



**TERMS AND CONDITIONS
to HIE
PARTICIPATION AGREEMENTS**

May 1, 2019

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Terms and Conditions for HIE Participation Agreements

1. DEFINITIONS

- 1.1 **“Alerts”** shall have the meaning set forth in the Policies and Procedures.
- 1.2 **“Authorized User”** means an individual Participant or an individual designated to use the Services on behalf of the Participant pursuant to Section 4 (Authorized Users).
- 1.3 **“Base Services”** has the meaning set forth in Section 8.3 (Services).
- 1.4 **“Breach”** shall have the meaning set forth in the Policies and Procedures.
- 1.5 **“Business Associate”** means any party that acts as a “business associate” of HealtheConnections or a Participant, as defined in 45 CFR Part 160.103.
- 1.6 **“Chargeable Services”** has the meaning set forth in Section 8.3 (Services).
- 1.7 **“Data Provider”** means a Participant that provides Patient Data to the HIE.
- 1.8 **“Data Recipient”** means a Participant that receives or accesses Patient Data from the HIE.
- 1.9 **“Data Source”** means a (i) Data Provider, (ii) third party entity providing data (including laboratory or diagnostic testing results or medication history information), and (iii) any other sources from which data originates.
- 1.10 **“Data Use and Reciprocal Support Agreement” or “DURSA”** means the data use agreement entered into by HealtheConnections as a requirement for participation in the eHealth Exchange.
- 1.11 **“eHealth Exchange”** means all of the standards, services and policies identified by, and the development of which was facilitated by, the Office of the National Coordinator for Health Information Technology in the Office of the Secretary, U.S. Department of Health and Human Services (“ONC”), that enables secure health information exchange over the internet.
- 1.12 **“External Networks”** means statewide, nationwide or other health information exchange networks, including but not limited to the eHealth Exchange (defined in Section 1.11) and SHIN-NY (defined in Section 1.26), which enable the secure exchange of health information among authorized parties, all in accordance with the Policies and Procedures.
- 1.13 **“Health Information Exchange or HIE”** means HealtheConnections’ systems, devices, mechanisms and infrastructure to facilitate the electronic movement of Patient Data among Participants according to nationally recognized standards.
- 1.14 **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated there under at 45 CFR Parts 160 and 164.

- 1.15 “Participant”** means a person or entity that has entered into a Participation Agreement with HealtheConnections.
- 1.16 “Participation Agreement”** means a legally binding agreement between HealtheConnections and each of its Participants for the use of the HIE and Services, and which incorporates these Terms and Conditions and the Policies and Procedures.
- 1.17 “Patient Data”** means health information that is created or received by a health care provider and relates to past, present, or future physical or mental health of an individual or the provision of health care to an individual that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, including such information that is made available for exchange by a Data Provider pursuant to Section 6 (Data Provider’s Rights and Obligations).
- 1.18 “Personal Representative”** means a person who has the authority to consent to the disclosure of a patient’s Protected Health Information under Section 18 of the New York State Public Health Law and any other applicable state and federal laws and regulations.
- 1.19 “Policies and Procedures”** means HealtheConnections’ policies and procedures for the operation of the HIE as amended from time to time pursuant to Section 3.3 (Changes to Terms and Conditions and Policies and Procedures), and which are available on HealtheConnections’ website.
- 1.20 “Qualified Health IT Entity” or “QE”** means a not-for-profit entity that has been certified as a QE under 10 N.Y.C.R.R. Section 300.4 and has executed a contract to which it has agreed to be bound by SHIN-NY Policy Guidance.
- 1.21 “Qualified Service Organization”** shall have the meaning referenced in Section 10.5 and Exhibit B.
- 1.22 “Research”** means a systematic investigation, including research development, testing and evaluation designated to develop or contribute to generalizable knowledge, including clinical trials.
- 1.23 “Services”** means the Base Services and the Chargeable Services.
- 1.24 “SHIN-NY Policy Guidance”** means the set of policies and procedures, including technical standards and SHIN-NY services and products that are approved by the New York State Department of Health, and available at <https://www.health.ny.gov/technology/regulations/shin-ny/>.
- 1.25 “Statewide Collaboration Process”** means an open, transparent process within which multiple SHIN-NY stakeholders contribute to recommendations for SHIN-NY Policy Guidance.
- 1.26 “Statewide Health Information Network of New York or SHIN-NY”** means the set of agreements (and the transactions, relations and data that are created by and through such set of agreements), between the New York State Department of Health, its contractors, QEs and Participants, to make possible the exchange of clinical information among authorized users for authorized purposes to improve the quality, coordination and efficiency of patient care, reduce medical errors and carry out public health and oversight

activities, while protecting privacy and security. Pursuant to such agreements, the QEs and the Participants agree to be bound by policy and technical requirements in the SHIN-NY Policy Guidance that has been created through the Statewide Collaboration Process.

- 1.27 “Terms and Conditions”** means these Terms and Conditions for Participation Agreements set forth in this document, as amended, repealed, and/or replaced from time to time as described herein.
- 1.28 “Unauthorized Use”** means (i) any attempt at or any action that results in circumventing the access controls or access policies of the HIE; (ii) use in violation of intellectual property, privacy, publicity, proprietary information rights and policies of others; and/or (iii) use other than in accordance with the express terms of these Terms and Conditions, the Policies and Procedures, the SHIN-NY Policy Guidance, or applicable law.
- 1.29 “Vendor”** means each third party vendor of software, hardware and/or related services that, together with the software, hardware and/or related services provided by other Vendors, comprise the HIE and the Services.
- 1.30 “Vendor Agreement”** means each agreement between HealtheConnections and a Vendor respecting that Vendor’s provision of software or hardware and/or performance of related services.

2. TERMS AND CONDITIONS; POLICIES AND PROCEDURES

2.1 Generally

These Terms and Conditions apply to the operation of the HIE, the provision of the Services, and the relationships among HealtheConnections, Participants and certain others with respect thereto, and shall be deemed incorporated by reference into the Participation Agreement.

2.2 Policies and Procedures

The Policies and Procedures set forth the policies and procedures pursuant to which HealtheConnections shall provide the HIE and the Services, and shall be consistent with these Terms and Conditions, and shall be deemed to be incorporated by reference into these Terms and Conditions.

