

Healthix Participation Agreement – Non-CE CBO

This Healthix Participation Agreement (the “Agreement”) is made as of [REDACTED], 2021 (the “Effective Date”) by and between Healthix Inc. (“Healthix”), a New York not-for-profit corporation, and [REDACTED] (“Entity”), with its principal office located at [REDACTED] (Healthix and Entity will each be referred to as a “Party,” and will collectively be referred to as the “Parties.”)

RECITALS

WHEREAS, Healthix operates an Inter-Organizational Data Exchange and participates in the Statewide Health Information Network for New York (“SHIN-NY”) under the terms of the QEPA and its contract with the New York State Department of Health;

WHEREAS, Entity is an organization that can qualify as a Participant under Healthix Policy and wishes to participate in the Inter-Organizational Data Exchange, and/or access the SHIN-NY; and

WHEREAS, Healthix and Entity seek to set forth the terms of participation in and use of Healthix’s System and SHIN-NY.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Healthix and Entity agree as follows:

I. DEFINITIONS

The following terms will have the corresponding meanings when used in this Agreement. Other capitalized terms used in this Agreement are defined in the context in which they are used and have the meanings there indicated.

“Data Source” is a Participant and that Participant’s authorized employees, consultants or agents, who are providing Patient Data to or through the System.

“Documentation” means all materials, documentation, technical manuals, operator and user manuals, file descriptions, and other written information made generally available by Healthix to users of the System, including all updates thereto, that describe the functions, operational characteristics and specifications and use of the System.

“Healthix Policy” means all written policies and procedure of Healthix.

“Inter-Organizational Data Exchange” means the exchange of clinical patient information between unrelated organizations that provide or manage care for the purposes of treatment or care management.

“NY Statewide Guidance” means Part 300 of the New York State Public Health Law and the policies, procedures, and guidance approved by the New York State Department of Health for operation of health information exchange and participation in the SHIN-NY, including, without limitation, Privacy and Security Policies and Procedures for QEs and their Participants in New York State.

“Participant” means Entity or other authorized entity that has entered into an agreement with Healthix authorizing access to and use of the System.

“Patient Data” means all data provided by a Data Source to be accessed or otherwise utilized through the System, which includes (i) PHI; (ii) patient information locator data; (iii) patient demographic data and organization domain information; and (iv) clinical data, medical records, registration information and such other information as shall be consistent with the Healthix Policy.

“Proprietary Rights” means patented or patentable inventions, trade secrets, trademarks, copyrights and other intellectual property rights.

“Protected Health Information (“PHI”) shall have the meaning set forth in 45 C.F.R. 164.501.

“Provider Organization” is a hospital, nursing home, certified home health care agency, diagnostic and treatment center, physician practice, laboratory and other health care organization.

“QE” is a not-for-profit regional health information organization or other entity that has entered into a QEPA and is entitled to participation in the SHIN-NY under the QEPA’s terms and under the Part 300 of New York State Public Health Law.

“QEPA” is the qualified entity participation agreement, between Healthix and New York eHealth Collaborative, under which Healthix is considered a QE that is entitled to participate in the SHIN-NY under the terms of the QEPA.

“Software” means any software that Healthix provides to Entity from time to time to facilitate Entity’s interface with or use of the System, including any upgrades of or modifications to such software, or new versions of such software, provided to Entity.

“System” means the software, hardware and related Documentation licensed, owned or prepared by Healthix to allow Participants to engage in health information exchange and participate in the SHIN-NY.

“Terms and Conditions” mans the Healthix terms and conditions attached hereto as Exhibit D.

II. LICENSE GRANT AND RESTRICTIONS

Healthix grants Entity a personal, non-exclusive, non-transferable, non-sub-licensable, royalty-free, limited license to access and use the System, during the Term, subject to the terms and conditions of this Agreement and the limitations set forth in the NY Statewide Guidance. Entity acknowledges and agrees that Healthix and/or any licensor to Healthix are the exclusive owner(s) of all right, title and interest in any aspect of the System, including Proprietary Rights and enhancements or derivative works related to the System, regardless of any participation or collaboration of Entity in the development or implementation of any aspect of the System including the documentation. This Agreement does not convey to Entity any title in or to, or ownership of, the System or of any part thereof, or any modifications, extensions, enhancements or derivative works made thereto.

