



**TERMS AND CONDITIONS
FOR
HEALTH INFORMATION EXCHANGE
PARTICIPATION AGREEMENT**

November 27, 2017

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TERMS AND CONDITIONS FOR PARTICIPATION AGREEMENT
[Unless otherwise indicated, Section references are to Section numbers contained in these
Terms and Conditions]

1. DEFINITIONS

- 1.1** “Alerts” shall have the meaning set forth in the Policies and Procedures.
- 1.2** “Authorized User” means an individual who has been authorized by a Participant to access data via the HIE in accordance with these Terms and Conditions and the Policies and Procedures.
- 1.3** “Data Provider” means a Participant that is registered to provide Patient Data to the HIE.
- 1.4** “Data Recipient” means a Participant that is registered to obtain Patient Data from the HIE.
- 1.5** “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.
- 1.6** “Data Use and Reciprocal Support Agreement” or “DURSA” means the data use agreement entered into by HEALTHeLINK as a requirement for participation in the eHealth Exchange.
- 1.7** “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.
- 1.8** “External Networks” means statewide, nationwide or other health information exchange networks, including but not limited to the eHealth Exchange (defined in Section 1.7) and SHIN-NY (defined in Section 1.20), which enable the secure exchange of health information among authorized parties.
- 1.9** “Health Information Exchange” or “HIE” means HEALTHeLINK’s systems, devices, mechanisms and infrastructure to facilitate the electronic movement of Patient Data among Participants according to nationally recognized standards.
- 1.10** “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and its implementing regulations set forth at 45 CFR Parts 160 and 164.
- 1.11** “Participant” shall have the meaning set forth in the Policies and Procedures.
- 1.12** “Participation Agreement” means the agreement made by and between HEALTHeLINK and each of its Participants, which sets forth the terms and conditions governing the operation of the HIE and the rights and responsibilities of the Participants and HEALTHeLINK with respect to the HIE, which incorporates these Terms and Conditions and the Policies and Procedures.
- 1.13** “Patient Data” means health information that is created or received by a health care provider and relates to the past, present, or future physical or mental health condition of an individual or the provision of health care to an individual and 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 or Data Source pursuant to Section 6 (Data Providers' Rights and Obligations).

1.14 “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.

1.15 “Policies and Procedures” means HEALTHeLINK's policies and procedures applicable to the operation of the HIE, as may exist and be in effect, and as amended, repealed, and/or replaced from time to time pursuant to Section 2.3 (Procedures for Amendment). The Policies and Procedures as in effect as of the date hereof are incorporated herein by reference and are available on HEALTHeLINK's website.

1.16 “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.

1.17 “Registration Application” means the application submitted by a person or entity that wishes to become a Participant pursuant to Section 3 (Registration Application and Participation Agreement).

1.18 “Services” refers to the services for which the Participant registers and means the information-sharing and aggregation services that HEALTHeLINK provides, as available from time to time, to enable Participants to exchange Patient Data on the HIE, including:

- (a) Acting as an intermediary between, and operating a network of, Participants seeking to exchange information;
- (b) Managing access to and use of the HIE;
- (c) Providing Participants access to External Networks (defined in Section 1.8); and
- (d) Other services furnished by or available through HEALTHeLINK from time to time.

1.19 “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.

1.20 “Statewide Collaboration Process” means an open, transparent process within which multiple SHIN-NY stakeholders contribute to recommendations for SHIN-NY Policy Guidance.

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

1.22 “Terms and Conditions” means these Terms and Conditions for the Participation Agreement, as amended, repealed, and/or replaced from time to time, pursuant to Section 2.3 (Procedures for Amendments).

1.23 “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.

1.24 “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.

