

PARTICIPATION AGREEMENT

This Participation Agreement (the “Participation Agreement”) is made by and between Bronx RHIO, Inc., a New York not-for-profit corporation with its principal office at 1776 Eastchester Rd., Suite 200, Bronx, NY 10461 (the “RHIO”), and each of the participating entities who execute a counterpart to this Participation Agreement (each, a “Participant” and collectively, the “Participants”). This Participation Agreement shall apply to only such sites or facilities of the Participant as are set forth on Schedule A. The effective date of this Participation Agreement with respect to any Participant shall be the date indicated on the counterpart executed by the RHIO and such Participant.

W I T N E S S E T H

WHEREAS, the RHIO is a New York State not-for-profit corporation that operates a clinical information data exchange that facilitates the exchange of health information among health care providers in Bronx County, New York;

WHEREAS, the RHIO participates as a Qualified Entity (as hereinafter defined) in the Statewide Health Information Network of New York (the “SHIN-NY”) in accordance with the SHIN-NY Policy Standards (as hereinafter defined) and the terms of the Qualified Entity Participation Agreement entered into by the RHIO and the State Designated Entity (as hereinafter defined), which governs the RHIO’s participation in the SHIN-NY;

WHEREAS, the RHIO also facilitates access by its Participants to a service provided by a third party that allows for the one-to-one directed exchange of messages among the Participant, on the one hand, and other health care providers and other health-related organizations, including Participants in the RHIO as well as participants of other Qualified Entities, on the other hand (the “Direct Service”);

WHEREAS, the Participant wishes to utilize the RHIO System to connect to the SHIN-NY and/or access the Direct Service;

NOW THEREFORE, in consideration of the covenants and agreements made herein, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 “Authorized User” means an individual who has been authorized by Participant to use the RHIO Services on behalf of the Participant. The types of individuals that may qualify as Authorized Users shall be set forth in the RHIO Policies and Procedures.

1.2 “Commissioner” means the New York State Commissioner of Health.

1.3 “Data Provider” means a Participant that uses the RHIO System to make Patient Data accessible pursuant to this Agreement.

1.4 “Data Recipient” means a Participant that uses the RHIO System to access Patient Data pursuant to this Agreement.

1.5 “Direct Service” has the meaning set forth in the recitals.

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

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

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

1.9 “Participant Type” means the category of Participants to which a particular Participant is assigned based upon that Participant’s role in the health care system and as set forth in the Participant’s Registration Approval.

1.10 “Patient Data” means information provided by a Participant pursuant to this Agreement or information provided by a participant of another Qualified Entity or otherwise available through the RHIO System.

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

1.12 “Registration Application” means the application of a potential Participant to access the RHIO System and use the RHIO Services, as described in Section 4.4.

1.13 “Registration Approval” means the written approval by the RHIO of a potential Participant’s Registration Application as described in Section 4.6.

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

1.15 “Research” means a systematic investigation, including research development, testing and evaluation designated to develop or contribute to generalizable knowledge, including clinical trials.

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

1.17 “RHIO Policies and Procedures” means the policies and procedures adopted by the Board of Directors of the RHIO for the operation of the RHIO System and the participation by Participants in the RHIO System, as described in Article III. Copies of the RHIO Policies and Procedures as in effect as of the date hereof are attached hereto as Exhibit A.

1.18 “RHIO Services” means the information sharing services for which the Participant registers as described in Article IV, the precise scope of which shall be set forth in the RHIO Policies and Procedures.

1.19 “RHIO System” means the system of software and hardware through which the RHIO provides access to the RHIO Services.

1.20 “SHIN-NY” means the Statewide Health Information Network of New York, which means the technical infrastructure and the supportive policies and agreements that make possible the electronic exchange of clinical information among Qualified Entities, their participants, and other individuals and entities for authorized purposes, including both the infrastructure that allows for exchange among participants governed by the same Qualified Entity and the infrastructure governed by the State Designated Entity that allows for exchange among different Qualified Entities. The goals of the SHIN-NY are to improve the quality, coordination and efficiency of patient care, reduce medical errors and carry out public health and health oversight activities, while protecting privacy and security. Pursuant to such agreements, the State Designated Entity, the Qualified Entities and the participants of Qualified Entities agree to be bound by policy and technical requirements in the SHIN-NY Policy Standards that has been created through the Statewide Collaboration Process.

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

1.22 “SHIN-NY Policy Standards” means the set of policies and procedures, including technical standards and SHIN-NY services and products, that are developed through the Statewide Collaboration Process and adopted by the New York State Department of Health, including the following: (i) Privacy and Security Policies and Procedures for QEs and Their Participants in New York State; (ii) Oversight and Enforcement Policies for Qualified Entities; (iii) Qualified Entity Minimum Core Service Technical Requirements; (iv) Qualified Entity Member Facing Service Requirements; and (v) Qualified Entity Organizational Characteristics Requirements.

1.23 “SHIN-NY Services” means (i) the services that the State Designated Entity makes available to Qualified Entities and participants of Qualified Entities accessing the SHIN-NY through Qualified Entities in accordance with the Minimum Core Service Technical Requirements, which are part of the SHIN-NY Policy Standards and (ii) any other services that

the State Designated Entity makes available to Qualified Entities and Participants of Qualified Entities.