III. RESPONSIBILITIES

1. **Terms and Conditions.** Healthix and Entity each acknowledge and agree that it must comply with the Terms and Conditions, which are incorporated herein by reference and an integral part of this Agreement, attached as **Exhibit D**.
2. **Participation in Healthix and Use of the System.** Entity warrants and represents that it shall use the System and participate in Healthix in good faith and in compliance with Healthix Policy, NY Statewide Guidance, the Terms and Conditions, all applicable state or federal law, rule or regulation and this Agreement;
3. **Financial Obligations.** All fees, Entity contributions and distributions, if any, shall be as set forth in **Exhibit B**, annexed hereto and incorporated herein
4. **Patient Consent.** Entity acknowledges it has an affirmative obligation to obtain patient consent when required in accordance with applicable state and federal law, rules and regulations, NY Statewide Guidance, Terms and Conditions and with Healthix Policy.
5. **QEPA Flow Down Requirements.** Entity acknowledges that the QEPA requires Healthix to include certain requirements in this Agreement. The QEPA Flow Down Requirements, are set forth in the limitation on Entity liability and insurance requirements in the Terms and Conditions, and as follows:
 - 5.1 Entity acknowledges that, by participating in the SHIN-NY, data from Entity may be shared with other Participants of Healthix as well as participants of QEs other than Healthix.
 - 5.2 Entity agrees to provide information and/or allow audit to the extent necessary for Healthix to fulfill its reporting, audit and investigation obligations under the QEPA and the NY Statewide Guidance.
6. **Compliance with HIPAA.** The Parties acknowledge that Entity may not be a Covered Entity, as defined by HIPAA, however, to the extent required by the NY Statewide Guidance, Entity is required to comply with HIPAA in regard to the privacy and security of PHI that it receives or accesses through Healthix or the SHIN-NY.

IV. TERM AND TERMINATION

1. **Term.** This Agreement will commence on the Effective Date and be in effect for a term of one year and shall thereafter renew for successive one-year terms (the "Term"), unless terminated sooner in accordance with the provisions of this Article IV below.
2. **Termination.** This Agreement may terminate as follows:
 - 2.1 **Uncured Breach.** Should either Party default in the performance of any material obligation under this Agreement, or breach any material provision contained in this Agreement, and not cure or substantially cure the default or breach within thirty (30) days after receipt of written notice by the other Party of such default or breach, then in addition to other remedies set forth in this Agreement or allowed by law, this Agreement may be

terminated by the non-defaulting/non-breaching Party upon written notice to the defaulting/breaching Party.

2.2 Entity's Right to Terminate this Agreement and Cease Participation. Entity has the right to terminate this Agreement and cease participation in Healthix, without cause, upon not less than thirty (30) days prior written notice to Healthix.

2.3 Security/Privacy Breach. Either Party may terminate this Agreement or, where applicable, suspend the other Party's right to use the System immediately upon written notice to the other Party in the event the other Party materially breaches its obligations under this Agreement if (i) the security of the System or (ii) the System or any of the computer systems or networks of either Party or its' employees, consultants, medical staff or agents, has been or is likely to be seriously compromised by such breach, or such breach has been or is likely to result in a serious violation of the legal obligations of either Party to patients with respect to the privacy or confidentiality of PHI.

3. Return of Documentation and Software. If applicable, Entity will destroy all original, backup and archival copies of the Software, Documentation, and other material relating thereto or to the System. Entity's senior information officer or equivalent thereof will certify such destruction to Healthix in writing.

4. Survival. Any provision of this Agreement or the Terms and Conditions that contemplates performance or observance subsequent to termination will survive termination, including Section IV.3 and V of this Agreement.

V. MISCELLANEOUS PROVISIONS

1. Venue; Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of law provisions thereof. The sole and exclusive jurisdiction and venue for actions related to the subject matter of this Agreement will be the state and federal courts located in New York State.

2. No Third-Party Beneficiary. Except as expressly provided in Terms and Conditions, nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

3. Notices. All notices required or permitted to be given under this Agreement will be in writing, and may be given (i) by personal delivery; (ii) by prepaid certified or registered U.S. mail; or (iii) by reputable commercial overnight courier service with tracking capabilities to the address listed in the signature block; or (iv) by facsimile; or (v) by email, provided that in the case of (iv) facsimile and (v) email, receipt is confirmed by the addressee within 48 hours.

All notices will be deemed given and effective upon receipt, except in the case of registered or certified mail, in which case such notice will be deemed given effective upon the delivery or refusal date specified on the return receipt.

4. Assignment. Neither Party may assign, transfer, or sublicense any obligations or benefit under

this Agreement without the prior written consent of the other Party, provided that either Party may assign this Agreement to the surviving party in a merger or acquisition of substantially all of its shares or assets. Except as otherwise provided herein, this Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