1.25 “Vendor Agreement” means each agreement between HEALTHeLINK 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 Terms and Conditions

These Terms and Conditions apply to the operation of the HIE, the provision of the Services, and the relationships among HEALTHeLINK and Participants, 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 HEALTHeLINK shall provide the HIE and the Services, 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) HEALTHeLINK is solely responsible for the development of these Terms and Conditions and the Policies and Procedures, and may amend, repeal, or replace these Terms and Conditions and/or the Policies and Procedures at any time as HEALTHeLINK determines is appropriate, and except as provided in Section 2.3(b), all pursuant and subject to Sections 3.3 – 3.9 below.

(b) Notwithstanding anything contained in Section 2.3(a) or Section 3.3 – 3.9 below, if a change to the Terms and Conditions or Policies and Procedures, as the case may be, is required in order for HEALTHeLINK and/or Participants to comply with applicable laws or regulations, HEALTHeLINK may implement the change and provide notice to Participants within a shorter period of time that HEALTHeLINK determines is appropriate under the circumstances.

3. REGISTRATION APPLICATION AND PARTICIPATION AGREEMENT

3.1 Registration Application

Before a person or entity may enter into a Participation Agreement, it must submit a written Registration Application to HEALTHeLINK. HEALTHeLINK shall review each Registration Application and approve or disapprove such Registration Application, as HEALTHeLINK determines in its sole discretion.

3.2 Participation Agreement Required

Upon approval of a Registration Application, and prior to accessing the HIE or using the Services, the person or entity so approved shall enter into a Participation Agreement with HEALTHeLINK.

3.3 Effect of Policies and Procedures Upon Participant

Upon approval of a Registration Application and execution of the Participation Agreement, Participant agrees to comply with all applicable provisions of the Policies and Procedures in effect from time to time. HEALTHeLINK may make exceptions to the Policies and Procedures in a Registration Application at HEALTHeLINK's sole discretion, as long as any exceptions do not otherwise conflict with the terms of these Terms and Conditions and are approved through the Operating Committee processes referenced in Section 8.8 (Operating Committee).

3.4 Changes to Policies and Procedures and/or Terms and Conditions

HEALTHeLINK may amend, repeal, and/or replace the Policies and Procedures or Terms and Conditions at any time, and from time to time, upon thirty (30) days' prior written notice to the Participants, unless an earlier effective date is required by law. Subject to Section 3.5 (Request for Reconsideration or Termination Based on Objection to Change) below, any change to the Policies and Procedures and/or Terms and Conditions shall be legally binding upon HEALTHeLINK and Participants, as of the effective date of the change, which shall not be earlier than thirty (30) days after notice is provided to Participants, unless an earlier effective date is required by law.

3.5 Request for Reconsideration or Termination Based on Objection to Change

If a change described in Section 3.4 (Changes to Policies and Procedures and/or Terms and Conditions) affects a material right or obligation of a Participant under that Participant's Registration Application, and the Participant objects to that change, that Participant may, within thirty (30) days following HEALTHeLINK's notice of the change to Participant, (i) make request to the Operating Committee for reconsideration noting the reasons for the Participant's objection; or (ii) terminate its Registration Application by giving HEALTHeLINK written notice thereof. The change objected to will not be implemented with respect to the objecting Participant prior to resolution of a requested reconsideration or to the effective date of termination under this Section 3.5, unless such change was required in order for HEALTHeLINK and/or Participants to comply with applicable laws or regulations.

(a) In the event of a request for reconsideration, the Operating Committee shall review the request for reconsideration within thirty (30) days of its receipt of the request and make a determination thereon. The determination must be finalized and shall be conveyed in writing to the Participant within five (5) business days of becoming final.

(b) If Participant chooses not to request reconsideration, or is still unsatisfied after reconsideration, it may terminate its Participation Agreement by giving HEALTHeLINK written notice of termination pursuant to this Subsection 3.5(b), which will be effective upon receipt of the notice.

3.6 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 HEALTHeLINK.

(b) Participant may terminate its Participation Agreement if HEALTHeLINK 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 Participant has given HEALTHeLINK notice of that failure and requested that the HEALTHeLINK cure that failure.