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

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

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

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

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

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

ARTICLE II RHIO SERVICES

2.1 Services. The services made available by the RHIO are described in the RHIO Policies and Procedures.

2.2 Change or Termination of Services.

2.2.1 Procedures for Change or Termination of Services. The RHIO may change the RHIO System and/or the RHIO Services, or may cease providing the RHIO Services, at any time as the RHIO, subject to the approval of its Board of Directors, determines is appropriate. Changes to the RHIO System and/or the RHIO Services or cessation of the RHIO Services may be necessary for various reasons, including systems maintenance or updates,

inability to provide services or data exchange for technical reasons, lack of access to data, or unexpected technical shortcomings or system shut down. The RHIO shall notify all Participants of any changes to the RHIO System and/or the RHIO Services at least thirty (30) days prior to the implementation of the change; provided that, if the change requires modifications to the Participant's system or may otherwise materially affect the Participant's operations or obligations under this Participation Agreement, the RHIO shall notify the Participant at least ninety (90) days prior to the implementation of the change. Notwithstanding the foregoing, if the change is required in order for the RHIO and/or Participants to comply with applicable laws, regulations or the SHIN-NY Policy Standards, or for the RHIO to continue to participate in the SHIN-NY, or for management of unplanned or unanticipated service changes, the RHIO may implement the change within a shorter period of time as the RHIO determines is appropriate under the circumstances; provided that the RHIO shall provide the Participants with as much notice of such change as reasonably possible.

2.2.2 Participant's Rights in the Event of a Change in Services. If a change to the RHIO System and/or the RHIO Services affects a material right or obligation of a Participant hereunder and the Participant objects to that change, that Participant may terminate this Participation Agreement by giving the RHIO written notice thereof not more than thirty (30) days following the RHIO's notice of the change. Such termination shall be effective as of the effective date of the change to which the Participant objects; provided, however, that any change to the RHIO System or the RHIO Services that the RHIO reasonably determines is required to comply with any federal, state or local law or regulation or the SHIN-NY Policy Standards or for the RHIO to continue to participate in the SHIN-NY shall take effect as of the effective date the RHIO reasonably determines is required, and the termination of this Participation Agreement based on the Participant's objection to the change shall be effective as of the RHIO's receipt of the Participant's notice of termination.

2.3 Standard of Performance. The RHIO shall perform the RHIO Services in accordance with the service level provisions, if any, set forth in the RHIO Policies and Procedures.

ARTICLE III ESTABLISHMENT OF RHIO POLICIES AND PROCEDURES

3.1 Generally. The RHIO Policies and Procedures shall apply to the operation of the RHIO System, the provision of the RHIO Services and the relationships among the RHIO, its Participants, other Qualified Entities and the participants of other Qualified Entities. The RHIO and each Participant agrees to comply with the SHIN-NY Policy Standards, the RHIO Policies and Procedures attached hereto as Exhibit A applicable to it, and, subject to the provisions of Section 3.2 hereof, with any amendments to such SHIN-NY Policy Standards or RHIO Policies and Procedures.

3.2 Amendment of RHIO Policies and Procedures.

3.2.1 Procedures for Amendment of RHIO Policies and Procedures. The RHIO is solely responsible for the development of the RHIO Policies and Procedures, and may

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

3.2.2 Participant's Rights in the Event of Amendment of RHIO Policies and Procedures. Any change to the RHIO Policies and Procedures shall automatically be incorporated by reference into this Participation Agreement, and be legally binding upon the RHIO and the Participant, as of the effective date of the change. If a change to the RHIO Policies and Procedures affects a material right or obligation of a Participant hereunder and the Participant objects to that change, that Participant may terminate this Participation Agreement by giving the RHIO written notice thereof not more than thirty (30) days following the RHIO's notice of the change. Such termination shall be effective as of the effective date of the change to which the Participant objects; provided, however, that any change to the RHIO Policies and Procedures that the RHIO reasonably determines is required to comply with any federal, state or local law or regulation or the SHIN-NY Policy Standards or for the RHIO to continue to participate in the SHIN-NY shall take effect as of the effective date the RHIO reasonably determines is required, and the termination of this Participation Agreement based on the Participant's objection to the change shall be effective as of the RHIO's receipt of the Participant's notice of termination.

ARTICLE IV REGISTRATION REQUIREMENTS

4.1 Registration Required. Only organizations that are registered with the RHIO as Participants and enter into a Participation Agreement with the RHIO shall be permitted to access the RHIO System and use the RHIO Services. Every registration must list each site operated by the Participant that will utilize the RHIO System.

4.2 Participant Types. Each Participant shall register to participate in one of the following Participant Types:

- (a) General Hospital as defined under Article 28 of the New York State Public Health Law ("PHL");
- (b) Diagnostic and treatment center as defined under Article 28 of the PHL;

- (c) Nursing home or residential health care facility as defined under Article 28 of the PHL;
- (d) Home care services agency as defined under Article 36 of the PHL;
- (e) Individual or group private medical practice;
- (f) Clinical laboratory as defined under Article 5 of the PHL;
- (g) Pharmacy as defined under Article 137 of the New York State Education Law;
- (h) Health home member, defined as an entity that contracts with a New York Medicaid health home to provide services covered by New York's Medicaid health home program;
- (i) Payor organization, defined as an insurance company, health maintenance organization, employee health benefit plan established under the Employee Retirement Income Security Act or any other entity that is legally authorized to provide health insurance coverage; or
- (j) Such other Participant Types as may be established by the Board of Directors of the RHIO and incorporated in the RHIO Policies and Procedures from time to time.

4.3 Eligibility of Different Participant Types to Provide and Receive Patient Data. Except as otherwise set forth in the RHIO Policies and Procedures, any type of Participant may participate as a Data Provider, a Data Recipient, or both.

4.4 Application for Registration. An organization that wishes to register with the RHIO and enter into a Participation Agreement must first submit a written application for registration (a "Registration Application") as described in this Section 4.4. A Registration Application shall include:

- 4.4.1 the Participant's Participant Type, as described in Section 4.2;
- 4.4.2 each site operated by the Participant that will utilize the RHIO System;

and

4.4.3 such other terms and conditions as may be required under the SHIN-NY Policy Standards and the RHIO Policies and Procedures.

4.5 Review of Registration Application. The RHIO shall review each Registration Application and shall approve or disapprove each such application in accordance with the RHIO Policies and Procedures. The RHIO shall not be required to approve any Registration Application.

