactivate the user name and password and/or other security measures of such individual as defined in Policies and Procedures.

4.4 Responsibility for Conduct of Participant and Authorized Users. The Participant shall be solely responsible for all acts and omissions of the Participant and/or the Participant's Authorized Users, and all other individuals who access the System and/or use the Services either through that Participant's facilities or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from that Participant or any of that Participant's Authorized Users, with respect to the System, the Services and/or any confidential and/or other information accessed in connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of that Participant.

4.5 Termination of Authorized Users. The Participant shall require that all of its Authorized Users use the System and the Services only in accordance with this Agreement and the Policies and Procedures, including without limitation the provisions thereof governing the confidentiality, privacy and security of Protected Health Information. The Participant shall discipline appropriately any of its Authorized Users who fail to act in accordance with this Agreement or the Policies and Procedures in accordance with that Participant's disciplinary policies and procedures.



4.6 Use of Information. Participant will ensure that Authorized Users use any information, electronic health records and/or data obtained in whole or in part through access provided by this Agreement be used only for treatment, care, well-being, billing or payment of a patient unless otherwise authorized in writing by HealthIE Nevada.

5. Data Recipient's Rights and Obligations. If the Participant is registered with HealthIE Nevada to act as a Data Recipient, the terms of this Section 5 (Data Recipient's Rights and Obligations) shall apply.

5.1 Grant of Rights. A Data Recipient may use the System and the Services for the permitted uses described in Section 5.2 (Permitted Uses), subject to the Data Recipient's full compliance with this Agreement and the Policies and Procedures. HealthIE Nevada retains all ownership and other rights to the System, the Services and all the components thereof. A Data Recipient shall not obtain any rights to the System except for the limited rights to use the System expressly granted by this Agreement.

5.2 Permitted Uses. A Data Recipient may use the System and the Services for which that Data Recipient has registered only for the permitted purposes described in the Policies and Procedures.

5.3 Prohibited Uses. A Data Recipient shall not use or permit the use of the System or the Services for any prohibited use described in the Policies and Procedures. Without limiting the foregoing, a Data Recipient shall not use the System or the Services for any purpose or in any manner that is prohibited by applicable federal and state laws and regulations. Participant may not use any information, electronic health records and/or data obtained in whole or in part through access provided by this Agreement for purposes of marketing. It is understood and agreed by Participant that the permitted uses of the information, electronic health records and/or data obtained in whole or in part through access provided by this Agreement are limited to treatment, care, well-being, billing or payment of a patient. Use of information, electronic health records and/or data obtained in whole or in part through access provided by this Agreement, for reasons other than those authorized under this Agreement, are strictly prohibited.

5.4 Warranty and Representation. By this Agreement and upon each use of the System, each Data Recipient warrants and represents to each Data Provider that (1) the Data Recipient is a Covered Entity under the HIPAA Privacy Rule and (ii) any access by the Data Recipient, its Authorized Users and/or members of its workforce shall be in compliance with the Privacy Rule, including but not limited to the "minimum necessary" requirement. Each Data Recipient acknowledges and understands that each Data Provider has entered into this Agreement in reliance on this warranty and representation by each Data Recipient.



6. Data Provider's Rights and Obligations.

6.1 Grant of Rights. A Data Provider may use the System for the purposes of complying with the obligations described in this Section 6 (Data Provider's Rights and Obligations), subject to the Data Provider's full compliance with this Agreement and the Policies and Procedures. HealthIE Nevada retains all ownership and other rights to the System, the Services and all the components thereof. A Data Provider shall not obtain any rights to the System except for the limited rights to use the System expressly granted by this Agreement.

6.2 Provision of Data. A Data Provider shall provide, through the HIE System, Patient Data that the Data Provider has agreed to provide to HealthIE Nevada. Without limiting Section 9.1 (Compliance with Laws and Regulations), a Data Provider shall not use the system to make any disclosure of Patient Data through the System that is unauthorized or unlawful.

6.3 Accuracy of Data. A Data Provider shall, use reasonable and appropriate efforts to assure that all Patient Data it provides to the System is accurate, free from serious error, reasonably complete, and provided in a timely manner. A Data Provider agrees to abide by any policies and procedures adopted by HealthIE Nevada regarding the accuracy of Patient Data.