(c) Participant may terminate its Participation Agreement if a Breach, as described in Section 10.2 (Reporting of Breaches), occurs and HEALTHeLINK does not promptly take measures either (i) to cure that breach to the reasonable satisfaction of Participant, if cure is possible given the nature of the breach, or (ii) to prevent subsequent similar breaches, subject to the termination provisions outlined in Section 10 of these Terms and Conditions.

(d) Notwithstanding any other provision of this Section 3, Participant may also terminate its Participation Agreement in accordance with the provisions of the Business Associate Agreement attached hereto as **Exhibit A**.

3.7 HEALTHeLINK's Rights to Terminate

(a) HEALTHeLINK 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) HEALTHeLINK, with approval of the Operating Committee (defined in Section 8.8 (Operating Committee)), 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 HEALTHeLINK has given the Participant notice of that failure and requested that the Participant cure that failure.

(c) HEALTHeLINK may terminate any Participant's Participation Agreement if a Breach as described in Section 10.2 (Reporting of Breaches), occurs and the Participant does not promptly take measures either (i) to cure that breach to the reasonable satisfaction of HEALTHeLINK, 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 HEALTHeLINK.

3.8 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. All licenses or other rights to use the HIE, associated hardware and/or Services 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 3.9 (Survival of Provisions).

3.9 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 4.4 (Responsibility for Conduct of Participant and Its Authorized Users); Section 10 (Protected Health Information); Section 12 (Proprietary Information); Section 14 (Dispute Resolution); and Section 15 (Indemnification).

4. AUTHORIZED USERS

4.1 Identification of Authorized Users

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

4.2 Requirements for Participant's Authorized Users and HEALTHeLINK's Personnel

Participant shall ensure that each of its Authorized Users satisfies all of the requirements for Authorized Users set forth in the Policies and Procedures. HEALTHeLINK shall ensure that each person utilizing the HIE on behalf of HEALTHeLINK satisfies all of the requirements for its personnel set forth in the Policies and Procedures.

4.3 No Use by Other than Authorized Users

Both HEALTHeLINK 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 HEALTHeLINK in accordance

with Section 4.1 (Identification of Authorized Users) and HEALTHeLINK's employees, agents, or contractors.

4.4 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 its 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 from the Participant or any of the Authorized Users, only if such access was obtained as a result of the negligence or willful misconduct of the Participant or a Participant's Authorized User.

4.5 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 HEALTHeLINK or by the Participant on whose behalf the Authorized User accesses the HIE and/or uses the Services or the Patient Data or other information made available therefrom, 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 HEALTHeLINK or the Participant.

4.6 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 and in accordance with the Participant's policies and procedures, as applicable.

5. DATA RECIPIENTS' RIGHTS AND OBLIGATIONS

5.1 Data Recipient's Use of Services

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

5.2 Grant by HEALTHeLINK

HEALTHeLINK 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. HEALTHeLINK 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

A 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

A 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. Without limiting the generality of the foregoing, a Data Recipient shall not use the HIE, Services, or Patient Data for any purpose or in any manner that is prohibited by HIPAA, the SHIN-NY Policy Guidance, or other applicable law.

5.5 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, including Patient Data, in any way.

5.6 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 PROVIDERS' RIGHTS AND OBLIGATIONS

6.1 Data Provider Obligations

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

6.2 Grants by HEALTHeLINK

HEALTHeLINK 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 for the purposes of complying with the obligations described in this Section 6 (Data Providers' Rights and Obligations), subject to the Data Provider's full compliance with the Data Provider's Participation Agreement. HEALTHeLINK 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 through the HIE.

6.4 Ownership of Data

The parties acknowledge that each Participant continues to own its data and that HEALTHeLINK holds the data on behalf of each Participant as a custodian, subject to applicable law and the Participation Agreement. Notwithstanding, in the event a Participant's participation in HEALTHeLINK terminates for any reason, the terminating Participant acknowledges that any Participant who properly accessed any such data in accordance with the terms of the Participation Agreement, may retain such data after termination.