5. **Amendment.** Healthix may amend this Agreement by sending written notice of the amendment according to the notice provisions herein and offering the Participant the opportunity to object. If the Participant does not object within thirty (30) days, the amendment will be deemed to be accepted. Otherwise, no change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both Parties.
6. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the Parties and supersedes all other prior and contemporaneous agreements, understandings, and commitments between Healthix and Entity with respect to the subject matter hereof, except to the extent they are specifically incorporated into this Agreement.
7. **Severability.** If any term or condition of this Agreement is to any extent held invalid, unenforceable or in violation of any law, the remainder of this Agreement will not be affected thereby and it will remain in full force and effect.
8. **Priority.** In the event of any conflict or inconsistency between a provision in the body of this Agreement and any attachment, schedule or exhibit hereto, the terms contained in the body of this Agreement will prevail.
9. **Force Majeure.** A Party will not be liable for nonperformance or delay in performance (other than of obligations regarding payment of money or confidentiality) caused by any event reasonably beyond the control of such Party including, but not limited to wars, hostilities, riots, national emergency, strikes, lockouts, unavailability of supplies, epidemics, fire, flood, earthquake, force of nature, embargo, or any other Act of God, internet, electric power or communications outage, or any law, proclamation, regulation, ordinance of any court, government or governmental agency.
10. **Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify or aid in the interpretation or construction of meaning of the provisions of this Agreement.
11. **Non-Waiver.** No provision of this Agreement may be modified or waived, by course of dealing or otherwise (including any failure or delay by either Party to exercise or partially exercise any right, power or privilege hereunder), unless such modification or waiver is set forth in a written document executed by an authorized representative of the Party to be bound thereby.
12. **Relationship of the Parties.** The Parties will be considered independent contracting entities. Nothing in this Agreement will be construed to create a partnership, agency relationship, or joint venture among the Parties. Neither Party will have any authority to bind or make commitments on behalf of the other Party for any purpose, nor will it hold itself out as having such authority.
13. **Duly Authorized.** Healthix and Entity each represent and warrant to the other that it has full

power and authority to enter into and perform this Agreement. Each represents and warrants to the other that its representatives signing this Agreement on its behalf have been properly authorized and empowered to enter into this Agreement.

- 14. Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original as against the Party whose signature appears thereon, but all of which taken together will constitute but one and the same instrument.

IN WITNESS WHEREOF, an authorized officer of each Party has duly executed and delivered this Agreement effective as of the Effective Date.

[Entity]

By (Signature): _____ **Date:** _____

Name (Print): _____

Title: _____

Address: _____

Email: _____

Healthix Inc.

By: _____ **Date:** _____

Name: Todd Rogow

Title: President & CEO

Email: trogow@healthix.org

Address: 551 North Country Road, St. James, NY, 11780

Exhibit A

[LEFT INTENTIONALLY BLANK]

Exhibit B

Projects

[ALL PROJECT WORK AND PRICING TO BE IN THIS EXHIBIT]

Agreed and Acknowledged as to the terms of this Scope of Work:

[Entity]

By (Signature): _____ **Date:** _____

Name (Print): _____

Title: _____

Address: _____

Email: _____

Healthix Inc.

By: _____ **Date:** _____

Name: Todd Rogow

Title: President & CEO

Email: trogow@healthix.org

Address: 551 North Country Road, St. James, NY, 11780

Exhibit C
Healthix Support and Maintenance Guide

1. HEALTHIX SYSTEM/APPLICATION SUPPORT

a. System/Application Authentication

Access to the Healthix System/application is maintained by Healthix. The end users have a few ways to gain access to the System/application. Depending on the path of access, some Participants may have a supportive role in assuring their system/application is providing proper access to the Healthix System/application.

b. System/Application Roles and Data

Healthix is responsible for maintaining the proper role for each user. Healthix also is responsible for ensuring that Participants can only gain access to data to that the Participants are authorized to see according to consent rules, including if “Break the Glass” is allowed.

2. PROVIDER BASE SUPPORT HEALTHIX ACCESS

Participant is required to establish and maintain access to the Healthix System/application. Depending on the organization this can be provided via the local internet access (primary); via a hyperlink on the local portal (optional); or Access via a clinical viewer (optional).

3. HEALTHIX SUPPORT TO BASE SYSTEM APPLICATION SUPPORT

a. Application Support

Healthix applications are supported internally by Healthix staff.

b. Restores

Restores will be requested by Healthix on a “need only” basis. The Participant will provide the restore request process or point of contact.

c. Secure VPN Tunnel

The Secure VPN tunnel is monitored by Healthix. If any issues arise, Healthix will notify the respective groups for resolution. Firewall rules are managed by each side.

4. HELP DESK PROCESS

a. Website

Healthix helpdesk will verify if the end user has access to the login website of <https://portal.healthix.org>. If they do not have access to login page, refer user or caller to participant’s helpdesk.

b. Password

If it is a password issue the Helpdesk would advise them to click on the “Reset Password” link that is at the bottom of <https://portal.healthix.org>.

c. Non-password issues

The local help desk will direct the end user to call the Healthix HelpDesk at 1-877-695-4749 Ext. 1 or email support@healthix.org. From this point please see section 6 for Service Levels Support Provided.

- d. All requests received by email trigger a system auto-response that provides the requester with a case number for reference. (the email text is included below)

Thank you for contacting Healthix support. We have received your request and logged the issue under Case #00000000. A support representative will be assigned to your issue shortly and will reply with a resolution or additional questions related to your request.

For critical issues please call 1-877-695-4749 Extension 1. This email is a service from Healthix Support.

5. UPTIME OBJECTIVES

The uptime objective is **99%** per NYeC guidelines.