4.6 Approval of Registration. Any Registration Approval shall be in writing and shall specify the Participant's Participant Type and such other terms and conditions as may be required under the RHIO Policies and Procedures. Upon the RHIO's issuance of a Registration Approval and execution by an applicant of this Participation Agreement, the applicant shall become a Participant and shall be permitted to use the RHIO System and access RHIO Services, subject to the provisions of this Participation Agreement, the SHIN-NY Policy Standards, and the RHIO Policies and Procedures.

ARTICLE V AUTHORIZED USERS

5.1 Identification of Authorized Users. Each Participant shall identify, in accordance with the SHIN-NY Policy Standards and the RHIO Policies and Procedures, all of the Participant's Authorized Users and the level of access to the RHIO System and the RHIO Services to be provided to such Authorized User. A unique identifier shall be established for each Authorized User.

5.2 Credentials and Authentication. In accordance with the requirements set forth in the SHIN-NY Policy Standards and the RHIO Policies and Procedures, appropriate credentials shall be issued to each Authorized User identified pursuant to Section 5.1 and appropriate authentication procedures shall be established in order to permit such Authorized User to access the RHIO System and use the RHIO Services. Whenever an individual is removed as an Authorized User by reason of termination of employment or otherwise, the credentials of such individual shall be revoked as soon as reasonably practicable.

5.3 No Use by Other than Authorized Users. The Participant shall restrict access to the RHIO System and, if applicable, use of the RHIO Services only to the Authorized Users the Participant or the RHIO has identified and to whom the Participant or the RHIO has issued a user name and password in accordance with Sections 5.1 and 5.2.

5.4 Responsibility for Conduct of Participant and Authorized Users.

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

ARTICLE VI DATA RECIPIENT'S OBLIGATIONS

When a Participant is acting as a Data Recipient under this Agreement, the terms of this Article VI shall apply to that Participant.

6.1 Grant of License. The RHIO grants to each Data Recipient, and each Data Recipient shall be deemed to have accepted, a nonexclusive, personal, nontransferable, limited license to have access to and to use the RHIO System and the RHIO Services during the term of this Participation Agreement, subject to the Data Recipient's full compliance with the RHIO Policies and Procedures, the SHIN-NY Policy Standards and this Participation Agreement. The RHIO retains all other rights to the RHIO System and all the components thereof. No Data Recipient shall obtain any rights to the RHIO System except for the limited rights to use the RHIO System expressly granted by the RHIO Policies and Procedures.

6.2 Permitted Uses of RHIO System, RHIO Services and SHIN-NY Applications. A Data Recipient may use the RHIO System, the RHIO Services and the SHIN-NY Applications only for the permitted uses described in the RHIO Policies and Procedures and the SHIN-NY Policy Standards.

6.3 Prohibited Uses of RHIO System, RHIO Services and SHIN-NY Applications. Without limiting the generality of Section 6.1, a Data Recipient shall not use or permit the use of the RHIO System, the RHIO Services or the SHIN-NY Applications for any use or purpose described below:

6.3.1 No Services to Third Parties. The Data Recipient shall use the RHIO System, the RHIO Services and the SHIN-NY Applications only for the Data Recipient's own account and the Data Recipient's Authorized Users, and shall not use any part of the RHIO System, the RHIO Services or the SHIN-NY Applications to provide separate services or sublicenses to any third party, including without limitation providing any service bureau services or equivalent services to a third party.

6.3.2 No Services Prohibited by Laws. The Data Recipient shall not use the RHIO System, the RHIO Services or the SHIN-NY Applications for any purpose or in any manner that is prohibited by federal, state or local laws, rules or regulations.

6.3.3 No Use for Comparative Studies. A Data Recipient shall not use the RHIO System, the RHIO Services or the SHIN-NY Applications to aggregate data to compare the performance of other Participants, other Qualified Entities or the participants of other Qualified Entities without the express written consent of the RHIO and each of the Participants, Qualified Entities, or participants of other Qualified Entities being compared.

6.3.4 No Use for Purposes Prohibited by the SHIN-NY Policy Standards or the RHIO Policies and Procedures. A Data Recipient shall not use the RHIO System, the RHIO Services or the SHIN-NY Applications for any purpose prohibited by the SHIN-NY Policy Standards or the RHIO Policies and Procedures.

6.4 No Limitations on Data Recipient's Use of Its Own Data. Nothing in this Article VI or elsewhere in this Participation Agreement is intended or will be deemed to in any way limit a Data Recipient's use of its own patient data.

6.5 Consent. Prior to accessing Patient Data, each Data Recipient shall comply with all applicable laws governing patient consent to the disclosure of information, as well as with all requirements regarding obtaining consent from patients as may be set forth in the SHIN-NY Policy Standards and the RHIO Policies and Procedures.

ARTICLE VII DATA PROVIDER'S OBLIGATIONS

When a Participant is acting as a Data Provider under this Agreement, the terms of this Article VII shall apply to that Participant.

7.1 Grant of Rights to Data Provider. Throughout the term of this Participation Agreement, the RHIO 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 RHIO System for the purposes of complying with the obligations described in this Article VII, subject to the Data Provider's full compliance with the RHIO Policies and Procedures, the SHIN-NY Policy Standards, and the terms of this Participation Agreement. The RHIO retains all other rights to the RHIO System and all the components thereof. No Data Provider shall obtain any rights to the RHIO System except for the limited rights to use the RHIO System expressly granted by this Participation Agreement and the RHIO Policies and Procedures.

7.2 Provision of Data.

7.2.1 Generally. The Data Provider shall make accessible through the RHIO System the information described in the RHIO Policies and Procedures. The Data Provider will use reasonable efforts to provide Patient Data that accurately reflects the relevant data in the Data Provider's electronic records at the time such Patient Data is made accessible through the RHIO System.