6.5 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 provide Patient Data to the HIE that is free from serious error, reasonably complete, and provided in a timely manner.

6.6 License

The Data Provider grants to HEALTHeLINK 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; (ii) to process Alerts; (iii) to use such Patient Data to carry out HEALTHeLINK's duties under the Participation Agreement, 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 permitted under the Policies and Procedures, and as HEALTHeLINK determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations; (iv) to use such Patient Data that has been de-identified in accordance with HIPAA, (which, if permitted by applicable law, may be de-identified by HEALTHeLINK), to assess and articulate the value of the HIE in a manner consistent with HEALTHeLINK's mission and purposes and only in accordance with the Policies and Procedures; (v) to release population data in accordance with the Policies and Procedures; and (vi) to facilitate the access of individuals and their Personal Representatives to the individuals' data in accordance with the Policies and Procedures. Except as specifically provided in the Participation Agreement and as otherwise agreed to by both parties, nothing in the Participation Agreement shall give rise to any right of HEALTHeLINK to any right, title or interest in any Patient Data received by HEALTHeLINK through the HIE, and HEALTHeLINK will not acquire any such right, title or interest by virtue of providing the Services.

6.7 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, including Patient Data, in any way.

6.8 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 PARTICIPANTS

7.1 Software and Hardware Provided by Participant

Participant shall be responsible for procuring all equipment and software necessary for it to access the HIE, use the Services, and provide to HEALTHeLINK all information required to be provided by the Participant ("Participant's Required Hardware and Software"). Participant's Required Hardware and Software shall conform to HEALTHeLINK's then-current specifications, as set forth in the Policies and Procedures. Without limiting any other provision of these Terms and Conditions, HEALTHeLINK may change such specifications from time to time in its sole discretion 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 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.

7.2 Other Resources

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.

7.3 Malicious Software, Viruses, and Other Threats

Participant shall use reasonable efforts to ensure that its connection to and use of the HIE, 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 HEALTHeLINK 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 HEALTHeLINK or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.

7.4 Training

Participant shall provide appropriate and adequate training to all of the Participant 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. HEALTHeLINK may, from time to time, make certain training materials available for the Participant’s use.

7.5 Audits, Investigations and Reports

Participant shall review periodic audits and reports conducted and prepared by HEALTHeLINK and shall ensure compliant use of the HIE by Participant and Authorized Users, including taking appropriate follow-up actions as required by the Policies and Procedures.

7.6 Cooperation with HEALTHeLINK’s Participation in External Networks

Participant agrees, in accordance with the Policies and Procedures, to reasonably cooperate on issues relating to HEALTHeLINK’s participation in External Networks, a list of which are posted on HEALTHeLINK’s website, including but not limited to providing information and/or allowing audit of information, to the extent necessary for HEALTHeLINK to fulfill its reporting, audit, investigation and other obligations with respect to its participation in External Networks.

7.7 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.

7.8 Compliance with Participant’s Policies and Procedures

In the event of a conflict between the Policies and Procedures and a Participant’s own policies and procedures, the Participant shall comply with the policy that is more protective of individual privacy and security.

7.9 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 Participant shall also comply with federal, state, and local laws, ordinances and regulations, and the Participant’s policies and procedures, applicable to its operations.

7.10 Disclosure to Business Associates

In any case where a Participant has a right to access or receive protected health information under the SHIN-NY Policy Guidance, the Participant may request that HEALTHeLINK forward such information to a Business Associate of the Participant, and HEALTHeLINK may comply with such request, so long as the conditions set forth in subsections (a) through (e) are met. The Participant is responsible for the actions of its Business Associate.

(a) The Participant and its Business Associate have entered into a business associate agreement under which the Business Associate agrees to protect the confidentiality of the protected health information being disclosed to the Business Associate.

(b) The Participant represents to HEALTHeLINK in writing that its Business Associate is seeking access to the Participant's information in accordance with the terms of the business associate agreement between the two parties.