6. SERVICE LEVELS SUPPORT PROVIDED

a. Support Hours

Healthix will provide helpdesk support during regular business hours (8am-6pm EST). Support tickets can be entered 24x7 via email. Healthix or its designee may utilize a third-party vendor to help with coverage.

b. Mode of Communication

Healthix Support is provided via a single toll free, telephone number and via email for all support requests.

c. Response Times

Response times are based upon the severity of the problem, as determined by Healthix and described herein. Healthix will provide direct support for all basic end-user support calls, such as registration questions, password resets, and the like and will address all calls immediately based on availability or within 5 business hours. For more severe issues the following applies:

- i. **Problem Classification:** Healthix will assign a Severity level to each problem reported.
- ii. **Error Reporting and Response:** For all e-mail and phone support requests which cannot be resolved in an initial telephone support conversation we will take the following steps:

Step 1: Acknowledge problem and begin collecting additional information from Participant, if required.

Step 2: Healthix will actively address the problem and provide a temporary patch, correction, or workaround, based on severity.

Step 3: Healthix will provide a solution in the form of a tested permanent patch or code release.

- iii. **Method of Ticket Closure:** Tickets are closed manually, and production support staff responds to participant via email to indicate that the issue has been resolved or the task is completed when updating the case status to 'closed'. A requester may still respond to a case if there are any unresolved issues which will update the case status back to 'open'.
- iv. **Determining Response Times:** Response times shall be measured commencing upon direct contact with level 2 support staff, technical support staff or from the first documented good-faith attempt to make contact. Once Healthix diagnoses the problem, we will indicate an

estimated repair time to the Participant. Repair consists of diagnosing and correcting the problem and correcting the Services to the operational condition. Healthix will respond to Participants support problems during the response times indicated below.

Support Ticket Classification Table

Level	Case Type	Response Time
1	Outage	< 2 hours
2	Interface	< 1 business day
3	Password Digipass User Support Deactivation	1 - 2 business days
4	New User Provisioning	5 business days
5	Data Quality	8 - 10 business days

Outage Classification Table

Category of Measure	Notes	Measure
Data Messages Response Time		On average, over any 2-hour period, all messages will be delivered with less than a 5 seconds response time from the trigger time. On average, over any 2-hour period, all received messages will be acknowledged within 3 seconds
-Severity 1- Critical systems unusable	System users are unable to perform a mission-critical business function through the Services and there is no electronic systemic workaround in place. Mission critical is defined as, but not limited to, any problem such as Healthix is unable to receive or send messages from any one or more of the active interfaces.	<2 hours Response Time from 8 am – 6 pm Monday-Friday and <4 hours nights, weekends and holidays.
-Severity 2- Degrading critical systems	More than 90% of messages received and delivered successfully, but some messages are not delivered/received with required accuracy Ex: System users are unable to perform a mission-critical business function through the Services and there is no electronic systemic workaround in place.	<3 hours Response Time from 8 am-6 pm Monday-Friday and <6 hours nights, weekends and holidays.

	Mission Critical is defined as, but not limited to, web portal, API services, outbound data feeds, VPN connectivity etc. are down.	
-Severity 3- Degrading critical sys— Alternative Work Around Available	Messages are not being received and delivered successfully due to isolated errors. Ex: Messages being received by Healthix, but Healthix unable to send the messages to the end systems. Web based access to consume data through Healthix portal is available.	<4 hours Response Time from 8 am -6 pm Monday –Friday and <12 hours nights, weekends and holidays.

Exhibit D

HEALTHIX TERMS AND CONDITIONS

I. DEFINITIONS

The following terms will have the corresponding meanings when used in these Terms and Conditions. Other capitalized terms used in these Terms and Conditions are defined in the Agreement or in the context in which they are used and have the meanings there indicated.

“Agreement” means Healthix Participation Agreement and all exhibits, schedules and attachments thereto.

“Data User” is a Participant and that Participant’s authorized employees, consultants or agents, who may access Patient Data from or through the System.

“Healthix Participant Listing” means the listing of Participants at <http://healthix.org/wp-content/uploads/Healthix-Participant-List.pdf>.

“HIPAA” means Title II, Subtitle F, “Administrative Simplification,” of the Health Insurance Portability and Accountability Act of 1996, as amended and its implementing regulations, as amended.

“Vendor” means a health information technology vendor who provides software and/or services that are “mission critical” to the SHIN-NY and/or EHR adoption.

II. LICENSE RESTRICTIONS

Nothing in the Participation Agreement or these Terms and Conditions will be construed as an implied grant to any Participant of any right to, and a Participant will not, and will not permit its’ employees, consultants, medical staff and agents or any third party to, (a) use or reproduce, distribute, disclose or allow use of, decompile, disassemble, or otherwise reverse engineer or attempt to deconstruct or discover, modify or alter the Software or Documentation in any manner (b) allow use of the Software, or access to or use of the System, by anyone who is not authorized, provided that it will not violate this section if Participant allows access by a third party vendor providing services to Participant in connection with the Software or System (e.g., implementation, maintenance), provided that such third party vendor agrees in writing to abide by the same restrictions with respect to the Software and the System as are set forth in these Terms and Conditions.