2.3 Procedures for Amendments

(a) HealtheConnections is solely responsible for the development of the Participation Agreement, these Terms and Conditions and the Policies and Procedures, and may amend, or repeal and replace, the Participation Agreement, these Terms and Conditions and/or the Policies and Procedures at any time as HealtheConnections determines is appropriate, pursuant and subject to Sections 3.3 – 3.8 below. Except as provided in Section 2.3(b), HealtheConnections will provide Participant ninety (90) days prior notice of any amendments to or a repeal and replacement of these Terms and Conditions and/or the Policies and Procedures. HealtheConnections will consider input from stakeholder populated committees with respect to any such amendments, as HealtheConnections deems appropriate under the circumstances.

(b) Notwithstanding anything contained in Section 2.3(a) or Sections 3.3 – 3.8, if an amendment to or a repeal or replacement of the Terms and Conditions or Policies and Procedures, as the case may be, is required in order for HealtheConnections and/or Participants to comply with applicable laws or regulations, HealtheConnections may implement such amendment, repeal or replacement within a shorter time period and without prior notice to Participants.

3. PARTICIPATION AGREEMENTS

3.1 Participation Agreement Required

Upon completion of HealtheConnections' registration process, and prior to accessing the HIE or using the Services, a person or entity seeking to be a Participant shall enter into a Participation Agreement with HealtheConnections.

3.2 Effect of Policies & Procedures

Upon execution of the Participation Agreement, Participant agrees to comply with all applicable provisions of the Policies and Procedures in effect from time to time.

3.3 Changes to Participation Agreements, Terms and Conditions, and Policies and Procedures

HealtheConnections may amend, repeal and replace the Participation Agreement, these Terms and Conditions and/or the Policies and Procedures at any time, and shall give Participants prior notice of those changes, as described in Section 2.3 (Procedures for Amendments). Subject to Section 3.4 (Request for Reconsideration; Termination Based on Objection to Change), any such change to these Terms and Conditions or the Policies and Procedures shall automatically be incorporated by reference into each Participation Agreement, and be legally binding upon HealtheConnections and the Participant, as of the effective date of the change.

3.4 Request for Reconsideration; Termination Based on Objection to Change

If a change to the Participation Agreement, these Terms and Conditions or the Policies and Procedures described in Section 3.3 (Changes to Terms and Conditions and Policies and Procedures), affects a material right or obligation of the Participant, and the Participant objects to that change, that Participant may:

(a) Make requests to HealtheConnections for reconsideration noting the reasons for the Participant's objection. In the event of a request for reconsideration, HealtheConnections shall review the request and convey its determination thereon to Participant within thirty (30) days of receipt of the request.

(b) Terminate its Participation Agreement by giving HealtheConnections written notice thereof not more than thirty (30) days following the latter of: (i) HealtheConnections' notice of the change; or (ii) HealtheConnections' written determination after the request for reconsideration in Section 3.4(a). Such termination of the Participant's Participation Agreement shall be effective as of the effective date of the change to which the Participant objects; provided, however, that any change to these Terms and Conditions or the Policies and Procedures or to a Participation Agreement that HealtheConnections determines is required to comply with any federal, state, or local law or regulation shall take effect as of the effective date HealtheConnections determines is required, and the termination of any Participant's Participation Agreement based on the Participant's objection to the change shall be effective as of HealtheConnections' receipt of the Participant's notice of termination, and allowance of a reasonable time for HealtheConnections to diligently implement such termination.

3.5 Participant's Other Rights to Terminate

(a) Participant may terminate its Participation Agreement at any time without cause by giving not less than ninety (90) days prior notice to HealtheConnections.

(b) Participant may terminate its Participation Agreement if HealtheConnections fails to perform a material responsibility arising out of the Participant's Participation Agreement, and that failure continues uncured for a period of sixty (60) days after the Participant has given HealtheConnections notice of that failure and requested that HealtheConnections cure that failure.

(c) Participant may terminate its Participation Agreement if a Breach of confidentiality or security, as described in Section 10.2 (Reporting of Breaches), occurs and HealtheConnections does not promptly take measures either (i) to cure that breach, if cure is possible given the nature of the breach, or (ii) to prevent subsequent similar breaches, subject to the termination provisions outlined in the Participant's Business Associate Agreement.

(d) Notwithstanding any other provision of this Section 3 to the contrary, if Section 10.4 (Business Associate Agreement) applies, the Participant may terminate its Participation Agreement as set forth in the Business Associate Agreement.

3.6 HealtheConnections' Rights to Terminate

(a) HealtheConnections may terminate any Participant's Participation Agreement at any time without cause by giving not less than ninety (90) days prior notice to the Participant.

(b) HealtheConnections may terminate any Participant's Participation Agreement if the Participant fails to perform a material responsibility arising out of the Participant's Participation Agreement, and that failure continues uncured for a period of thirty (30) days after HealtheConnections has given the Participant notice of that failure and requested that the Participant cure that failure.

(c) HealtheConnections may terminate its Participation Agreement if a Breach of confidentiality or security, as described in Section 10.2 (Reporting of Breaches), occurs and the Participant does not promptly take measures either (i) to cure that Breach, if cure is possible given the nature of the Breach, or (ii) to prevent subsequent similar Breaches, in either case in a manner reasonably satisfactory to HealtheConnections.

3.7 Effect of Termination

Upon any termination of a Participant's Participation Agreement, that party shall cease to be a Participant and thereafter neither the former Participant nor its Authorized Users shall have any rights to use the HIE or the Services. A former Data Provider shall have no obligation to provide data following the termination of that Data Provider's Participation Agreement. All licenses or other rights to use HIE granted to the Participant hereunder shall terminate automatically upon the termination of the Participant's Participation Agreement. Certain provisions of these Terms and Conditions shall continue to apply to the former Participant and its Authorized Users following that termination, as described in Section 3.8 (Survival of Provisions).

3.8 Survival of Provisions

The following provisions of these Terms and Conditions shall continue to apply to a former Participant notwithstanding any termination of the former Participant's Participation Agreement: Section 4.5 (Responsibility for Conduct of Participant and Authorized Users); Section 10 (Protected Health Information); Section 12 (Proprietary Information); Section 13.8 (Limitation of Liability); Section 14.1 (Required Coverage); Section 15 (Indemnification); and Section 16 (Dispute Resolution).