(c) The Business Associate and the Participant agree to provide a copy of their business associate agreement to HEALTHeLINK upon request.

(d) HEALTHeLINK reasonably believes that the disclosure is in accordance with state and federal law and terms of the business associate agreement.

(e) The Business Associate agrees not to further disclose the protected health information except where the SHIN-NY Policy Guidance allows for such disclosure.

8. HEALTHeLINK'S RIGHTS, OBLIGATIONS AND OPERATIONS

8.1 Compliance with Terms and Conditions

HEALTHeLINK shall require that all Participants enter into a Participation Agreement or other legally binding agreement to comply with these Terms and Conditions in such form as HEALTHeLINK determines is appropriate.

8.2 Maintenance of the HIE

HEALTHeLINK shall maintain the functionality of the HIE and the Services, including maintenance of a disaster recovery plan, all 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 Malicious Software, Viruses, and Other Threats

HEALTHeLINK shall use reasonable efforts to ensure that its provision of the HIE and the 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 HEALTHeLINK or any Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.

8.4 Training of HEALTHeLINK's Personnel

HEALTHeLINK shall provide appropriate and adequate training to all of HEALTHeLINK's 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 and the Policies and Procedures.

8.5 Telephone and/or E-Mail Support

HEALTHeLINK will provide or arrange for assistance in resolving difficulties in accessing and using the HIE and the Services, as HEALTHeLINK determines appropriate to support the HIE and the Services.

8.6 Audits, Investigations and Reports

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

8.7 Change or Termination of Services

Unless circumstances beyond HEALTHeLINK's 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 HEALTHeLINK's Board of Directors and not on less than ninety (90) days prior notice to Participants.

8.8 Operating Committee

(a) HEALTHeLINK shall create and maintain an Operating Committee (the "Operating Committee"), which shall act as a resource to HEALTHeLINK's Board of Directors. The composition of the Operating Committee shall be determined by the Board of Directors of HEALTHeLINK in accordance with the Bylaws of HEALTHeLINK. Actions taken by the Operating Committee are subject to amendment or revocation by the Board of Directors of HEALTHeLINK.

(b) The Operating Committee shall meet not less than quarterly to consider and resolve various issues pertaining to HEALTHeLINK.

8.9 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, HEALTHeLINK shall perform in all respects as contemplated by these Terms and Conditions, in compliance with applicable federal, state, and local laws, ordinances and regulations, including, as and where applicable, its obligations in respect of its participation in External Networks.

9. SOFTWARE AND HARDWARE PROVIDED BY HEALTHeLINK

9.1 Description

HEALTHeLINK 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 HEALTHeLINK determines is appropriate to arrange for the availability of the HIE and the performance of the Services for Participants. A description of HEALTHeLINK's 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 the Participation Agreement, HEALTHeLINK's 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 HEALTHeLINK.

9.2 Grant of License

HEALTHeLINK grants to each Participant and its Authorized Users 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 Services. HEALTHeLINK represents and warrants to each Participant that HEALTHeLINK has the legal right and power to grant the license described in this Section 9.2; 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 HEALTHeLINK by a Vendor(s) ("Vendor Terms and Conditions"). HEALTHeLINK shall make Vendor Terms and Conditions of such licenses and other rights available to each Participant upon request.

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 HEALTHeLINK.

10. PROTECTED HEALTH INFORMATION

10.1 Compliance with Applicable Laws and Policies and Procedures

HEALTHeLINK 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, HEALTHeLINK and the Participant shall report to the other, in accordance with the Policies and Procedures. HEALTHeLINK 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. For purposes of this Section 10.2, “Breach” shall have the meaning set forth in the Policies and Procedures.