6.4 License. Subject to Section 6.5 (Limitations on Use of Patient Data), a Data Provider grants to HealthIE Nevada and its subcontractors a perpetual, fully-paid, worldwide, non-exclusive, royalty-free right and license (i) to license and/or otherwise permit others to access through the System and use all Patient Data provided by the Data Provider in accordance with the terms and conditions of this Agreement and the Policies and Procedures, and (ii) to use such Patient Data to carry out HealthIE Nevada's duties under Participation Agreements and the Policies and Procedures, including without limitation system administration, testing, problem identification and resolution, management of the System, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as HealthIE Nevada determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations. Subject to the foregoing, a Data Provider retains all other ownership rights it has to the Patient Data it provides pursuant to this Agreement.

6.5 Limitations on Use of Patient Data. Notwithstanding Section 6.4 (License), Patient Data provided by a Data Provider shall not be used by HealthIE Nevada for any purpose that is prohibited by applicable laws and regulations, this Agreement and/or HealthIE Nevada Policies and Procedures.

7. Other Licenses.

7.1 Third-Party Software. The System includes certain third-party software and services, which may require that Participant enter into separate subscription or licensing agreements with third party vendors, or which may be open-source, as a condition of Participant's use of the System. If



Participant elects not to execute agreements with such third-party vendors or determines it is unable to comply with the terms of any license or other agreement held by HealthHIE Nevada, Participant may elect to terminate this Agreement.

8. Protected Health Information.

8.1 Compliance with Policies and Procedures. HealthHIE Nevada and the Participant shall comply with the standards for the confidentiality, security, and use of patient health information, including without limitation Protected Health Information described in HIPAA, as provided in the Policies and Procedures. The Participant shall comply with such standards regardless of whether or not the Participant is a “Covered Entity” under HIPAA.

8.2 Legal Requirements. Without limiting Section 8.1 (Compliance with Policies and Procedures), HealthHIE Nevada and the Participant shall comply with the requirements for the privacy, security, and use of patient health information imposed under HIPAA, HITECH and under the laws of the State of Nevada.

8.3 Reporting of Serious Breach of Confidentiality or Security. HealthHIE Nevada and the Participant shall report to the other any Serious Breach of Confidentiality or Security.

Participant shall report a Serious Breach of Confidentiality or Security to HealthHIE Nevada within forty-eight (48) hours of learning information that a Serious Breach of Confidentiality or Security may have occurred.

9. Other Obligations of the Participant.

9.1 Compliance with Laws and Regulations. Without limiting any other provision of this Agreement requiring compliance with applicable laws and regulations, the Participant shall perform its roles and responsibilities hereunder in all respects in compliance with applicable federal, state, and local laws, ordinances and regulations. A Participant must be a Covered Entity under HIPAA and must conduct itself in accordance with the applicable rules and regulations under HIPAA.

9.2 System Security. The Participant shall implement reasonable and appropriate security measures to limit unauthorized use of equipment through which access to the System and the Services may be gained, and to prevent unauthorized use or disclosure of Protected Health Information and other Patient Data. This includes, but is not limited to:

- (A) Implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits in conjunction with this Agreement;



- (B) Ensuring that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;
- (C) Reporting to the HealthIE Nevada any security incident of which it becomes aware; and
- (D) Establishing a traceable electronic audit system for identifying access points and trails to electronic health data from the System and the date and identity of the recipient(s) of protected health information obtained in whole or in part by virtue of the access provided by this Agreement

9.3 Participant's Equipment. Except to the extent provided by a Technology License Agreement, the Participant shall be responsible for procuring all equipment and software necessary for it to access the System, use the Services, and provide to HealthIE Nevada all information required to be provided by the Participant ("Participant's Required Hardware and Software"). The Participant's Required Hardware and Software shall conform to HealthIE Nevada's then-current specifications. As part of the Participant's obligation to provide Participant's Required Hardware and Software, the Participant shall be responsible for ensuring that all Participant's computers to be used to interface with the System are properly configured, including but not limited to the operating system, web browser, and internet connectivity.

9.4 Malicious Software, Viruses, and Other Threats. The Participant shall use 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 HealthIE Nevada or other Participants 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 HealthIE Nevada or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.

9.5 Training. The Participant shall provide appropriate and adequate training to all of the Participant's personnel, including without limitation Authorized Users, in the use of the System and the Services, the requirements of this Agreement and the Policies and Procedures, the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of Protected Health Information.