4. AUTHORIZED USERS

4.1 Identification of Authorized Users

To enable HealtheConnections to establish appropriate access for each Authorized User, each Participant shall provide HealtheConnections with a list in a medium and format approved by HealtheConnections identifying all of the Participant's Authorized Users, together with the information described in Policies and Procedures. Thereafter, the Participant shall provide notification to HealtheConnections whenever an Authorized User is added or removed by reason of termination of employment or otherwise and notify HealtheConnections to such change within 48 hours or as reasonably practical.

4.2 Requirements for Participants' Authorized Users

Participant shall verify, and certify to HealtheConnections if reasonably requested, that each Authorized User has satisfied all requirements for Authorized Users described in the Policies and Procedures.

4.3 Requirements for HealtheConnections' Personnel

HealtheConnections shall require that its personnel having access to the HIE on behalf of HealtheConnections has complied with other requirements described in the Policies and Procedures.

4.4 No Use by Other than Authorized Users

For each of its part, both HealtheConnections and the Participant shall restrict access to the HIE and, if applicable, use of the Services, only to the Authorized Users that a Participant has identified to HealtheConnections in accordance with Section 4.1 (Identification of Authorized Users), and the employees, agents or contractors of HealtheConnections as the case may be.

4.5 Responsibility for Conduct of Participant and its 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 HIE and/or use the Services either through the Participant or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from the Participant or any of the Participant's Authorized Users, with respect to the HIE, the Services and/or any Patient Data or other confidential and/or other information accessed in connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of the Participant.

4.6 Limited Rights of Authorized Users

An Authorized User shall have no rights to access the HIE, and/or to use the Services or any Patient Data or other information made available therefrom, other than those granted to the Authorized User by HealtheConnections or by the Participant on whose behalf the Authorized User accesses the HIE and/or uses the Services or Patient Data or other information made available there from, whether by virtue of the Authorized User's relationship with the Participant or otherwise. Any such rights of an Authorized User shall cease and terminate upon the removal of that Authorized User by HealtheConnections or the Participant.

4.7 Termination of Authorized Users

Each Participant shall require that all of its respective Authorized Users use the HIE and the Services only in accordance with these Terms and Conditions 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 and/or sanction appropriately any of its respective Authorized Users who fail to act in accordance with these Terms and Conditions or in accordance with the that Participant's policies and procedures, as applicable.

5. DATA RECIPIENT'S RIGHTS AND OBLIGATIONS

5.1 Data Recipient's Use of Services

If the Participant is a Data Recipient, the terms of this Section 5 (Data Recipient's Rights and Obligations) shall apply to that Participant.

5.2 Grant by HealtheConnections

HealtheConnections Terms and Conditions to HIE Participation Agreement

HealthConnections grants to each Data Recipient, and each Data Recipient shall be deemed to have accepted, a nonexclusive, personal, nontransferable, limited right to have access to and to use the HIE and the Services for which that Data Recipient has registered, subject to the Data Recipient's full compliance with the Data Recipient's Participation Agreement. HealthConnections retains all other rights to the HIE and all the components thereof. No Data Recipient shall obtain any rights to the HIE except for the limited rights to use the HIE expressly granted by the Participation Agreement.

5.3 Permitted Uses

Data Recipient may use the HIE, Services, and Patient Data only as follows ("Permitted Uses"):

- (a) Uses for Treatment, Payment and Health Care Operations (as those terms are defined in HIPAA); or
- (b) Any other use that is permitted or required under HIPAA, the SHIN-NY Policy Guidance, or other applicable law governing the use and disclosure of Patient Data.

5.4 Prohibited Uses

Data Recipient shall not use or permit the use of the HIE, Services, or Patient Data for any purpose or use other than for the Permitted Uses set forth in Section 5.3 (Permitted Uses). Without limiting the generality of the foregoing, a Data Recipient shall not use the HIE, Services, External Networks, or Patient Data for any of the following uses:

- (a) To allow separate access, separate services or sub-license to any third party.
- (b) For any purpose or in any manner that is prohibited by federal laws or the laws of the State of New York or the SHIN-NY Policy Guidance.
- (c) To aggregate data to compare the performance of other Participants, its authorized users, other QEs and/or participants of other QEs except with the express written consent of the other Participant, its authorized users, the other QE and/or participants of the other QEs.
- (d) For the purpose of competition.

5.5 Data Sources' and Other Restrictions on Uses

Data Recipient acknowledges that the use and disclosure of certain Patient Data may be subject to particular restrictions, including specific restrictions imposed by a Data Source, which may be more restrictive than the restrictions set forth in Section 5.4 (Prohibited Uses). Data Recipient agrees that it will comply with any specific restrictions of which Data Recipient is made aware by HealthConnections in connection with the receipt of Patient Data.

5.6 No Limitation on Data Recipient's Use of Its Own Data

Nothing in this Section 5 or elsewhere in these Terms and Conditions or the Policies and Procedures is intended or will be deemed to limit Data Recipient's use of its own data in any way.

5.7 Consent

Prior to accessing Patient Data, Data Recipient shall comply with all applicable laws governing patient consent to and for the use or disclosure of information, as well as with all requirements regarding obtaining consent from patients that are set forth in the Policies and Procedures.

6. DATA PROVIDER'S RIGHTS AND OBLIGATIONS

6.1 Data Provider Obligations

If the Participant is a Data Provider, the terms of this Section 6 (Data Provider's Rights and Obligations) shall apply to that Participant.

6.2 Grants by HealtheConnections

HealtheConnections grants to each Data Provider, and each Data Provider shall be deemed to have accepted, a nonexclusive, personal, nontransferable, limited right to have access to and to use the HIE and Services for the purposes of complying with the obligations described in this Section 6, subject to the Data Provider's full compliance with the Data Provider's Participation Agreement. HealtheConnections retains all other rights to the HIE and all the components thereof. No Data Provider shall obtain any rights to the HIE except for the limited rights to use the HIE expressly granted by the Participation Agreement.

6.3 Data Providers Generally

Each Data Provider shall participate in and maintain its connection to the HIE and provide Patient Data to the HIE.

6.4 Measures to Assure Accuracy of Data

Each Data Provider shall, in accordance with the requirements described in the Policies and Procedures, use reasonable and appropriate efforts to assure that all Patient Data it provides to the HIE is accurate, free from serious error, and reasonably complete. Each Data Provider shall cooperate with and assist HealtheConnections in correcting any inaccuracies or errors in the Patient Data it provides to the HIE.