7.2.2 No Warranties. THE DATA PROVIDER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES REGARDING THE PATIENT DATA OF THE DATA PROVIDER MADE AVAILABLE THROUGH THE RHIO SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF ACCURACY, COMPLETENESS, FITNESS FOR A PARTICULAR USE AND ANY OTHER EXPRESS OR IMPLIED WARRANTIES. EACH DATA RECIPIENT ACKNOWLEDGES AND AGREES THAT ANY DATA ACCESSED BY THE DATA RECIPIENT OR ITS AUTHORIZED USERS IS PROVIDED ON AN "AS-IS" AND "WHERE-IS" BASIS, AND THE DATA RECIPIENT SHALL TAKE ALL REASONABLE EFFORTS NECESSARY TO INFORM AUTHORIZED USERS OF THEIR RESPONSIBILITY TO REVIEW, UPDATE AND CONFIRM THE ACCURACY OF ANY INFORMATION ACCESSED THROUGH THE RHIO SYSTEM. USE OF THE RHIO SYSTEM IS NOT A SUBSTITUTE FOR A HEALTH CARE PROVIDER'S STANDARD PRACTICE OR PROFESSIONAL JUDGMENT. ANY

DECISIONS WITH RESPECT TO THE APPROPRIATENESS OF DIAGNOSES OR TREATMENTS OR THE VALIDITY OR RELIABILITY OF INFORMATION IS THE SOLE RESPONSIBILITY OF THE PATIENT'S HEALTH CARE PROVIDER. NOTHING IN THIS SECTION 7.2.2 IS INTENDED TO LIMIT A DATA PROVIDER'S OBLIGATIONS UNDER SECTION 7.2.1 HEREOF.

7.3 Grant of Rights to RHIO.

7.3.1 Grant of Rights.

(a) Throughout the term of this Participation Agreement, the Data Provider grants to the RHIO a worldwide, non-exclusive, non-transferable, limited, royalty-free right (i) to permit other Participants, other Qualified Entities and the participants of other Qualified Entities to access through the RHIO System and use all Patient Data provided by the Data Provider in accordance with the SHIN-NY Policy Standards and the RHIO Policies and Procedures, (ii) access and use, and permit other Participants, other Qualified Entities and the participants of other Qualified Entities to access through the RHIO System and use, all Patient Data provided by the Data Provider for Research in accordance with the SHIN-NY Policy Standards and the RHIO Policies and Procedures; (iii) to forward Patient Data provided by the Data Provider to other Participants, and to other Qualified Entities in order to enable those Qualified Entities to forward such Patient Data to their participants, in accordance with the SHIN-NY Policy Standards and the RHIO Policies and Procedures and (iv) subject to Section 7.3.2, to use such Patient Data to carry out the RHIO's duties under the SHIN-NY Policy Standards and the RHIO Policies and Procedures, including without limitation system administration, testing, problem identification and resolution, management of the RHIO System, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as the RHIO determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state and local laws and regulations.

(b) Each Data Provider acknowledges and agrees that by virtue of the RHIO's participation in the SHIN-NY, the Data Provider grants to other Qualified Entities and the participants of other Qualified Entities the right to receive, use and exchange Patient Data in accordance with the SHIN-NY Policy Standards. Each Data Provider and the RHIO agrees that the RHIO has no responsibility for any users accessing or utilizing the RHIO System or the SHIN-NY through any other Qualified Entity.

(c) Notwithstanding anything to the contrary in the SHIN-NY Policy Standards, each Data Provider acknowledges and agrees that the RHIO may provide De-Identified Data (as such term is defined in the RHIO Policies and Procedures) to Participants and that Participants may utilize such De-Identified Data for Quality Improvement (as such term is defined in the RHIO Policies and Procedures) activities provided that a specially designated committee appointed by Bronx RHIO reviews and approves the Quality Improvement activity in accordance with standards adopted through the Statewide Collaboration Process. Participants must make available to the committee the methodology of any proposed Quality Improvement project, which the Bronx RHIO shall make accessible to other Participants and the general public.

7.3.2 Limitations on Use of Patient Data. Notwithstanding Section 7.3.1, Patient Data provided by a Data Provider shall not be used by the RHIO for any of the following purposes:

(a) Uses Prohibited by the SHIN-NY Policy Standards or the RHIO Policies and Procedures. Any use that is prohibited by the SHIN-NY Policy Standards or the RHIO Policies and Procedures.

(b) Uses Prohibited by Law. Any use that is prohibited by federal, state or local laws, rules or regulations.

7.4 No Limitations on Data Provider's Use of Its Own Data. Nothing in this Article VII or elsewhere in this Participation Agreement is intended or will be deemed to in any way limit a Data Provider's use of its own patient data.

ARTICLE VIII PROTECTED HEALTH INFORMATION

8.1 Compliance with HIPAA, the SHIN-NY Policy Standards, RHIO Policies and Procedures, and Other Laws and Regulations. The RHIO and each Participant shall comply with all applicable standards for the confidentiality, security and use of patient health information under HIPAA, HITECH, 42 C.F.R. Part 2, the SHIN-NY Policy Standards, the RHIO Policies and Procedures, Article 33 of the New York Mental Hygiene Law, Article 27-F of the New York State Public Health Law, and any other applicable federal, state and local laws, rules or regulations. Each Participant agrees to report promptly upon its knowledge to the RHIO, and the RHIO agrees to report promptly to the Audit Subcommittee of the RHIO or such other committee or subcommittee of the Board of Directors as may be established by the RHIO Policies and Procedures, any material breach of the provisions of this Section 8.1 that relates to this Agreement. In addition, the RHIO agrees to report promptly to the other Participants any material breach of the provisions of this Section 8.1.