III. PARTICIPANT RESPONSIBILITIES

1. Participation in Healthix and Use of the System.

1.1 Participants shall:

- a. Use the System and participate in Healthix in good faith and in compliance with Healthix Policy, NY Statewide Guidance, these Terms and Conditions and all applicable state or federal law, rule or regulation.
- b. Either be responsible for facilitating Participant’s authorized users to access the System through trusted secure web services connections (thus allowing Healthix to rely

on the Participant for authentication and authorization of its users as per Healthix Policy) or for allowing Healthix to authenticate all of the Participant's authorized users that enroll in and access the System (in which case Participant shall be responsible for identifying and/or helping Healthix to identify authorized System users and Participant will notify Healthix as soon as possible via email of any Healthix users who should no longer have access to the System. Revocation of access, if necessary, shall occur promptly thereafter);

c. Be responsible for maintaining in full working condition, at its own expense, its technical interfaces, software, telecommunications connectivity, and equipment necessary to operate the System that is in Participant's (or its agents) possession, if applicable. Such interfaces, software and equipment will conform to the current specifications of Healthix. Healthix may change such specifications from time to time in its sole discretion, and to the extent reasonably practicable, Healthix will provide Participant not less than thirty (30) days prior notice of any such change.

d. Provide Healthix all information reasonably requested by Healthix regarding proposed clinical information exchange methodology, results of System testing activities, results of pilot testing, and similar developmental and operational issues; and

e. Provide Healthix with such information as Healthix may deem necessary or appropriate to evaluate the utility and usefulness of the System (including evaluation of the System's technical performance and the impact of the use of the System on matters such as quality, safety, finances, and operations).

2. Patient Data.

2.1 Integration of Patient Data by Participant. Each Participant will, in accordance with Healthix Policy, use its best efforts to ensure that all Patient Data provided by it is accurate, free from serious error, reasonably complete, and provided in a timely manner. Participant will use reasonable and appropriate efforts to make clinical information about its patients available to be exchanged through the System by (i) providing clinical information in the categories and of the types requested through Healthix; (ii) providing or having its EHR Vendor provide such information in the format(s) specified by Healthix Policy and (iii) facilitating the integration of its EHR as more fully described in Exhibit B annexed hereto and incorporated herein. It is understood that each Data Source, including Participant, may not be able to make all categories/types of clinical information available in the formats specified by Healthix, nor is there a requirement on Data Sources to provide historical data. Participant grants Healthix the right to permit all Participants and Data Users, their officers, employees, medical staff, consultants and agents who enter into an agreement with Healthix, access through the System to all Patient Data, as appropriate for the purposes set forth in these Terms and Conditions subject to Healthix Policy.

2.2 Excluded Patient Data. If a Participant is a Data Source, the Participant will not include within the Patient Data any clinical information maintained or created by Participant which has not been approved by the New York State Department of Health for exchange

through the System in accordance with the NY Statewide Guidance, and all applicable state and federal laws, rules and regulations. If the Participant has chosen and informed Healthix of an affirmative decision to participate in Healthix, then other than (i) such Patient Data which has been excluded as stated in this Section; (ii) information that Participant is not able or willing to make available in accordance with Article III, Section 2.1 above; or (iii) information that Participant has agreed with the patient (or the patient's legally authorized representative) to protect as confidential or to make unavailable to or through the System, Participant will not otherwise unreasonably withhold any Patient Data from the System. Participant will notify Healthix of any data or type of data that is withheld.

- 2.3 Uses of Patient Data.** Participants may not use information in the System for purposes other than those explicitly allowed based upon Healthix Policy and NY Statewide Guidance. When the System is queried by a Participant, and once PHI received as a result of such query is incorporated into such Participant's records, the Participant will handle and maintain such PHI in the same form, place and manner as the Participant would handle and maintain its own PHI and any PHI that Participant received from other health care providers and in full compliance with all applicable state and federal laws, rules and regulations.
- 2.4 Responsibility for Acts and Omissions.** Each Participant accepts sole responsibility for (i) the accuracy and completeness of its Patient Data, but only to the extent of Participant's obligations under this Article III, Section 2; (ii) the performance of its information technology systems; (iii) all of its use of the System and the Patient Data obtained through the System, including any treatment, care management and quality improvement decisions made by Participant, including any of its employees, consultants, medical staff and agents in reliance on Patient Data obtained through the System; and (iv) use of any password, identifier, or log-on received or obtained, directly or indirectly, lawfully or unlawfully from the Participant or any of its employees, consultants, medical staff, or agents with respect to the System. The acts and omissions of Participant, its' employees, consultants, medical staff and agents will be deemed to be the acts and omissions of the Participant.
- 2.5 Rights, Title and Interest.** Each Participant represents and warrants to Healthix that Participant has all necessary rights, title and interest in and to all Patient Data that Participant provides or makes available during the Term of this Agreement. The Participant grants to Healthix permission to access Patient Data to: (a) exercise its rights and obligations under this Agreement to provide services on behalf of Participant, including but not limited to System administration (including performance measurement), testing, upgrades, problem identification and resolution, (b) provide the proper management and administration of Healthix to the extent permitted by HIPAA and applicable State law, and (c) perform data aggregation activities and other uses permitted by applicable state and federal laws, rules and regulations, including, but not limited to, HIPAA.
- 2.6 No Limitations on Participant's Use of Its Own Data.** Nothing in this Article III or elsewhere in these Terms and Conditions is intended or will be deemed to in any way limit a Participant's use of its own Patient Data outside of the System.