9.6 Individuals' Rights. Participant shall be solely responsible for affording individuals their rights with respect to Participant's Shared Information, such as the rights of access and amendment, or requests for special restrictions on the use or disclosure of health information. HealthIE Nevada shall not accept or process any requests from individuals for the exercise of such rights. Participant shall not undertake to afford an individual any rights with respect to any information



in the System other than Participant's Shared Information. Participant will not require a patient to participate in HealthIE Nevada nor shall Participant condition any care and/or payment for care in a patient's participation in HealthIE Nevada.

9.7 Third Party Access. To the extent that a Participant is authorized under this Agreement to share information, electronic health records and/or data obtained in whole or in part through access provided by this Agreement with a third party, Participant shall enter into a business associate agreement with third party in compliance with 45 CFR § 164.504(e).

9.8 Safeguarding of Certain Information. Participant shall follow all regulations established by the State of Nevada, Department of Health and Human Services regarding maintaining the confidentiality of electronic health records relating to a child who has received health care services without the consent of a parent or guardian and which ensure that a child's right to access such health care services is not impaired.

9.9 Notifications required by the State of Nevada and/or United States Department of Health and Human Services. Participant shall follow all regulations established by the State of Nevada, Department of Health and Human Services and/or United States Department of Health and Human Services for notifying a patient if the confidentiality of information contained in an electronic health record of the patient is breached. In the event that HealthIE Nevada is required or elects (in its sole discretion) to notify a patient regarding a breach, Participant shall assist HealthIE Nevada in making such notification.

9.10 Written Waiver for Certain Participants and Patients. Any Participant that is a federally assisted alcohol and drug abuse program, as that term is defined in 42 CFR Part 2, shall obtain a written waiver in compliance with 42 CFR § 2.31 from the patient before sharing any alcohol or drug abuse patient records with HealthIE Nevada. Such consent shall identify if and when HealthIE Nevada is permitted to share the alcohol or drug abuse patient records with any other participant treating the patient.

9.11 Protections provided by NRS 439.593. All parties to this Agreement agree that Participant is entitled to the protections of NRS 439.539, and nothing herein should be considered a waiver of those protections.

10. HealthIE Nevada's Operations and Responsibilities.

10.1 Compliance with Terms and Conditions. HealthIE Nevada shall require that access to the System and the Services shall be limited to Participants and their Authorized Users, and that each Participant shall enter into a Participation Agreement with HealthIE Nevada that provides with respect to that Participant as is provided in the following provisions of this Agreement: Section 3.4 (Termination Upon Material Breach), Section 3.6 (Survival of Provisions), Section 4 (Authorized Users), Section 5 (Data Recipient's Rights and Obligations), Section 6 (Data Provider's Rights and Obligations), Section 8 (Protected Health Information), Section 9 (Other



Obligations of the Participant), Section 13 (Disclaimers, Exclusions of Warranties and Limitations of Liability), Section 14 (Insurance and Indemnification).

10.2 Maintenance of System. HealthIE Nevada shall maintain the functionality of the System. At this time, maintenance of the System shall be provided through Optum Insight, in accordance with its maintenance schedule.

10.3 Compliance with Laws and Regulations. Without limiting any other provision of this Agreement requiring compliance with applicable laws and regulations, HealthIE Nevada shall perform its roles and responsibilities hereunder in all respects in compliance with applicable federal, state, and local laws, ordinances and regulations, including without limitation those provisions of HIPAA and the American Recovery and Reinvestment Act, Public Law 111- 5 applicable to Business Associates. HealthIE Nevada represents and warrants to each Participant that it shall ensure that each of its service contractors complies with the provisions of this Agreement and all applicable law, including without limitation those provisions of HIPAA and the American Recovery and Reinvestment Act, Public Law 111- 5 applicable to Business Associates.

11. Fees and Other Charges.

11.1 Service Fees. As payment for use of the System and the Services, the Participant shall pay to HealthIE Nevada Service Fees (“Service Fees”) as described in the Service Agreement, attached as Attachment 2, 90 days after Project Kick Off. The Fee Schedule is subject to change at any time by HealthIE Nevada following the provision of at least forty five (45) days prior written notice to Participants.

11.2 Other Charges. The Participant also shall pay HealthIE Nevada’s charges for all goods or services that HealthIE Nevada provides at the Participant’s request that are not specified in the Fee Schedule (“Miscellaneous Charges”). Miscellaneous Charges shall be detailed in an invoice to Participant.