8.2 Business Associate Agreement. The Participant and the RHIO shall comply with the Business Associate Agreement attached hereto as Exhibit B or with such other Business Associate Agreement as may otherwise be mutually agreed upon by the Participant and the RHIO.

8.3 Qualified Service Organization Agreement. If, through any Participant's use of the RHIO Services, the RHIO's performance of its responsibilities described in the RHIO Policies and Procedures causes the RHIO to act as a "qualified service organization" (as defined in 42 CFR Part 2), the Participant and the RHIO shall comply with the Qualified Service Organization Agreement attached hereto as Exhibit C or with such other Qualified Service Organization Agreement as may otherwise be mutually agreed upon by the Participant and the RHIO.

**ARTICLE IX
OTHER OBLIGATIONS OF PARTICIPANTS.**

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

9.2 Compliance with the SHIN-NY Policy Standards and the RHIO Policies and Procedures. Each Participant shall comply with the SHIN-NY Policy Standards and the RHIO Policies and Procedures. Each Participant shall be responsible for any failure on the part of itself or any of its Authorized Users to comply with the SHIN-NY Policy Standards or the RHIO Policies and Procedures.

9.3 System Security and Risk Assessments.

9.3.1 Each Participant shall implement security measures with respect to the RHIO System and the RHIO Services in accordance with the SHIN-NY Policy Standards and the RHIO Policies and Procedures.

9.3.2 Each Participant shall conduct such risk assessments with respect to the RHIO System and the RHIO Services as the RHIO may reasonably require.

9.4 Software and/or Hardware Provided by Participant. Each Participant shall be responsible for procuring all equipment and software necessary for it to: (i) access the RHIO System, (ii) use the RHIO Services and (iii) provide to the RHIO 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 the RHIO's then-current specifications, as approved by the Board of Directors of the RHIO. The RHIO may change such specifications from time to time upon approval of the Board of Directors of the RHIO upon not less than ninety (90) 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 properly configuring all the Participant's computers to be used to interface with the RHIO System, including but not limited to the operating system, web browser and Internet connectivity.

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

9.6 Viruses and Other Threats. In providing any data to the RHIO System, the Participant shall use reasonable efforts to ensure that the medium containing such data does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data which will disrupt the proper operation of the RHIO System or any part

thereof or any hardware or software used by the RHIO in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the RHIO System or any part thereof or any hardware, software or data used by the RHIO or any other Participant in connection therewith, to be destroyed, damaged or rendered inoperable.

9.7 Authorized User Training. The Participant shall participate in training programs directed at its Authorized Users as required in the RHIO Policies and Procedures regarding, without limitation, access and use of the RHIO System and the RHIO Services, and privacy and security of Patient Data obtained using the RHIO System and the RHIO Services.

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

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

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

ARTICLE X THE RHIO'S OPERATIONS AND RESPONSIBILITIES.

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

10.2 Participant Training. The RHIO shall provide training to each Participant regarding access to and use of the RHIO System and the RHIO Services, including such user manuals and other resources as the RHIO determines appropriate to support the RHIO System and the RHIO Services, so that the Participant or the RHIO may train all of the Participant's Authorized Users regarding the access and use of the RHIO System and the RHIO Services as required under Section 9.7 hereof.

10.3 Telephone and/or E-Mail Support. The RHIO shall provide, by telephone and/or e-mail, support and assistance in resolving difficulties in accessing or using the RHIO System and the RHIO Services, in accordance with the requirements, if any, set forth in the RHIO Policies and Procedures.

10.4 Audits and Reports.

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

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

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

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

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

(c) Participation in the RHIO's process for soliciting and accepting complaints from stakeholders, including Participants.

10.5 Compliance with Laws and Regulations. Without limiting any other provision of this Participation Agreement, the SHIN-NY Policy Standards, and the RHIO Policies and Procedures relating to the parties' compliance with applicable laws and regulations, the RHIO agrees to comply with applicable federal, state and local laws, ordinances and regulations relating to its operation of the RHIO System and provision of the RHIO Services.

10.6 Viruses and Other Threats. The RHIO shall use reasonable efforts to ensure that the RHIO System does not include, and will not introduce, any program, routine, subroutine, or data which will disrupt the proper operation of any hardware or software used by the Participant in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause any hardware, software or data used by the Participant in connection with the RHIO System to be destroyed, damaged or rendered inoperable.

10.7 Responsibility for Conduct. As between the Participant and the RHIO, the RHIO shall be solely responsible for all acts and omissions of the RHIO with respect to the RHIO System, the RHIO 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 the RHIO. In addition, as between the Participant and the RHIO, the RHIO shall be solely responsible for all acts or omissions of any other individual who accesses the RHIO System and/or uses the RHIO Services either through the RHIO or by use of any password, identifier or log-on received or obtained from the RHIO if access and/or use was due to the negligent or intentional failure of the RHIO to comply with its obligations under this Agreement.

10.8 Responsibility for Other Qualified Entities and their participants. Each Participant acknowledges and agrees that the RHIO shall have no responsibility for the acts or omissions of any other Qualified Entity or the participants of any other Qualified Entity.

10.9 Intellectual Property Rights. Subject to compliance by the Participant with the provisions of this Agreement, the RHIO warrants that it has all rights and licenses necessary to provide the RHIO System and the RHIO Services to the Participant without violating any intellectual property rights of any third party.

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

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

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

**ARTICLE XI
FEES AND CHARGES.**

11.1 Service Fees. The RHIO shall charge Participants fees to access the RHIO System and use the RHIO Services in accordance with a Fee Schedule adopted by the Board of Directors of the RHIO. The RHIO shall notify all Participants of any changes to such fees at least (90) days prior to the implementation of such change. In the event that a Participant objects to such change, that Participant may terminate this Participation Agreement by giving the RHIO written notice thereof not more than thirty (30) days following the RHIO's notice of such decision. Such termination shall be effective as of the effective date of the change in fees.