3. **Audits.** Participants will be subject to audit by Healthix (or a third party engaged by Healthix for such purposes) to confirm compliance and proper use of the System in accordance with these Terms and Conditions, NY Statewide Guidance and Healthix Policy. Such audits will take place during normal business hours and at mutually agreeable times and shall be limited to such records, personnel and other resources of Participant as are necessary to determine compliance with these Terms and Conditions proper use of the System under NY Statewide Guidance and Healthix Policy, and/or compliance with applicable state or federal requirements. Such audits will be performed at the expense of Healthix, and in a manner designed to reasonably minimize interference with Participant's day-to-day operations.
4. **End-User Training.** Each Participant, at its own expense, shall provide appropriate training to its employees, consultants, medical staff and agents who will be accessing clinical information through Healthix and will not allow access until such training is complete, regarding, without limitation: (i) proper use of the System; (ii) proper use of the clinical information obtained using the System; and (iii) privacy and security procedures for accessing clinical information using the System. Healthix will assist this training via a "Train the Trainer" model. Healthix will ensure all users have attested (in writing, electronically, or otherwise in accordance with Healthix Policy) to protect the confidentiality of the clinical information accessed through the System.
5. **Organizational Liaison.** Each Participant will designate an individual to serve as its organizational liaison to Healthix for both technical and clinical issues.
6. **Security.** Participant and its officers, employees, medical staff, consultants and agents will at all times comply with all reasonable security standards, practices and procedures established by Healthix in connection with Participant's use of the System. Without limitation of the foregoing, Participant will use reasonable efforts to ensure that its connection to and use of the System, including the medium containing any data or other information provided to the System, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including malicious software or "mal-ware," viruses, worms, and Trojan Horses) that will disrupt the proper operation of the System or any part thereof or any hardware or software used by Healthix in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the System or any part thereof or any hardware, software or data used by Healthix or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.

IV. HEALTHIX RESPONSIBILITIES

1. **Participation Agreements.** Healthix will require that all non-patient Participants enter into substantially similar Participation Agreements in such form as Healthix may determine is appropriate prior to being granted access to and use of the System and be bound by Healthix Policy.
2. **Enforcement.** Healthix agrees to enforce Healthix Policy as it pertains to Participant and all Participants in such manner as defined in Healthix Policy or, notwithstanding, as Healthix may deem appropriate.
3. **Maintenance and Support of the System.** Specific responsibilities and service level agreements for maintenance and support of the System will be defined in the Healthix Support and Maintenance Guide, attached hereto as Exhibit C.

4. **Notification of Changes to Healthix Policy.** Healthix may modify these Terms and Conditions or Healthix Policy at any time. Healthix shall notify Participant of any material modifications to Healthix Policy or these Terms and Conditions not less than thirty (30) days prior to any such change. Such modifications shall be made in Healthix's sole discretion and shall not be considered an "amendment" for purposes of Article V, Section 5.
5. **Healthix' Vendor Responsibilities.** Healthix will ensure that all of its Vendors follow applicable Healthix policies and maintain, at their own expense, appropriate levels of insurance.

V. CONFIDENTIAL INFORMATION

1. Confidentiality Obligations.

- 1.1 **General.** In the performance of their respective responsibilities pursuant to the Participation Agreement and these Terms and Conditions, Healthix and Participant may come into possession of certain Confidential Information about the other Party. Each Party will use the other Party's Confidential Information only as permitted by this Agreement and to take reasonable and appropriate measures to prevent unauthorized use, reproduction, dissemination, and disclosure of the other's Party Confidential Information during the Term and thereafter. Each Party will confine knowledge of the other Party's Confidential Information only to its employees, consultants, medical staff and agents who require such knowledge and use such knowledge in the ordinary course and scope of their employment, association or retention by such Party in a manner consistent with the terms and conditions of this Article V, and to such other persons who have a need to know such materials and information, in all cases in connection with the purposes of these Terms and Conditions. Confidential Information also may be disclosed as required by applicable law, provided that in the event of disclosure required by applicable law pursuant to a court order, subpoena, or other valid legal process, the disclosing Party will give the other Party reasonable notice to allow the non-disclosing Party an opportunity to object to such disclosure and then may disclose such Confidential Information only to the minimum extent necessary to comply with such court order, subpoena, or legal process (as reasonably determined by the disclosing Party). Healthix may share information with third parties: (a) as it may deem necessary or appropriate to apply for or make reports under (or as otherwise required by) grants or other similar activities for funding Healthix's operations or projects; and (b) to current and prospective vendors of services to Healthix, as it may deem necessary or appropriate, provided that Healthix will use reasonable efforts to require such vendors to protect the confidentiality of such information through a non-disclosure agreement or other agreement, as applicable.
- 1.2 **Defined.** As used herein, "Confidential Information" includes the following information:
 - a. Any designs, drawings, procedures, and trade secrets regarding the System, including any Documentation and the technical and design specifications for the System or other intellectual property;
 - b. Non-public financial and administrative information concerning each Party and all other Participants;