10.3 Business Associate Agreement

HEALTHeLINK acknowledges that, as a health information exchange organization that operates an electronic health information exchange, it is a Business Associate of Participant (as such term is defined by HIPAA). 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. 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

HEALTHeLINK may enter into arrangements with one or more subcontractors as defined in 45 CFR Part 160.103, to perform certain HEALTHeLINK responsibilities as described in these Terms and Conditions. HEALTHeLINK 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 HEALTHeLINK 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

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

11. FEES AND CHARGES

[Intentionally Omitted – No fees to Participant Contemplated at this time]

12. PROPRIETARY INFORMATION

12.1 Scope of Proprietary Information

In the performance of their respective responsibilities pursuant to these Terms and Conditions, HEALTHeLINK 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 HEALTHeLINK and the 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

HEALTHeLINK 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 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 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 (if possible) 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 HEALTHeLINK 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 the other party without prior written consent of the other party.

13. DISCLAIMERS AND EXCLUSIONS OF WARRANTIES

13.1 Carrier Lines

Each Participant and HEALTHeLINK 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 HEALTHeLINK’s and each Participant’s control. Neither HEALTHeLINK 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 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 HEALTHeLINK 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 HEALTHeLINK OR THE PARTICIPANT HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. HEALTHeLINK 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 acknowledges that other Participants will 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 HEALTHeLINK and the Participant. Accordingly, HEALTHeLINK 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 HEALTHeLINK and the Participant.

(b) Participant acknowledges that data may also be shared with participants of other health information exchanges and QEs in connection with HEALTHeLINK’s participation in External Networks. Each Participant acknowledges that HEALTHeLINK 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.

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 the acts and omissions of the Participant and/or its 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 from the Participant or any of the Authorized Users, only if such access was obtained as a result of the negligence or willful misconduct of the Participant or a Participant's Authorized User.

13.5 Unauthorized Access; Lost or Corrupt Data

Except as caused by its negligence or willful misconduct, HEALTHeLINK 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, reports and information, and protecting the Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. HEALTHeLINK, its Vendors and Data Sources are not responsible for the content of any information transmitted or received through the HIE or 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 HEALTHeLINK.

13.6 Inaccurate Data

By using the HIE and the Services, each Participant acknowledges that all data to which access is made through the HIE and/or the Services originates from Data Sources and does not originate from HEALTHeLINK. 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. HEALTHeLINK neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of these Terms and Conditions, HEALTHeLINK 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 HEALTHeLINK.

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 HEALTHeLINK, Vendors, Data Sources and other Participants 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 the HEALTHeLINK, its officers, directors, employees or agents, shall be limited to the greater of: (i) the amount of insurance coverage available to HEALTHeLINK with respect to such liability plus any amounts for which HEALTHeLINK is indemnified by third parties, such as technology Vendors; or (ii) \$1,000,000.

(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 Subsections 13.8(a) and 13.8(b) above shall not apply to intentional acts or omissions of HEALTHeLINK or Participant, as the case may be.

13.9 Remedies Against Vendors

Upon written request by Participant to HEALTHeLINK describing harm to Participant as a result of an alleged act or omission or willful misconduct by a HEALTHeLINK Vendor, HEALTHeLINK will: (a) examine whether HEALTHeLINK has a contractual basis to seek a remedy for Participant and report the results of its examination to Participant. If HEALTHeLINK 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 Vendor Agreement, or report back to Participant its reason for not doing so.

14. DISPUTE RESOLUTION

14.1 Scope

Any controversy, dispute, or disagreement arising out of or relating to the Participation Agreement, the Terms and Conditions, the Policies and Procedures, or any Participant's Registration Application (individually and collectively referred to in this Section 14 as "this Agreement"), or the breach of this Agreement, (referred to in this Section 14 as a "dispute") shall be settled according to the procedure set forth in this Section 14.

14.2 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 14.

14.3 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 Erie 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.

14.4 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 Erie 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 thirty (30) 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.