**ARTICLE XII
PROPRIETARY INFORMATION.**

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

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

**ARTICLE XIII
DISCLAIMERS, EXCLUSIONS OF WARRANTIES, LIMITATIONS OF LIABILITY**

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

13.2 NO WARRANTIES. ACCESS TO THE RHIO SYSTEM, USE OF THE RHIO 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 OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE SYSTEM OR THE INFORMATION IN THE SYSTEM, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE RHIO SYSTEM.

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

13.4 Unauthorized Access; Lost or Corrupt Data. The RHIO is not responsible for unauthorized access to the Participant’s transmission facilities or equipment by individuals or

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

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

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

13.7 Limitation of Liability. Notwithstanding anything in this Participation Agreement to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of the RHIO and the RHIO's officers, directors, employees and other agents to the Participant under this Participation Agreement, regardless of theory of liability, shall be limited to the amount of

insurance coverage available to the RHIO with respect to such liability (the amount of such insurance coverage to be determined by the Board of Directors of the RHIO pursuant to Section 14.1 hereof) plus any amounts for which the RHIO is entitled to indemnification by third parties, such as technology vendors.

13.8 Direct Service. The Participant acknowledges and agrees that the RHIO facilitates access to the Direct Service, but that the Direct Service is provided by a third party and not by the RHIO. The RHIO shall have no liability with respect to the Direct Service, including but not limited to any failure of such third party to provide the Direct Service.

ARTICLE XIV INSURANCE; INDEMNIFICATION FIX

14.1 Insurance. Each Participant and the RHIO shall obtain and maintain, throughout the term of this Participation Agreement, insurance coverage as determined by the Board of Directors of the RHIO and specified in the RHIO Policies and Procedures; provided that, for Participants with professional liability coverage under the Federal Tort Claims Act, such coverage shall be deemed to meet all requirements in this Participation Agreement related to professional liability insurance coverage.

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

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

14.2.2 relating to a violation of HIPAA or HITECH by the Participant;

14.2.3 relating to the gross negligence of any Participant Indemnified Party in connection with this Agreement or the RHIO Services;

14.2.4 relating to any taxes, interest, penalties, fines or other amounts, civil or criminal, in connection with this Agreement or the RHIO Services that are assessed against the RHIO and that are not the obligation of the RHIO; or

14.2.5 relating to any theft or misappropriation of Patient Data by any Participant Indemnified Party.

14.3 Indemnification Procedure. If any claim is commenced against the RHIO (the “Indemnified Party”), prompt notice thereof shall be given by the Indemnified Party to the Participant (the “Indemnifying Party”). The parties shall agree upon the party who will be responsible for the defense of such claim; provided, however, that if the parties cannot agree upon the party who will be responsible for the defense of such claim within 15 days after receipt by the Indemnifying Party of such notice, (1) the Indemnifying Party shall immediately take control of the defense of such claim and shall engage attorneys acceptable to the Indemnified Party (which acceptance shall not be unreasonably withheld) to defend such claim; and (2) the Indemnified Party shall cooperate with the Indemnifying Party (and its attorneys) in the defense of such claim. The Indemnified Party may, at its own cost and expense, participate (through its attorneys or otherwise) in such defense. If the Indemnifying Party does not assume control over the defense of a claim as provided in this Section 14.3, the Indemnified Party may defend the claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party. If the Indemnifying Party assumes control over the defense of a claim as provided in this Section 14.3, the Indemnifying Party may not settle such claim without the consent of the Indemnified Party if the settlement provides for relief other than the payment of monetary damages or for the payment of monetary damages for which the Indemnified Party will not be indemnified in full pursuant to this Article XIV.

14.4 Sole Recourse; Assignment of Insurance Rights.

14.4.1 Except as otherwise set forth in this Section 14.4, in each case, the aggregate liability of the Participant to the RHIO Indemnified Parties for any Losses or Damages incurred by the RHIO Indemnified Parties arising under or in connection with this Agreement or the RHIO Services will be limited to (1) in the event that the Losses or Damages are subject to insurance coverage, (i) the insurance proceeds actually recovered by the Participant, its officers, directors and employees (the “Participant Indemnified Parties”), plus (ii) any amounts actually received by the Participant Indemnified Parties from third-party service providers, vendors and suppliers, in each case in respect of the claim giving rise to such Losses or Damages; or (2) in the event that the Losses or Damages are not subject to insurance coverage, (i) One Million Dollars (\$1,000,000), plus (ii) any amounts actually received by the Participant Indemnified Parties from third-party service providers, vendors and suppliers in respect of the claim giving rise to such Losses or Damages; provided, however, that in either event any Losses or Damages caused by the intentional acts or omissions of a Participant Indemnified Party shall not be subject to such limitation. Except as otherwise provided, this Section 14.4 shall constitute the sole and exclusive recourse of the RHIO Indemnified Parties with respect to any Losses or Damages incurred by the RHIO Indemnified Parties or any other liability of the Participant to the RHIO Indemnified Parties, in connection with this Agreement, regardless of the theory under which any claim for Losses, Damages or such other liability is made.

14.4.2 To the extent that the Participant is liable to the RHIO Indemnified Parties under Section 14.2 for any Losses or Damages, the Participant will use commercially reasonable efforts, at its sole expense, to secure all available insurance proceeds for the benefit of the RHIO Indemnified Party from the Participant's insurers. This obligation includes, where warranted, retention of specialized insurance counsel to assist in securing such proceeds.