c. Each Party's and all other Participants secret and confidential information, records, and other material regarding its business and operations (including, as applicable, its customers, patients, physicians, providers, provider groups, referral sources, members, employees, vendors, products, methods, processes, systems, business or marketing plans, methods and strategies, pricing and costs);

d. Any other non-public information designated by either Party in writing as confidential or proprietary;

e. (i) Any password or other identifier issued by Healthix or Participant and (ii) other information or data stored on magnetic media or otherwise or communicated orally, and obtained, received, transmitted, processed, stored, archived, or maintained by Healthix under these Terms and Conditions;

f. With respect to Participant, any documentation or technical specifications relating to the hardware or the software that relate to the System; and

1.3 Excluded. "Confidential Information" will not include any information which:

a. Is or becomes known publicly through no fault of the receiving Party;

b. Is learned by the receiving Party from a third party entitled to disclose it;

c. Is already known to the receiving Party before receipt from the disclosing Party as shown by the receiving Party's written records; or

d. Is independently developed by the receiving Party, as shown by the receiving Party's written records.

VI. WARRANTIES; LIMITATION OF LIABILITY

1. Availability of the System and Patient Data. Each Participant acknowledges and agrees that because the System (i) is accessed over the Internet; (ii) relies, in part, on the existence and proper operation of equipment and software that is outside of the control of Healthix (including telecommunication lines); and (iii) relies on access to information from, and the provision of information controlled by, third parties, Healthix makes no representations, warranties, or guarantees as to the availability or accessibility of the System or any Patient Data, or the completeness or accuracy of any Patient Data.

2. No Warranties. HEALTHIX MAKES NO REPRESENTATIONS OR WARRANTIES TO ANY PERSON OR PARTICIPANT WITH RESPECT TO THE SYSTEM, THE SOFTWARE, TRAINING, THE DOCUMENTATION, OR ANY SERVICES PROVIDED BY HEALTHIX OR ITS AGENTS WITH RESPECT THERETO, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE SYSTEM, THE SOFTWARE, THE DOCUMENTATION, AND SUCH SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, HEALTHIX MAKES NO WARRANTY, GUARANTEE, OR REPRESENTATION REGARDING THE USE, OR ANY INTENDED, EXPECTED OR ACTUAL RESULTS OF THE USE OF THE SYSTEM, THE SOFTWARE, THE DOCUMENTATION OR ANY INFORMATION CONTAINED THEREIN OR OTHERWISE PROVIDED PURSUANT TO A PARTICIPATION AGREEMENT INCLUDING ANY PATIENT DATA, IN TERMS OF

CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. HEALTHIX DOES NOT MAKE ANY WARRANTIES THAT THE SYSTEM, THE SOFTWARE, OR THE DOCUMENTATION WILL BE ERROR-FREE OR THAT THE OPERATION OF THE SYSTEM OR THE SOFTWARE WILL BE UNINTERRUPTED. WITHOUT LIMITING THE FOREGOING, HEALTHIX SPECIFICALLY DISCLAIMS ALL EXPRESS WARRANTIES NOT STATED HEREIN AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO HEALTHIX AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION OR ADDITION TO THIS LIMITATION AND EXCLUSION OF WARRANTIES IN THESE TERMS AND CONDITIONS

3. **No Consequential or Special Damages.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING UNDER OR IN CONNECTION WITH A PARTICIPATION AGREEMENT, INCLUDING ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF EQUIPMENT USE, OR LOSS OF DATA OR INFORMATION OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
4. **Limitation on Healthix Liability.** HEALTHIX WILL NOT BE LIABLE FOR THE SYSTEM, THE SOFTWARE, THE DOCUMENTATION OR THE LICENSE GRANTED OR THE INFORMATION ACCESSED THROUGH THE SYSTEM HEREUNDER, OR UNDER ANY BREACH OF WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. WITHOUT LIMITATION OF THE FOREGOING PROVISIONS OF THESE TERMS AND CONDITIONS, HEALTHIX WILL NOT HAVE ANY LIABILITY TO PARTICIPANT FOR (A) THE CONTENT OF ANY PATIENT DATA, OR (B) FOR ANY ACTION OR INACTION OF ANY PARTICIPANT.
5. **Limitation on Participant Liability.** EACH PARTICIPANT'S OBLIGATION TO INDEMNIFY HEALTHIX FOR PARTICIPANT'S NEGLIGENT ACTS OR OMISSIONS SHALL BE SUBJECT TO A CAP OF \$1,000,000, PROVIDED THAT SUCH CAP IS APPLICABLE ON A PER OCCURRENCE BASIS AND PROVIDED FURTHER THAT PARTICIPANT ACKNOWLEDGES THAT ITS OBLIGATION TO INDEMNIFY HEALTHIX FOR ITS INTENTIONAL ACTS OR OMISSIONS, AND FOR ALL OTHER PURPOSES, AS STATED IN ARTICLE VII, SECTION 3.1 SHALL NOT BE SUBJECT TO THE FORGOING CAP.
6. **No Obligation to Operate.** Healthix may dissolve, discontinue its business, or cease to operate the System at any time and Participant will have no recourse against Healthix as a result of such action or inaction.
7. **Accuracy of Data.** All data to which access is made through the System originates from Data Sources and other parties making data available through the System, and not from Healthix. All such data is subject to change arising from numerous factors, including changes to PHI made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. Healthix 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, Healthix will have no responsibility for or liability related to the accuracy, content, currency, completeness, content, or delivery of any data either provided or used by a Participant.
8. **Equitable Remedies.** In the event of a breach, or threatened breach, (i) by a Party of any of its obligations under Article V above, (ii) by Participant of its obligations under Article III, above, or (iii) by Healthix of its obligations under Article IV, the damages resulting therein would be difficult to ascertain but would result in irreparable loss to the non-breaching/non-threatening Party. Accordingly, the non-breaching/non-threatening Party will be entitled to seek and obtain