6.5 License

The Data Provider grants to HealtheConnections a perpetual, fully-paid, worldwide, non-exclusive, royalty free right and license (i) to permit others to access through the HIE and use all Patient Data provided by the Data Provider in accordance with the Participation Agreement and/or the rules and regulations governing External Networks, as applicable; (ii) to use such Patient Data to carry out HealtheConnections' duties under the Participation Agreement and/or the rules and regulations governing External Networks, including without limitation, system administration, testing, problem identification and resolution, management of the HIE, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation those promulgated under HIPAA, and otherwise as HealtheConnections determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations; (iii) to use such Patient Data to assess and articulate the value of the HIE in a manner consistent with HealtheConnections' mission and purposes; (iv) to allow for the disclosure of such Patient Data provided by the Data Provider for purposes of Research; (v) to release data in accordance with the Policies and Procedures and as permitted by applicable federal, state and local laws and regulations; and (vi) to facilitate the access of individuals and their Personal Representatives to the individuals' data in accordance with the Policies and Procedures.

6.6 No Limitation on Data Provider's Use of Its Own Data.

Nothing in this Section 6 or elsewhere in these Terms and Conditions is intended or will be deemed to limit Data Provider's use of its own data in any way.

6.7 Consent

Data Provider shall comply with all applicable laws governing patient consent to the use or disclosure of information, as well as with all requirements regarding obtaining consent from patients that are set forth in the Policies and Procedures.

7. OTHER OBLIGATIONS OF ALL PARTICIPANTS

7.1 Compliance with Laws and Regulations

Without limiting any other provision of these Terms and Conditions and the Policies and Procedures relating to the parties' compliance with applicable laws and regulations, the Participants shall perform in all respects as contemplated by these Terms and Conditions, in compliance with applicable federal, state, and local laws, ordinances and regulations, and the Participant's policies and procedures.

7.2 HIE Security

The Participant shall implement security measures with respect to the HIE and the Services in accordance with the Policies and Procedures.

7.3 Software and Hardware Provided by Participant

Each Participant shall be responsible for procuring all equipment and software necessary for it to access the HIE, use the Services, and provide to HealtheConnections all information required to be provided by the Participant ("Participant's Required Hardware and Software"). Each Participant's Required Hardware and Software shall conform to HealtheConnections' then-current specifications, as set forth in the Policies and Procedures. Without limiting any other provision of these Terms and Conditions, HealtheConnections may change such specifications from time to time in its sole discretion upon not less than sixty (60) days prior notice to each Participant affected by the change. As part of the Participant's obligation to provide Participant's Required Hardware and Software, the Participant shall be responsible for ensuring that all the Participant's computers to be used to interface with the HIE are properly configured, including but not limited to the operating system, web browser, and Internet connectivity.

7.4 Other Resources

Each Participant shall be responsible for providing such other resources as may be reasonably necessary for connection with the implementation of the HIE, including but not limited to making available such Participant staff members as may be necessary for such purposes.

7.5 Malicious Software, Viruses, and Other Threats

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 HIE, 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 HIE or any part thereof or any hardware or software used by HealtheConnections 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 HIE or any part thereof or any hardware, software or data used by HealtheConnections or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.

7.6 Training of Participants' Authorized Users

Participant shall provide appropriate and adequate training to all of the Participant's designated Authorized Users, prior to becoming Authorized Users, in accordance with the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including without limitation requirements imposed under HIPAA.

7.7 Audits and Reports

Participant shall review periodic audits and reports generated and prepared by HealtheConnections and shall ensure compliant use of the HIE by Participants and Authorized

Users, including taking any required follow-up actions as required by the Policies and Procedures.

7.8 Cooperation with HealtheConnections' Participation in External Networks

Participant agrees to reasonably cooperate on issues relating to HealtheConnections' participation in External Networks, including but not limited to the SHIN-NY and eHealthExchange. A complete list of such External Networks are posted on HealtheConnections' website. "Cooperation" includes, but is not limited to, providing information and/or allowing the audit of information, to the extent necessary for HealtheConnections to fulfill its reporting, audit, investigation and other obligations with respect to its participation in External Networks.

7.9 Unauthorized Use

Participant shall not engage in any Unauthorized Use of the HIE, and shall ensure that its Authorized Users do not engage in any Unauthorized Use of the HIE.

7.10 Reliance on Participant Business Associate Agreement

(a) Participant represents that it has a right to access or receive protected health information under the Privacy and Security Policies and Procedures for Qualified Entities and their Participants in New York State under 10 NYCRR § 300.3(b)(1) available at https://www.health.ny.gov/technology/regulations/shin-ny/docs/privacy_and_security_policies.pdf ("SHIN-NY Privacy and Security Policies and Procedures").

(b) Participant represents that it enters into written business associate agreements with various vendors (each a "Participant Vendor") in connection with Participant allowing such Participant Vendor access to Participant's protected health information under which the Participant Vendor agrees to protect the confidentiality of the protected health information being disclosed to the Participant Vendor (each a "Participant Vendor Business Associate Agreement").

(c) Participant may wish, from time to time, for HealtheConnections to transmit certain protected health information to a Participant Vendor under the terms of Section 1.8.1 of the SHIN-NY Privacy and Security Policies and Procedures. In each such instance (i) Participant shall enter into a written agreement with the Participant Vendor that is acceptable to HealtheConnections and complies with all of the requirements of Section 1.8.1 of the SHIN-NY Privacy and Security Policies and Procedures, which includes prohibiting Participant Vendor from further disclosing protected health information except where the SHIN-NY Privacy and Security Policies and Procedures allow for such disclosure. (ii) Participant shall enter into a written agreement with HealtheConnections representing in writing that Participant Vendor is seeking the Participant's information in accordance with state and federal law and the terms of the Participant Vendor Business Associate Agreement ("Reliance Agreement"). (iii) Participant agrees and certifies that Participant shall be responsible for all actions of the Participant Vendor in connection with HealtheConnections's transmittal of protected health information to the Participant Vendor under the terms of the Participant Vendor Business Associate Agreement, the Reliance Agreement and Section 1.8.1. (iv) Participant shall provide a copy of the Participant Vendor Business Associate Agreement to HealtheConnections upon request.

(d) Notwithstanding the foregoing, Participant remains responsible for acts or omissions of its Participant Vendors.