14.4.3 With respect to any Losses or Damages to which Section 14.2 applies, the Indemnifying Party hereby assigns to the Indemnified Party the rights to proceeds of any insurance maintained by the Indemnifying Party covering such Losses or Damages. Notwithstanding the obligations of the Indemnifying Party set forth in Section 14.4.2, the Indemnified Party at any time may elect, at its sole discretion and expense, to assume from the Indemnifying Party responsibility for pursuing insurance recovery, in its own name or as assignee of rights held by the Indemnifying Party, with respect to any rights to insurance proceeds assigned to the Indemnified Party pursuant to this Section 14.4.3; provided, however, that if the Indemnifying Party, prior to such election, has failed to comply with its obligations pursuant to Section 14.4.2, the Indemnifying Party shall, notwithstanding the limitations set forth in Section 14.4.1, be liable to the Indemnified Party for all reasonable costs incurred by the Indemnified Party in pursuing insurance recovery on its own behalf, including any attorneys' fees. If the Indemnified Party elects to assume responsibility for pursuing insurance proceeds from one or more of the Indemnifying Party's insurers pursuant to this Section 14.4.3, the Indemnifying Party shall assist and cooperate with the Indemnified Party in the pursuit of such proceeds to the fullest extent that is commercially reasonable.

14.4.4 To the extent that the assignment of rights to insurance proceeds contemplated by Section 14.4.3 is deemed to invalidate or diminish the availability of insurance proceeds under any of the Indemnifying Party's insurance policies to cover Losses or Damages to which Section 14.4.1 applies, the Parties mutually intend that Section 14.4.3 not be enforced or enforceable.

ARTICLE XV TERMINATION

15.1 Termination by a Participant.

15.1.1 A Participant may terminate this Participation Agreement at any time without cause by giving not less than sixty (60) days prior notice to the RHIO.

15.1.2 A Participant may terminate this Participation Agreement upon the RHIO's material breach of its obligations hereunder, which breach is uncured for a period of thirty (30) days after the Participant has given the RHIO notice of that breach and requested that the RHIO cure that breach; provided that no opportunity to cure shall be provided and termination shall be immediate in the event of (a) a breach that cannot reasonably be cured within thirty (30) days, (b) repeated breaches of the same obligation, (c) a breach that would expose the Participant to civil or criminal liability or would otherwise cause a violation of applicable laws, rules, regulations or accreditation standards applicable to Participant or (d) a breach of the RHIO's obligations under Exhibit B hereto.

15.1.3 Participant may terminate this Participation Agreement in accordance with the provisions of Sections 2.2.2, 3.2.2 or 11.1 hereof.

15.2 Termination by the RHIO.

15.2.1 The RHIO may terminate this Participation Agreement with respect to all Participants at any time without cause by giving not less than sixty (60) days prior notice to the Participants.

15.2.2 The RHIO may terminate this Participation Agreement with respect to any Participant upon the Participant's material breach of its obligations hereunder, which breach continues uncured for a period of thirty (30) days after the RHIO has given the Participant notice of that breach and requested that the Participant cure that breach; provided that no opportunity to cure shall be provided and termination shall be immediate in the event of (a) a breach that cannot reasonably be cured within thirty (30) days, (b) repeated breaches of the same obligation or (c) a breach that would expose the RHIO to civil or criminal liability or would otherwise cause a violation of applicable laws, rules, regulations or accreditation standards applicable to the RHIO.

15.2.3 The RHIO may terminate this Participation Agreement with respect to all Participants at any time upon termination of the RHIO's participation in the SHIN-NY.

15.2.4 The RHIO may terminate this Participation Agreement at any time without cause with respect to any Participant by giving not less than one hundred twenty (120) days prior notice to such Participant.

15.3 Effect of Termination. Upon any termination of this Participation Agreement with respect to a Participant, neither that party nor its Authorized Users shall have any rights to use the RHIO System or the RHIO Services and neither the RHIO nor any of the other Participants shall have any further access to Patient Data of such Participant through the RHIO System; provided that nothing in this Section 15.3 shall require the return by any other Participant of any Patient Data of a terminating Participant that was accessed prior to such termination.

15.4 Survival of Provisions. Any provision of this Participation Agreement that contemplates performance or observance subsequent to any termination of this Participation Agreement shall survive any termination of this Participation Agreement, including but not limited to the following: Section 5.4, Article VIII, Article XII, Section 13.7, Section 15.3 and this Section 15.4.

**ARTICLE XVI
GENERAL PROVISIONS.**

16.1 Applicable Law. This Participation Agreement shall be governed by the laws of the State of New York, without reference to the principles thereof respecting conflicts of laws. Except as otherwise required by law, if any action or other proceeding is brought on or in connection with this Participation Agreement, the venue of such action shall be exclusively in Bronx County, New York.

16.2 Non-Assignability. No rights of either party under this Participation Agreement may be assigned or transferred by such party, either voluntarily or by operation of law, without the prior written consent of the other party, which it may withhold in its sole discretion.

16.3 Supervening Circumstances. Neither the Participant nor the RHIO shall be deemed in violation of any provision of this Participation Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control other than a lack of financial resources. This Section 16.3 shall not apply to obligations imposed under applicable laws and regulations.

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

16.5 Notices. Any and all notices required or permitted under this Participation Agreement shall be deemed to have been properly given when delivered if delivered in person; upon receipt if mailed by first class mail, postage, prepaid; within five (5) business days if mailed by certified or registered mail, return receipt requested; or within one (1) business day if delivered by commercial courier that can confirm delivery, and when addressed to the parties as specified below, or as the parties may otherwise specify in accordance with this provision.

For Participant:

with a courtesy copy to:

For the RHIO:

Bronx RHIO, Inc.
1776 Eastchester Rd., Suite 200
Bronx, NY 10461

with a courtesy copy to:

Helen R. Pfister
Manatt, Phelps & Phillips, LLP
7 Times Square

New York, NY 10036

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

16.7 Injunctive Relief. Each of the parties hereby acknowledges and agrees that nothing in this Participation Agreement shall interfere with any right of the other party and/or the other Participants to injunctive or other equitable relief.