11.3 Payment. The Participant shall pay all Service Fees and any Miscellaneous Charges within thirty (30) days following the date of invoice by HealthIE Nevada sent to that Participant’s address as shown in HealthIE Nevada’s records or e-mailed in accordance with the Participant’s instructions.

11.4 Late Charges. Service Fees and Miscellaneous Charges not paid to HealthIE Nevada on or before the due date for those fees and charges are subject to a late charge of five percent (5%) of the amount owing and interest thereafter at the rate of one and one-half percent (1 1/2%) per month on the outstanding balance, or the highest amount permitted by law, whichever is lower.

11.5 Suspension of Service. Failure to pay Service Fees and Miscellaneous Charges within thirty (30) days following the due date for those fees and charges may result in termination of the



Participant's access to the System and/or use of the Services on ten (10) days prior notice. A reconnection fee may be assessed to re-establish connection after termination due to non-payment, in accordance with HealthIE Nevada's then-current Fee Schedule.

11.6 Taxes. All Service Fees and Miscellaneous Charges shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and the Participant shall pay any tax (excluding taxes on HealthIE Nevada's net income) that HealthIE Nevada may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services provided under this Agreement.

11.7 Other Charges and Expenses. The Participant shall be solely responsible for any other charges or expenses the Participant may incur 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.

12. Proprietary Information.

12.1 Scope of Proprietary Information. In the performance of their respective responsibilities pursuant to this Agreement, HealthIE Nevada and Participants may come into possession of certain Proprietary Information of the others. For the purposes hereof, "Proprietary 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, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements, whether written or verbal, that are confidential in nature; provided, however, that "Proprietary Information" does not include Patient Data or any information that: (a) Is in the public domain; (b) Is already known or obtained by any other party other than in the course of the other party's performance pursuant to this Agreement; (c) Is independently developed by any other party; and/or (d) Becomes known from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of this Agreement, or any other confidentiality or nondisclosure agreement by such other party.

12.2 Nondisclosure of Proprietary Information. HealthIE Nevada and the Participant each (i) shall keep and maintain in strict confidence all Proprietary Information received from the other, or from any other Participant, or from any of the other's employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under this Agreement; (ii) shall not use, reproduce, distribute or disclose any such Proprietary Information except as permitted by this Agreement; and (iii) shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure.



12.3 Equitable Remedies. All Proprietary Information represents a unique intellectual product of the party disclosing such Proprietary Information (the “Disclosing Party”). The unauthorized disclosure of said Proprietary 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 12 (Proprietary Information) and such equitable relief is in addition to any other rights or remedies available to the Disclosing Party.

12.4 Notice of Disclosure. Notwithstanding any other provision hereof, nothing in this Section 12 (Proprietary Information) shall prohibit or be deemed to prohibit a party hereto from disclosing any Proprietary 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 notice (unless such notice is prohibited by the compelling court, agency or governmental body) 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. Except for the failure to provide notice pursuant to the preceding sentence, 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.

13. Disclaimers, Exclusions of Warranties and Limitations of Liability.

13.1 Carrier Lines. By using the System and the Services, the 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 HealthHIE Nevada’s control. HealthHIE Nevada assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the Participant’s risk and is subject to all applicable local, state, national, and international laws.



13.2 No Warranties. Access to the System, use of the Services, and the information obtained by a Data Recipient pursuant to the use of those services are provided “as is” and “as available” without any warranty of any kind, expressed or implied, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. The Participant is 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. It is expressly agreed that in no event shall HealthIE Nevada be liable for any special, indirect, consequential, or exemplary damages, including but not limited to, loss of profits or revenues, loss of use, or loss of information or data, whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if HealthIE Nevada has been apprised of the possibility or likelihood of such damages occurring. HealthIE Nevada disclaims any and all liability for erroneous transmissions and loss of service resulting from communication failures by telecommunication service providers or the System.

13.3 Other Participants. By using the System and the Services, the Participant acknowledges that other Participants have access to the System and Services. Such other Participants shall have agreed to comply with the terms and conditions of this Agreement and the Policies and Procedures concerning use of the information made available through the System and the Services; however, the actions of such other parties are beyond the control of HealthIE Nevada. Accordingly, HealthIE Nevada does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the System resulting from any Participant’s actions or failures to act.

13.4 Participant’s Actions. The Participant shall be solely responsible for any damage to a computer system, loss of data, and any damage to the System caused by that Participant or any person using a user ID assigned to the Participant or an Authorized User.