equitable relief to prevent such a breach without the necessity of proving actual damages or posting bond or other security. Such equitable relief is in addition to any other rights or remedies available to such non-breaching/non-threatening Party.

VII. MISCELLANEOUS PROVISIONS

- 1. Use of Name.** Except as otherwise provided in this Agreement, neither Party may use the other's name or logo (or any variant thereof) 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. Notwithstanding the foregoing provision of this Article VII, Section 1, (i) Healthix may issue to the general press, trade press and industry, or publish on website concerning a Participation Agreement and may identify any employees of Participant who are serving as directors, officers, or subcommittee members of Healthix, in publications, presentations and other non-commercial public statements regarding Healthix; and (ii) Participant consents to use of its name and those of its affiliates by Healthix in the Healthix Participant Listings.
- 2. Insurance.**
 - 2.1** Each of Healthix and Entity shall maintain, at its own expense, policies of insurance as may from time to time be required under the NY Statewide Guidance or applicable laws insurance as well as Commercial General Liability in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 Annual Aggregate, and a \$1,000,000 Umbrella policy, which provides a total limit of \$2,000,000 per occurrence and \$3,000,000 annual aggregate;
 - 2.2** Entity shall maintain Network Security and Privacy Liability insurance in the minimum amount of \$3,000,000 per occurrence and \$3,000,000 in the annual aggregate;
 - 2.3** Healthix shall maintain Network Security and Privacy Liability insurance in the minimum amount of Ten million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the annual aggregate.
 - 2.4** Each Party shall provide the other with evidence of such coverage upon request and shall provide thirty (30) days prior written notice to the other Party of any material change in the terms of its' coverage. All insurance coverage required under this Agreement shall be provided under valid and enforceable policies issued by insurance companies legally authorized to do business in the State of New York.
- 3. Indemnification.**
 - 3.1** Subject to the terms of Article VI above and, as applicable, to the availability of lawful appropriations and restrictions applicable to public health benefit corporations, public health authorities, or other entities operated by the State of New York or a county thereof or by the federal government or a governmental agency, Participant will indemnify and hold harmless Healthix, and its directors, officers, trustees, employees, medical staff, consultants agents, subcontractors, and licensors (hereinafter "Indemnitees") from and against any and all liability (including reasonable attorneys' fees), injury or damage arising from any negligent, reckless, deliberate, illegal or fraudulent act or omission by the indemnifying Party, except to the extent such liability,

loss, damage, cost or expense is caused by the breach of the Participant Agreement or these Terms and Conditions by the Indemnitees or the negligent, reckless, deliberate, illegal or fraudulent act or omission by any of the Indemnitees or any other individuals who access Patient Data through the indemnified Party or by use of any password, identifier, or log-on received or obtained, directly or indirectly, lawfully or unlawfully from the indemnified Party.

- 3.2** Any indemnification made pursuant to the provisions will include payment of all costs associated with defending any claim or cause of action involved, whether or not such claim or cause of action is meritorious, including the costs of any reasonable attorneys' fees and of any settlement by or judgment against the Party to be indemnified. If the Party being 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 will have control of such litigation but may not settle such litigation without the express consent of the Party to be indemnified, which consent may not be unreasonably withheld, conditioned or delayed. The indemnification obligations of a Party under these Terms and Conditions or the Participation Agreement will not, as to third parties, be a waiver of any defense or immunity otherwise available, and the indemnifying Party, in indemnifying the indemnified Party, will be entitled to assert in any action every defense or immunity that the indemnified Party could assert on its own behalf. Nothing in this Article VII, Section 3 is intended to limit the right of any indemnified Party to retain its own counsel, at its own cost and expense, in connection with any indemnified claim or cause of action.