16.8 Third Party Beneficiaries. Except as expressly provided in Section 16.7 hereof (with respect to injunctive relief by Participant of other Participants), there shall be no third party beneficiaries of this Participation Agreement.

16.9 Complete Understanding. This Participation Agreement, together with the Business Associate Agreement, if any, in effect between the parties, the SHIN-NY Policy Standards and the RHIO Policies and Procedures, contains the entire understanding of the parties hereto, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Participation Agreement other than those contained or referenced herein. All modifications or amendments to this Participation Agreement shall be in writing and signed by all parties.

16.10 Publicity. Except as otherwise provided in this Participation Agreement, neither party may use the name or logo (or any variant thereof) of the other party or any other Participant in any news or publicity release, policy recommendation, advertising, or any commercial communication in any form of media (whether written, electronic, video or otherwise), without the prior written consent of the other party or such other Participant. Notwithstanding the foregoing provision of this Section 16.10, (i) the RHIO may issue to the general press, trade press and industry participants announcements concerning this Participation Agreement including Participant's name and, at the RHIO's discretion, a general description of its operations, such description to be subject to the reasonable prior approval of Participant; (ii) Participant may issue to the general press, trade press and industry participants announcements concerning this Participation Agreement including the RHIO's name and, at Participant's discretion, a general description of its operations, such description to be subject to the reasonable prior approval of the RHIO; and (iii) the RHIO may identify Participant as a participant in the RHIO System. The limitations set forth in this Section 16.10 shall not apply to any documents that either party may be required to provide to a federal, state or local governmental agency.

16.11 Independent Contractors. The parties to this Participation Agreement are separate and independent entities. Nothing in this Participation Agreement shall be construed or be deemed to create a relationship of employer and employee, principal and agent, partnership, joint venture, or any relationship other than that of independent entities who have entered into this Participation Agreement solely for the purposes provided.

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement as of the day and year first above written and have caused their respective corporate seals to be hereunto affixed.

BRONX RHIO, INC.

By: _____
Name: Charles Scaglione
Title: Executive Director

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Effective Date: _____

Schedule A

Participating Sites or Facilities

Exhibit A

Policies and Procedures

Exhibit B

Terms of Business Associate Agreement

All capitalized terms not defined herein shall have the meanings given to them under HIPAA.

1. **Use and Disclosure.** The RHIO shall use and disclose Protected Health Information only for the purposes of the RHIO's performance of its responsibilities described in the Participation Agreement between the parties (the "Participation Agreement") and the RHIO Policies and Procedures (as such term is defined in the Participation Agreement). The RHIO may also use and disclose Protected Health Information for the proper management and administration of the RHIO's business and to carry out its own legal responsibilities; provided, that any disclosure pursuant to this Section 1 shall either be required by law or be made with reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to such person, and that the person will notify the RHIO of any instances of which it is aware in which the confidentiality of the information has been breached.

2. **Appropriate Safeguards.** The RHIO shall use appropriate safeguards to prevent use or disclosure of Protected Health Information otherwise than as permitted by the RHIO Policies and Procedures, including administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of that Protected Health Information, including, but not limited to, those set forth in the HIPAA Security Rule (45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316) .

3. **Agents, Subcontractors.** The RHIO shall ensure that its agents, including any subcontractor, to whom the RHIO provides Protected Health Information agree to the restrictions and conditions that apply to the RHIO with respect to such information and implement the safeguards required by Section 2 with respect to electronic Protected Health Information. If the RHIO knows or should know of a material breach or violation by a subcontractor or agent that has created, received, maintained or transmitted such Protected Health Information, the RHIO shall take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, it shall terminate the subcontract or relevant agreement, if feasible.

4. **Inspection and Copying.** To the extent that the RHIO maintains any Protected Health Information of the Participant that is not also maintained by the Participant itself, the RHIO shall make such Protected Health Information available to the Participant or any person authorized by the Participant for inspection and copying within twenty (20) days of a request by the Participant therefor.

5. **Amendments.** To the extent that the RHIO maintains any Protected Health Information of the Participant that is not also maintained by the Participant itself, the RHIO shall make such Protected Health Information available for amendment and incorporate any amendments to Protected Health Information requested by the Participant within twenty (20) days of a request by the Participant therefor.

6. Reports. The RHIO shall promptly report to the Participant any unauthorized or improper use or disclosure of, or security incident pertaining to, Protected Health Information of which it becomes aware. Such notifications shall include all the information required by 45 C.F.R. §§ 164.404. Further, the RHIO shall notify the United States Department of Health and Human Services and relevant media outlets as required by, and subject to the exceptions set forth in, HIPAA. The RHIO shall, to the extent practicable, mitigate any harmful effects of any improper use or disclosure of Protected Health Information or security incident of which it becomes aware.

7. Accounting. The RHIO agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Participant to respond to a request for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. The RHIO shall provide such information to Participant within twenty (20) days of Participant's request therefor.

8. Availability of Records. The RHIO shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Participant's compliance with its legal obligations.

9. Action Upon Termination. Upon termination of the Participation Agreement, the RHIO shall, if feasible, return or destroy all Protected Health Information received from, or created or received by the RHIO or any of its subcontractors on behalf of, the Participant that the RHIO or any of its subcontractors still maintains in any form, and the RHIO shall retain no copies of such information. If the RHIO reasonably determines that such return or destruction is not feasible, it shall extend the protections of the Participation Agreement to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

10. Special Termination. Notwithstanding any other provision of the RHIO Policies and Procedures to the contrary, the Participant may immediately terminate the Participation Agreement if it determines that the RHIO has violated a material term of this Business Associate Agreement, and the RHIO fails to remedy the violation within thirty (30) days following receipt of written notice thereof.

Exhibit C

Terms of Qualified Service Organization Agreement

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

Furthermore, the RHIO:

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