8. HEALTHeCONNECTIONS' RIGHTS, OBLIGATIONS AND RESPONSIBILITIES

8.1 Compliance with Laws and Regulations

Without limiting any other provision of these Terms and Conditions relating to the parties' compliance with applicable laws and regulations, HealtheConnections shall perform in all HealtheConnections Terms and Conditions to HIE Participation Agreement

respects as contemplated by these Terms and Conditions, in compliance with applicable federal, state, and local laws, ordinances and regulations.

8.2 Maintenance of the HIE

HealtheConnections shall maintain the functionality of the HIE and the Services as described in the Policies and Procedures and shall in a timely manner provide such service, security, and other updates as are commercially appropriate.

8.3 Services

HealtheConnections agrees to provide to Participant (a) services in connection with access and use of the HIE and such other services as are required to be provided by HealtheConnections pursuant to the SHIN-NY Policy Standards (such services, the “Base Services”) and (b) services for which HealtheConnections may charge a fee that are not Base Services and are either (i) described in agreed upon statements of work and executed by HealtheConnections and Participant (each, an “SOW”), or (ii) otherwise offered to Participant(s) by HealtheConnections and used by Participant(s) (Section 8.3(b) Services are the “Chargeable Services”).

8.4 Malicious Software, Viruses, and Other Threats

HealtheConnections shall use reasonable efforts to ensure that its provision of the HIE and Services, including without limitation the medium containing any data or other information provided to the HIE, 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 HIE or any part thereof or any hardware or software used by the Participant 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 HIE or any part thereof or any hardware, software or data used by HealtheConnections or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.

8.5 Training of HealtheConnections’ Personnel

HealtheConnections shall provide appropriate and adequate training to all of its personnel in the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including without limitation requirements imposed under HIPAA.

8.6 Provision of Training to Participants and Their Authorized Users

HealtheConnections shall provide or arrange for the provision of training to each Participant and that Participant’s Authorized Users regarding the Participant’s and the Authorized User’s rights and obligations under its Participation Agreement and these Terms and Conditions, and the access and use of the HIE and Services, including such user manuals and other resources HealtheConnections determines appropriate to support the HIE and Services, including without limitation training for new or additional Authorized Users when added by the Participant.

8.7 Telephone and/or E-Mail Support

HealtheConnections shall provide or arrange for the provision of telephone and/or e-mail support and assistance in resolving difficulties in accessing and using the HIE and the Services, as HealtheConnections, with appropriate consideration of recommendations from stakeholder populated HealtheConnections committees, determines appropriate to support the HIE and the Services. Such support shall be described in the Policies and Procedures.

8.8 Audits and Reports

HealtheConnections Terms and Conditions to HIE Participation Agreement

HealtheConnections shall perform periodic audits and prepare reports and take any required follow-up actions as required by the Policies and Procedures.

8.9 Change or Termination of Services

HealtheConnections may change the HIE and/or the Services, or may cease providing the Services, at any time. Unless circumstances beyond HealtheConnections' control require it, changes to the HIE or the Services that reduce or limit the functionality or levels of service provided shall not be made without the prior approval of HealtheConnections' Board of Directors and not on less than ninety (90) days prior notice to Participants.

9. SOFTWARE AND HARDWARE PROVIDED BY HEALTHeCONNECTIONS

9.1 Description

HealtheConnections shall from time to time enter into agreements with one or more Vendors to arrange for the provision of such software, hardware and related services as HealtheConnections determines is appropriate to arrange for the availability of the HIE and the performance of the Services. A description of HealtheConnections' arrangements for such software, hardware and/or related services shall be set forth in the Policies and Procedures. Except as expressly provided otherwise in these Terms and Conditions or in a Participant's Participation Agreement, HealtheConnections' obligations to provide or arrange for the availability of the HIE and the performance of the Services shall be limited to the obligations undertaken by the Vendors pursuant to their respective Vendor Agreements with HealtheConnections.

9.2 Grant of License

HealtheConnections grants to each Participant a non-exclusive, personal, nontransferable, limited license to use the associated software and the associated hardware for access to or use of the HIE and, if the Participant is a Data Recipient, for the purpose of obtaining the Services. HealtheConnections represents and warrants to each Participant that HealtheConnections has the legal right and power to grant the license described in this Section 9.2 (Grant of License); provided, that the scope of such license, and these Terms and Conditions thereof, shall be limited by the terms and conditions of the licenses and other rights to the associated software and associated hardware granted to HealtheConnections by a Vendor(s) ("Vendor Terms and Conditions").

9.3 Modifications; Derivative Works

The Participant shall not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create the associated software or the HIE, or to create any derivative works from the associated software or the HIE. The Participant shall not modify the associated software or the HIE, or combine the associated software with any other software or services not provided or approved by HealtheConnections.

10. PROTECTED HEALTH INFORMATION

10.1 Compliance with Applicable Laws and Policies and Procedures

HealtheConnections and the Participant shall comply with the standards for the confidentiality, security, and use of patient health information, including without limitation protected health information as required by HIPAA, and all other state and federal laws, and as provided in the Policies and Procedures. Each Participant shall comply with such standards regardless of whether or not that Participant is a "covered entity" under HIPAA.

10.2 Reporting of Breaches

As soon as a Breach of confidentiality or security is discovered or known by a party hereto, HealtheConnections and the Participant shall report the Breach to the other, in accordance with the Policies and Procedures. HealtheConnections and the Participant shall further notify their insurers of such Breach within the time period required or otherwise set forth in their relevant insurance policies.

10.3 Business Associate Agreement

HealtheConnections acknowledges that, as a health information organization that operates an electronic health information exchange, it is a Business Associate of Participant. As such, it shall maintain the security and privacy of Protected Health Information in accordance with the provisions of the Business Associate Agreement that is attached hereto as **Exhibit A** and incorporated herein by reference or a Business Associate Agreement of a Participant that contains the same provisions of **Exhibit A**. As between HealtheConnections and Participant, HealtheConnections and Participant acknowledge that all such Protected Health Information shall be and remain the property of the Participant and, to the extent provided by law, of the individual who is the subject of that Protected Health Information.

10.4 Business Associate Agreements With Third Parties

HealtheConnections may enter into arrangements with one or more subcontractors as defined in 45 CFR Part 160.103, to perform certain HealtheConnections responsibilities as described in these Terms and Conditions. HealtheConnections shall enter into written agreements with such subcontractors, as required by 45 CFR Parts 164.308(b)(3), 164.314(a)(1), 164.502(e)(2), and 164.504(e)(1)(i), which written agreements shall contain the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to HealtheConnections in **Exhibit A**. Participant acknowledges that such written agreement may differ in form, but not in substance from **Exhibit A**.