13.5 Unauthorized Access; Lost or Corrupt Data. HealthIE Nevada is not responsible for unauthorized access to the Participant’s transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft, or destruction of the Participant’s data files, programs, procedures, or information through the System, whether by accident, fraudulent means or devices, or any other method. The Participant is solely responsible for validating the accuracy of all output and reports and protecting that Participant’s data and programs from loss by implementing appropriate security measures, including routine backup procedures. The Participant waives any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, or the use of third-party software. HealthIE Nevada is not responsible for the content of any information transmitted or received through the System or the Services. The Data Provider is solely responsible for the content of all Patient Data that the Data Provider makes available pursuant to this Agreement.



13.6 Inaccurate Data. All data to which access is made through the System and/or the Services originates from Data Providers, and not from HealthIE Nevada. All such data is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. Without limiting any other provision of this Agreement, HealthIE Nevada shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content, or delivery of any data either provided by a Data Provider, or used by a Data Recipient.

13.7 Patient Care. Without limiting any other provision hereof, the Participant and that Participant's Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from or in any way related to the use of the System or the Services or the data made available thereby. Neither the Participant nor any Authorized User shall have any recourse against, and shall waive, any claims against HealthIE Nevada for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the System and/or the Services or the data made available thereby.

13.8 Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of HealthIE Nevada, and HealthIE Nevada's officers, directors, employees, and other agents, to the Participant and the Participant's Authorized Users, regardless of theory of liability, shall be limited to the aggregate of Service Fees actually paid by that Participant in accordance with this Agreement for the six (6) month period preceding the event first giving rise to the claim; except to the extent such liability results from intentional misconduct or gross negligence, in which case no limit shall apply to damages resulting from such acts

14. Insurance and Indemnification.

14.1 Insurance. HealthIE Nevada and the Participant shall obtain and maintain insurance coverage for general liability (and for Participants, professional liability) with coverage limits that are reasonable and customary for a party engaged in their respective activities in Nevada.

14.2 Indemnification. HealthIE Nevada, each of HealthIE Nevada's service contractors, and the Participant (each, an "Indemnifying Party") each shall indemnify and hold the other and, if the Participant is the Indemnifying Party, the other Participants (each, the "Indemnified Party"), free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, members, agents, staff, or employees, including the Indemnifying Party's failure to comply with or perform its obligations under this Agreement. Without limiting the generality of the foregoing, acts or



omissions giving rise to the obligation to indemnify and hold harmless shall include, but not be limited to,

(a) acts or omissions that result in a Serious Breach of Confidentiality or Security or

(b) a Data Provider's provision of any Patient Data through the Services or System that is inaccurate, incomplete or defamatory.

14.3 Indemnification for Breaches of Patient Information. Participant agrees to indemnify HealthIE Nevada for any and all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, in the event that HealthIE Nevada is required by law, regulation or by either State of Nevada, Department of Health and Human Services and/or United States Department of Health and Human Services, to notify any patient that there has been a breach of confidentiality of information contained in an electronic health record, if said breach was caused in whole or in part by the errors, acts or omissions of Participant. Nothing in this section shall imply, admit or concede that HealthIE Nevada has any duty of notification under any currently existing law or regulation.

14.4 Rules for Indemnification. Any indemnification made pursuant to this Agreement shall include payment of all costs associated with defending the claim or cause of action involved, whether or not such claims or causes of action are meritorious, including reasonable attorneys' fees and any settlement by or judgment against the party to be indemnified. A party seeking to be indemnified pursuant to this Section 14 shall make a demand for indemnification upon the Indemnifying Party promptly and within a period of time within which the Indemnifying Party is not prejudiced by lack of notice. Upon receipt of such notice, the Indemnifying Party shall, at its sole cost and expense, retain legal counsel and defend the party to be indemnified. The Indemnifying Party shall be responsible for, and have control of, such claim and any litigation arising therefrom, but may not settle such litigation without the express consent of the party(ies) to be indemnified, which consent shall not be unreasonably withheld, conditioned or delayed. The indemnification obligations of the parties shall not, as to third parties, be a waiver of any defense or immunity otherwise available, and the Indemnifying Party, in indemnifying the indemnified party, shall be entitled to assert in any action every defense or immunity that the indemnified party could assert on its own behalf.