15. INDEMNIFICATION

Notwithstanding Section 14 (Dispute Resolution), and subject to Section 13.8 (Limitation of Liability), the following Indemnification provisions shall apply:

15.1 Infringement Indemnity

(a) HEALTHeLINK 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 HEALTHeLINK 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 HEALTHeLINK within two business days of receiving written notification of the claim; (ii) grants HEALTHeLINK sole control of the defense and settlement of the claim; and (iii) provides HEALTHeLINK, 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 HEALTHeLINK 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 HEALTHeLINK:

(i) notifies Participant within two 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 HEALTHeLINK's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

(c) HEALTHeLINK 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 HEALTHeLINK, if such a claim would have been avoided if the HIE or Services were not so modified; (ii) the combination, operation or use of the HIE or Services with software, equipment or devices not supplied by HEALTHeLINK, if such a claim would have been avoided if the HIE or Services were not used in such combination; (iii) Participant's failure to use updated or modified HIE or Services provided by HEALTHeLINK to avoid a claim; or (iv) HEALTHeLINK's 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' respective 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) HEALTHeLINK 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 (as defined in Section 10.2 (Reporting of Breaches)) arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's officers, directors, members, employees or other agents, including but not limited to Authorized Users.

(b) Participant shall hold HEALTHeLINK 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 Participant's failure to use reasonable and appropriate efforts to provide any Patient Data or other data that is free from serious error, materially incomplete, or provided in an untimely manner.

15.3 Rules for Indemnification

Any indemnification made pursuant to this Section 15 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 Certain Participants Operated by Governmental Agencies

Certain Participants that are operated by the State of New York, by a county thereof, or by a governmental agency thereof (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 this Section 15. HEALTHeLINK 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 this Section 15, and which shall apply to that Government Participant notwithstanding anything to the contrary in this Section 15; provided, that HEALTHeLINK shall do so only if and to the extent that such Government Participant demonstrates to HEALTHeLINK that applicable laws so limit that Government Participant's ability to agree to or perform such indemnification obligations.

16. INSURANCE

16.1 Required Coverage

HEALTHeLINK 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 16.1. Each Participant shall maintain, throughout the term of its Participation Agreement, at its sole expense, such professional, general, and cyber liability insurance coverage, or self-insurance, commensurate with its organizational characteristics, 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. In the event of termination of Participant's Participation Agreement for any reason, HEALTHeLINK and each Participant either shall maintain its insurance coverage called for under this Section 16.1 for a period of not less than three (3) years, or shall provide an equivalent extended reporting endorsement ("tail policy").

16.2 Evidence of Coverage

HEALTHeLINK and each Participant shall provide proof of such required coverage upon request. In the event of a Participant's failure to provide proof of such continuing coverage within thirty (30) days following request for such proof from HEALTHeLINK, for Participants, HEALTHeLINK shall have the right to purchase such coverage and bill Participant for the premium, as well as the right to offset any such premium amounts against any amounts owed to Participant by HEALTHeLINK. Participant shall pay HEALTHeLINK the billed amount within ten (10) days after Participant's receipt of billing.

16.3 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 HEALTHeLINK, or through a combination of commercial and self-insurance.

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 the Participation Agreement 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 Erie 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 HEALTHeLINK, which it may withhold in its reasonable discretion.

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 HEALTHeLINK 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 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 United States mail, overnight delivery service to the address provided in the Participation Agreement, or such different address as a party may designate pursuant to this Section 17.6.

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 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, the Registration Application, 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 signed by all parties.

EXHIBIT A TO TERMS AND CONDITIONS
BUSINESS ASSOCIATE AGREEMENT FORM

EXHIBIT B TO TERMS AND CONDITIONS
QUALIFIED SERVICE ORGANIZATION AGREEMENT

HEALTHeLINK, a Qualified Service Organization, and the Participant do hereby enter into a Qualified Service Organization Agreement, whereby HEALTHeLINK agrees to provide to the Participant the services described in the Participation Agreement between the parties (the “Participation Agreement”) and HEALTHeLINK’s 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, HEALTHeLINK:

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.

SCHEDULE 16.1 TO TERMS AND CONDITIONS
REQUIRED INSURANCE COVERAGE