10.5 Qualified Service Organization Agreement

If, through any Participant's use of the Services, HealtheConnections' performance of its responsibilities described in the Policies and Procedures causes HealtheConnections to act as a Qualified Service Organization, the Participant and HealtheConnections shall be bound by the terms of the Qualified Service Organization Agreement attached as **Exhibit B**.

11. FEES AND CHARGES

(a) Base Services. [**Intentionally Omitted – No fees to Participant Contemplated at this time**]

(b) Chargeable Services. Chargeable Services are as defined in Section 8.3 of these Terms and Conditions.

12. PROPRIETARY INFORMATION

12.1 Scope of Proprietary Information

In the performance of their respective responsibilities pursuant to these Terms and Conditions, HealtheConnections and Participants may come into possession of certain Proprietary Information of the other. 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 of HealtheConnections and the HealtheConnections Terms and Conditions to HIE Participation Agreement

Participant, whether written or verbal, that are confidential in nature; provided, however, that Proprietary Information shall not include any information that: (a) is in the public domain; (b) is already known or obtained by any other party other than in the course of the other party's performance pursuant to the Participation Agreement or these Terms and Conditions; (c) is independently developed by any other party; and/or (d) becomes known from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of the Participation Agreement or these Terms and Conditions, or any other confidentiality or nondisclosure agreement by such other party.

12.2 Nondisclosure of Proprietary Information

HealthConnections and the Participant each (i) shall keep and maintain in strict confidence all Proprietary Information received from the other, or from any of the other's employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under these Terms and Conditions; (ii) shall not use, reproduce, distribute or disclose any such Proprietary Information except as permitted by these Terms and Conditions; 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 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.

12.5 Trademarks

Participant and HealthConnections acknowledge and agree that each retains control of its trademarks, tradenames, and/or servicemarks presently existing or hereinafter established with respect to it, and will not use the trademark of the other party without prior written consent of the other party.

13. DISCLAIMERS AND EXCLUSIONS OF WARRANTIES

13.1 Carrier Lines

Each Participant and HealtheConnections acknowledges that access to the HIE 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 HealtheConnections’ and each Participant’s control. Neither HealtheConnections nor any Participant assumes any liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any 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 HIE, USE OF THE SERVICES, AND THE INFORMATION OBTAINED BY A PARTICIPANT 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, EXCEPT AS PROVIDED TO THE CONTRARY IN A VENDOR AGREEMENT, NON-INFRINGEMENT. THE PARTICIPANT SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE HIE OR THE INFORMATION IN THE HIE, INCLUDING BUT NOT LIMITED TO INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL HEALTHeCONNECTIONS OR ANY OTHER PARTICIPANT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF INFORMATION OR DATA, BODILY INJURY, OR OTHER THIRD-PARTY LIABILITIES, 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 HEALTHeCONNECTIONS OR THE PARTICIPANT HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. HEALTHeCONNECTIONS AND EACH PARTICIPANT DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE HIE.

13.3 Other Participants and Health Information Exchanges

(a) By using the HIE and the Services, each Participant shall acknowledge that other Participants have access to the HIE and Services. Pursuant to these Terms and Conditions, such other Participants shall have agreed to comply with these Terms and Conditions concerning use of the information made available through the HIE and the Services; provided, however, that the actions of such other parties are beyond the control of HealtheConnections and the Participant. Accordingly, HealtheConnections and the Participant do 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 HIE resulting from any action or failure to act of any other Participant or other party other than HealtheConnections and the Participant.

(b) Participant acknowledges that data may also be shared with participants of other health information exchanges in connection with HealtheConnections' participation in External Networks. Participant acknowledges that HealtheConnections shall have no responsibility for the acts or omissions of any other QE, any users accessing or utilizing the HIE or SHIN-NY through any External Network, any other QE, or any participant of any other QE or External Network.

13.4 Participant's Actions

Each Participant shall be solely responsible for any damage to a computer system, loss of data, and any damage to the HIE caused by that Participant, its Authorized Users or any person using a user name and/or password assigned to the Participant or a member of the Participant's workforce.

13.5 Unauthorized Access; Lost or Corrupt Data

HealtheConnections shall not be responsible for unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the HIE or for unauthorized access to, or alteration, theft, or destruction of the participant's data files, programs, procedures, or information through the HIE, whether by accident, fraudulent means or devices, or any other method. Each Participant shall be solely responsible for validating the accuracy of all output and reports and protecting the Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. Each 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. HealtheConnections and Data Sources are not responsible for the content of any information transmitted or received through HealtheConnections provision of the Services, except to the extent that the content of such information is distorted or corrupted as a direct result of the negligent acts or omissions or willful misconduct of HealtheConnections.

13.6 Inaccurate Data

By using the HIE and the Services, each Participant shall acknowledge that all data to which access is made through the HIE and/or the Services originates from Data Sources and not from HealtheConnections. 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 these Terms and Conditions, HealtheConnections and its Vendors 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 Source, or used by a Data Recipient, pursuant to these Terms and Conditions, except to the extent that the content of such information is distorted or corrupted as a direct result of the negligent acts or omissions or willful misconduct of HealtheConnections.

13.7 Patient Care

Without limiting any other provision of these Terms and Conditions, each Participant and the 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 HIE or the Services or the data made available thereby. No Participant or Authorized User shall have any recourse against, and through the Participation Agreements that apply thereto, each shall waive, any claims against HealtheConnections or a Data Source for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the HIE and/or the Services or the data made available thereby.

13.8 Limitation of Liability

In addition to the limitations of liability set forth in Section 13.2 (No Warranties):

(a) Notwithstanding the foregoing or anything in the Participation Agreement to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of HealtheConnections, its officers, directors, employees or agents, shall be limited to the amount of insurance coverage available to HealtheConnections with respect to such liability plus any amounts for which HealtheConnections is indemnified by third parties, such as technology Vendors.

(b) Notwithstanding the foregoing or anything in these Terms and Conditions to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of a Participant, its officers, directors, employees or agents, shall be limited to the greater of: (i) the amount of insurance coverage available to that Participant with respect to such liability plus any amounts for which that Participant is indemnified by third parties, such as technology vendors; or (ii) \$1,000,000.