15. General Provisions.

15.1 Disputes.

15.1.1 Applicable Law. The interpretation of Participation Agreements and the resolution of any disputes arising under Participation Agreements shall be governed by the laws of the State of Nevada. If any action or other proceeding is brought on or in connection with this Agreement, the venue of such action shall be exclusively in the County of Nevada in which Participant is located, or if Participant is outside of Nevada, in Washoe or Clark County, Nevada.



15.1.2 Arbitration. All disputes relating to, arising out of or in connection with the validity, interpretation or performance of this Agreement, including tort claims, shall be resolved by binding arbitration in accordance with the commercial rules of arbitration of the American Arbitration Association, as supplemented or modified by this Agreement. Written notice of a claim and demand for arbitration must be given to the other party (the “Respondent”) not more than one hundred and twenty (120) days after the date of (i) the events giving rise to the claim occur or (ii) the date the claim is discovered. Response to the demand for arbitration shall be due not later than twenty (20) days after receipt of notice. The claim will be deemed denied if Respondent does not answer the demand within that time period. Not more than twenty (20) days after Respondent answers the demand (or, if there is no answer, after the time for answer has elapsed) (the “Answer Date”), the parties shall select a single neutral arbitrator. If the parties cannot agree upon such arbitrator within twenty (20) days of the Answer Date, then either party may request the American Arbitration Association to select the third Arbitrator. Any Arbitrator selected under this Section shall be a person with business, financial or legal experience in the health care industry of at least five (5) years, who is generally familiar with the issues in dispute. The Arbitrator(s) shall not ignore the terms of this Agreement and shall be bound by Nevada substantive law. The arbitration decision shall include written findings of fact and conclusions of law. The arbitration decision may include equitable relief, but may not include punitive or exemplary damages. The prevailing party, as determined by the Arbitrator(s), shall be entitled to reasonable attorneys’ fees and costs. In cases submitted to arbitration, the parties agree to share equally in the arbitrator’s fees and expenses, if any, unless otherwise assessed against the non-prevailing party by the Arbitrator(s). The parties agree that the decision of the Arbitrator(s) shall be final and binding as to each of them, and that the arbitration award may be enforced in any court having jurisdiction thereof, by the filing of a petition to enforce said award.

15.1.3 Class Action Waiver. Any arbitration, trial or other proceeding arising out of or under this Agreement will take place on an individual basis without resort to any form of class or representative action. Regardless of any other provision of this Agreement the validity and effect of this subsection shall be determined only by a court and not an arbitrator. It is agreed that the Judicial District Court of the State of Nevada, in and for the County of Washoe, shall be the sole and exclusive forum for the resolution of such a dispute and the parties to this Agreement expressly and unconditionally confer jurisdiction therefor upon the Judicial District Court of the State of Nevada, in and for the County of Washoe for decision by a judge. In the event that any litigation commenced in the Judicial District Court of the State of Nevada, in and for the County of Washoe, is properly removable to a Federal Court under the laws of the United States of America, such removal shall take place if the legal basis for removal exists; provided, however, that the parties to this Agreement agree that the exclusive venue of the Federal forum for the resolution of any disputes shall be the United States District Court for the District of Nevada, Northern Nevada Division, located in Reno, Nevada for decision by a judge.



15.1.4 Jury Waiver. By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any claim arising out of or under the Agreement. Furthermore, without intending in any way to limit the agreement to arbitrate, to the extent that a claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such claim. WHETHER THE CLAIM IS DECIDED BY ARBITRATION OR TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO A TRIAL BY JURY.

15.2 Non-Assignability. No rights of the Participant under this Agreement may be assigned or transferred by the Participant, either voluntarily or by operation of law, without the prior written consent of HealthIE Nevada, which it may withhold in its sole discretion.

15.3 Third-Party Beneficiaries. This Agreement is for the benefit of HealthIE Nevada and Participant only. There shall be no third-party beneficiaries of any Participation Agreement, including, specifically, patients who are the subject of Patient Data and other Participants.

15.4 Supervening Circumstances. Neither the Participant nor HealthIE Nevada shall be deemed in violation of any provision of this 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 15.4 shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.

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

15.6 Notices. Any and all notices required or permitted under this Agreement shall be sent by United States mail, overnight delivery service, or facsimile transmission to the address(es) set forth under their signatures at the end of this Agreement; provided, that either party may change its address for purposes of notice by giving notice of that address change to the other in compliance with this Section. If the Participant has supplied HealthIE Nevada with an electronic mail address, HealthIE Nevada may give notice by email message addressed to such address; provided that if HealthIE Nevada receives notice that the email message was not delivered, it shall give the notice by United States mail, overnight delivery service, or facsimile.