(c) The foregoing limitations on liability set forth in Section 13.8(a) and Section 13.8(b) above shall not apply to intentional acts or omissions of HealtheConnections or Participant, as the case may be.

13.9 Remedies Against Vendors

Upon written request by Participant to HealtheConnections describing harm to Participant as a result of an alleged act or omission or willful misconduct by HealtheConnections' Vendor, HealtheConnections will: (a) examine whether HealtheConnections has a contractual basis to seek a remedy for Participant and report the results of its examination to Participant. If HealtheConnections determines that it does have a contractual basis to seek a remedy for Participant, it will use reasonable efforts to pursue that remedy, or report back to Participant its reason for not doing so; and (b) provide reasonable cooperation in any efforts by Participant to pursue a remedy against a Vendor, including providing copies of the relevant HealtheConnections Vendor Agreement, or report back to Participant its reason for not doing so.

14. INSURANCE

14.1 Required Coverage

(a) HealtheConnections shall maintain, throughout the term of the Participation Agreement, at its sole expense, insurance for "cyber-liability" or similar insurance appropriate to a breach of personal health information, as well as such professional and general liability insurance coverage as it deems reasonable and necessary to insure itself and its officers, directors, and employees against any third party claim or cause of action arising out of the performance of the Participation Agreement. Current coverages will be of the type and amount set forth on **Schedule 14.1**.

(b) Each Participant shall maintain, throughout the term of its Participation Agreement, at its sole expense, such professional, general, and cyber liability insurance coverage as it deems reasonable and necessary to insure itself and its officers, directors, and employees against any third party claim or cause of action arising out of the performance of its Participation Agreement.

(c) In the event of termination of Participant's Participation Agreement for any reason, HealtheConnections and each Participant either shall maintain its insurance coverage called for under this Section 14.1 for a period of not less than three (3) years, or shall provide an equivalent extended reporting endorsement ("tail policy").

14.2 Evidence of Coverage

HealtheConnections and each Participant shall provide proof of such required coverage upon request.

14.3 Commercial or Self-Insurance

The insurance coverage required under these Terms and Conditions may be provided through one or more commercial insurance policies through a self insurance fund reasonably satisfactory to HealtheConnections, or through a combination of commercial and self-insurance.

15. INDEMNIFICATION

Notwithstanding Section 16 (Dispute Resolution) and subject to Section 13.8 (Limitations of Liability), the following Indemnification provisions shall apply:

15.1 Infringement Indemnity

(a) HealtheConnections shall indemnify and hold harmless Participant and defend any action brought against the same with respect to any third-party claim, demand or cause of action, to the extent that it is based upon a claim that the HIE or Services, as provided by HealtheConnections and used within the scope of this Agreement, infringes or violates any United States patent, copyright, trade secret or other proprietary rights of a third party, provided that the Participant: (i) notifies HealtheConnections within five business days of receiving written notification of the claim; (ii) grants HealtheConnections sole control of the defense and settlement of the claim; and (iii) provides HealtheConnections, at Participant's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

(b) Participant shall indemnify and hold harmless HealtheConnections and defend any action brought against the same with respect to any third-party claim, demand or cause of action, to the extent that it is based upon a claim that Participant's hardware or software infringes or violates any United States patent, copyright, trade secret or other proprietary rights of a third party, provided that HealtheConnections: (i) notifies Participant within five business days of receiving written notification of the claim; (ii) grants Participant sole control of the defense and settlement of the claim; and (iii) provides Participant, at HealtheConnections' expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

(c) HealtheConnections will have no liability for any infringement or misappropriation claim of any kind to the extent it results from: (i) modification of any HIE product or any Services made by any party other than HealtheConnections, if such a claim would have been avoided if the Services or the HIE were not so modified; (ii) the combination, operation or use of the HIE or Services with software, equipment or devices not supplied by HealtheConnections, if such a claim would have been avoided if the Services or HIE were not used in such combination; (iii) Participant's failure to use updated or modified HIE or Services provided by HealtheConnections to avoid a claim; or (iv) HealtheConnections' compliance with designs, plans or specifications furnished by or on behalf of Participant.

(d) The foregoing provisions of this Section 15.1 set forth the parties' sole and exclusive obligations, and sole and exclusive remedies, with respect to infringement or misappropriation of intellectual property rights of any kind.

15.2 Specific Indemnities

(a) HealtheConnections and each Participant (each, an "Indemnifying Party") each shall hold the other (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 any Breach defined in Section 10.2 (Reporting of Breaches) or any other HealtheConnections Terms and Conditions to HIE Participation Agreement

breach of the Participation Agreement that results from the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, officers, directors, members, employees or other agents.

(b) A Data Provider shall hold HealtheConnections and each other Participant 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 Data Provider's provision of any Patient Data that is not accurate, not free from serious error, materially incomplete, or defamatory.

15.3 Rules for Indemnification

Any indemnification made pursuant to this Section 15 (Indemnification) shall, unless otherwise provided, 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. In the event that a lawsuit is brought against the party to be indemnified, the party responsible to indemnify that party shall, at its sole cost and expense, defend the party to be indemnified, if the party to be indemnified demands indemnification by written notice given to the indemnifying party within a period of time wherein the indemnifying party is not prejudiced by lack of notice. Upon receipt of such notice, the indemnifying party shall have control of such litigation but may not settle such litigation without the express consent of the party 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.

15.4 Indemnification by Government Participants

Certain Participants that are operated by the State of New York, by a county thereof, or by a governmental agency thereof, including but not limited to public health authorities and public benefit corporations create by statute to provide municipal health and medical services and health facilities, (collectively, "Government Participants"), may be subject to laws that limit that Participant's ability to agree to or perform certain of the obligations of a Participant concerning indemnification described in Section 15 (Indemnification) of these Terms and Conditions. HealtheConnections may enter into a Participation Agreement with a Government Participant that provides for terms and/or conditions concerning indemnification by that Government Participant that are different from those set forth in Section 15, and which shall apply to that Government Participant notwithstanding anything to the contrary in Section 15; provided, that HealtheConnections shall do so only if and to the extent that such Government Participant demonstrates to HealtheConnections that applicable laws so limit that Government Participant's ability to agree to or perform such indemnification obligations.

16. DISPUTE RESOLUTION

16.1 Scope

Any controversy, dispute, or disagreement arising out of or relating to the Participation Agreement, the Terms and Conditions, or the Policies and Procedures (individually and collectively referred to in this Section 16 as "this Agreement"), or the breach of this Agreement, (referred to in this Section 16 as a "dispute") shall be settled according to the procedure set forth in this Section 16.

16.2 Informal Conference

In the event a dispute arises between or among any of the parties concerning their respective duties and obligations under this Agreement, each party shall be obligated to meet and confer with the other(s) in good faith, on reasonable notice, and at a mutually agreeable location. The parties agree that if any party refuses to participate in such a conference, or if such a conference fails to produce a mutually acceptable resolution of the dispute within fifteen (15) calendar days after the parties' receipt of notice of the dispute, the other party or parties may submit the matter to mediation or arbitration pursuant to this Section 16.

16.3 Mediation

In the event a dispute arises between or among the parties that cannot be settled by informal conference as set forth above, the parties may, on mutual agreement, submit the matter to mediation to be conducted in Onondaga County, New York. The process for selecting the mediator shall be determined by the mutual written consent of the parties. If the parties fail to agree to a process within ten (10) calendar days from a request, the requesting party may proceed to invoke the arbitration process provided for herein. The consent of any party to such mediation may be withdrawn at any time, without cause.

16.4 Arbitration.

(a) In the event a dispute cannot be settled by informal conference or mediation as set forth above, or in the event either party refuses or withdraws consent to mediation, the matter shall be settled by arbitration in Onondaga County, New York, unless otherwise agreed to by the parties. The process for selecting the arbitrator(s), and the rules for arbitration, shall be determined by the mutual written consent of the parties. If the parties fail to agree to an arbitrator or panel of arbitrators, or the rules for arbitration within ten (10) calendar days after receipt of a demand for arbitration, the arbitration shall proceed in accordance with the American Health Law Association's (AHLA) Dispute Resolution Rules, except as modified below. Judgment on the award rendered by the arbitrator or panel of arbitrators may be entered in any court of competent jurisdiction. Punitive damages may not be awarded.

(b) Immediately after the filing of the submission or the answering statement or the expiration of the time within which the answering statement is to be filed, the AHLA shall send simultaneously to each party to the dispute an identical list of ten (10) (unless the AHLA decides that a greater number is appropriate) names of persons chosen from AHLA's National Roster of Arbitrators. The parties will attempt to agree on an arbitrator from the submitted list, and if they are able to do so, they will promptly advise the AHLA of their choice. The same person may serve as both mediator and arbitrator only with the consent of all parties.

(c) If the parties are unable to agree on an arbitrator within fifteen (15) calendar days of the date the AHLA transmitted the list, each party to the dispute shall have an additional seven (7) calendar days in which to strike names objected to, number the remaining names in order of preference, and return the list to the AHLA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on each party's list, and in accordance with the designated order of mutual preference, the AHLA shall invite the acceptance of one (1) arbitrator to serve. If the parties fail to agree on any of the persons named within the time specified by AHLA, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AHLA shall appoint a three-person panel of arbitrators from among other members of AHLA's National Roster of Arbitrators. The arbitrator selection process set forth above shall apply regardless of whether there are two or more claimants or two or more respondents involved in the dispute.

(d) Each party shall bear its own costs and expenses, and an equal share of the arbitrators' and administrative fees of arbitration.

17. GENERAL PROVISIONS

17.1 Applicable Law

The interpretation of these Terms and Conditions and the resolution of any disputes arising under these Terms and Conditions and Participants' Participation Agreements shall be governed by the laws of the State of New York. If any action or other proceeding is brought on or in connection with these Terms and Conditions or a Participation Agreement, the venue of such action shall be exclusively in Onondaga County, in the State of New York.

17.2 Non-Assignability

No rights of the Participant under its Participation Agreement may be assigned or transferred by the Participant, either voluntarily or by operation of law, without the prior written consent of HealtheConnections, which it may withhold in its sole discretion; provided, however, that HealtheConnections may assign rights of the Participant under its Participation Agreement upon prior written notice to, but without the prior written consent of, Participant to (i) the successor in any merger involving HealtheConnections or (ii) to an affiliated entity established for the purpose of operating the HIE, in which case the affiliated entity to which the Participation Agreement is assigned shall be solely responsible for the performance of the obligations of HealtheConnections under the Participation Agreement.

17.3 Third-Party Beneficiaries

Except as provided in Section 15 (Indemnification), there shall be no third-party beneficiaries of any Participation Agreement.

17.4 Supervening Circumstances

Neither the Participant nor HealtheConnections shall be deemed in violation of any provision of a 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 17.4 (Supervening Circumstances) shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.

17.5 Severability

Any provision of these Terms and Conditions or any Participation Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of these Terms and Conditions, the Policies and Procedures, or such Participation Agreement, and such other provisions shall remain in full force and effect.

17.6 Notices

Any and all notices required or permitted under these Terms and Conditions shall be sent by (a) United States mail to the address set forth in the Participation Agreement or such different address as a party may designate in writing, (b) overnight delivery service with proof of delivery, or (c) facsimile or email transmission with non-automatic acknowledgement from the recipient indicating receipt HealtheConnections by the Participant or such different addresses as a party may designate in writing.

17.7 Waiver

No provision of these Terms and Conditions, the Policies and Procedures, or any Participation Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall HealtheConnections Terms and Conditions to HIE Participation Agreement

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.

17.8 Complete Understanding

With respect to any Participation Agreement, that Agreement, the Policies and Procedures, and these Terms and Conditions together contain 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 any Participation Agreement other than those contained or referenced in that Participation Agreement. All modifications or amendments to any Participation Agreement shall be in writing and in accordance with Section 2.3 (Procedures for Amendments) and Sections 3.3 – 3.8.

EXHIBIT A TO TERMS AND CONDITIONS
BUSINESS ASSOCIATE AGREEMENT

EXHIBIT B TO TERMS AND CONDITIONS

QUALIFIED SERVICE ORGANIZATION AGREEMENT

HealthConnections, a Qualified Service Organization, and the Participant do hereby enter into a Qualified Service Organization Agreement, whereby HealthConnections agrees to provide to the Participant the services described in the Participation Agreement between the parties (the “Participation Agreement”) and HealthConnections’ Policies and Procedures (as such term is defined in the Participation Agreement). “Qualified Service Organization” means a person which: (a) provides services to a program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and (b) has entered into a written agreement with a program under which that person: (1) acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the programs, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and (2) if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

As a Qualified Service Organization, HealthConnections:

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