15.7 Waiver. No provision of the terms and conditions of this 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 expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.



15.8 Complete Understanding. This Agreement 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 Agreement other than those contained or referenced in this Agreement. All modifications or amendments to this Agreement shall be in writing and signed by all parties.

15.9 Records Retention. Until four (4) years after the termination or expiration of this Agreement, HealthIE Nevada shall make available to the Secretary of Health and Human Services and the Comptroller General of the General Accounting Office, and their duly authorized representatives, and to Participant and its duly authorized representatives, this Agreement all pertinent books, documents and records necessary to certify the nature and extent of the costs of the System and Services provided by HealthIE Nevada under this Agreement. This Section does not obligate HealthIE Nevada to maintain records in any particular format. No attorney-client, accountant-client or other legal or equitable privilege shall be deemed to have been waived by the Parties by virtue of this Section.

15.10 Subcontract Audit Provision. If HealthIE Nevada carries out the duties of this Agreement through a subcontract worth \$10,000 or more over a twelve (12) month period with a related organization, the subcontract shall contain clauses substantially identical to Sections 4.3 and 4.4 of this Agreement to permit access to the related organization's books and records by Participant, as its respective interests may appear, and the Secretary of Health and Human Services, the Comptroller General of the General Accounting Office and their representatives.

15.11 No Medicare Exclusion. Participant hereby represents and warrants that it is not and at no time has been excluded from participation in any federally-funded health care program, including Medicare and Medicaid. Participant hereby agrees to immediately notify HealthIE Nevada of any threatened, proposed, or actual exclusion from any federally-funded program, including Medicare or Medicaid. In the event that Participant is excluded from any federally-funded health care program during the term of this Agreement, or if at any time after the Effective Date of this Agreement, it is determined that Participant is in breach of this section, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate.

15.12 Referrals. Nothing in this Agreement or any consideration, whether written or oral, in connection herewith contemplates or requires the referral of any patient. This Agreement is not intended to influence the judgment of any professional choosing the proper treatment and care of his or her patients. The parties specifically do not intend to violate the federal (or any state's) Anti-Fraud and Abuse provisions [42 USC § 1320a7b(b)], the Physician Ownership and Referral Act [42 USC § 1395nn] (commonly known as the Stark Act) or any analogous provision of NRS/NAC 439B.



15.13 No Agency. HealthIE Nevada provides the Services to Participant but does not act as Participant's agent. Participant will not be deemed an agent of another Participant as a result of participation in this Agreement.

15.14 Counterpart Execution. This agreement may be executed in counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.

15.15 Public Release. Participant agrees to allow HealthIE Nevada and its agents, including website-related contractors to use and/or publish information about this organization's participation, to include in print, electronic, visual, verbal, Web and/or various media for an indefinite period of time.

[Signature Page follows]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date set forth below.

Effective Date: _____, 20____

HealthIE Nevada, a Nevada Nonprofit Corporation

By:

Michael L. Gagnon
(Print or Type Name)

Address for purposes of
notice:

6830 W. Oquendo Rd.
Suite 102
Las Vegas, NV 89118

Executive Director _____
(Title)

“Participant/Organization”

By:

Address for purposes of
notice:

(Print or Type Name)



Attachment 1

Participant Organization Information

Organization Information

- a) Organization Accounting Primary Contact/Title _____
Phone _____ Fax _____ Email _____
- b) Organization Privacy and Security Contact/Title _____
Phone _____ Fax _____ Email _____
- c) Organization Manager of HIE Users Contact/Title _____
Phone _____ Fax _____ Email _____
- d) Organization Compliance Officer Contact/Title _____
Phone _____ Fax _____ Email _____

Organization Primary Physical Address _____

City _____ State _____ Zip _____

Type of Healthcare setting (i.e Hospital, Physician, LTAC, SNF,ACO) _____

Organization NPI _____

of Sites (if applicable) _____ # of Providers (MD, DO, PA, APN, NP, Midwife) _____

EHR Name (if applicable) _____

Other Address Information

Mailing Address: Same as Primary Physical Address

Address _____ City _____ State _____ Zip _____

Shipping Address: Same as Primary Physical Address

Address _____ City _____ State _____ Zip _____

Billing Address: Same as Primary Physical Address

Address _____ City _____ State _____ Zip _____

Billing E-Mail Address: _____

