

SERVICES AGREEMENT

This Services Agreement (the “Services Agreement”) is made by and between Healthix, Inc., a New York not-for-profit membership corporation (“Healthix”), and [NAME OF PARTICIPANT (“Participant”). The effective date of this Services Agreement shall be the date executed by both Healthix and the Participant. Healthix and Participant are individually a Party and collectively, the Parties.

W I T N E S S E T H

WHEREAS, Healthix participates as a Qualified Entity (as hereinafter defined) in the Statewide Health Information Network of New York (the “SHIN-NY”).

WHEREAS, Healthix and Participant have entered into the Statewide Common Participation Agreement (“SCPA”) to participate in the SHIN-NY and Participant has elected the Healthix as either a Designated Health Information Network (“HIN”), an Additional HIN or a Value Added Service HIN (each as defined in the SCPA) under the terms of the SCPA;

WHEREAS, the Participant wishes to obtain, and Healthix wishes to provide, Healthix Services (as defined below) that may include Value Added Services (as defined below) and that are in addition to, and do not include, the Required Participant Services (as defined below) required to be offered under the SCPA by the Healthix acting as a Designated HIN, if applicable;

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

ARTICLE I DEFINITIONS

1.1 “Authorized User” means an individual who has been authorized by Participant to use the Healthix Services on behalf of the Participant as set forth below..

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

1.3 “Patient Data” means information provided by the Participant pursuant to this Agreement or information provided under the SCPA or information otherwise available through the Healthix System.

1.4 “QE Permitted Purposes” means the purposes for which SHIN-NY data maintained in the Healthix System may be used or disclosed in accordance with the SCPA and the SHIN-NY SOPs (as defined below).

1.5 “Required Participant Services” means the minimum services required to be provided by a Designated HIN to SHIN-NY participants under the SCPA pursuant to the SHIN-NY Standards. “Required Participant Services” are further defined in the SHIN-NY SOPs.

1.6 “Healthix Policies and Procedures” means the policies and procedures adopted by Healthix for the operation of the Healthix System and the participation by participants in the Healthix System. Healthix Policies and Procedures can be found at <https://healthix.org/who-we-are/policies-privacy-security/>.

1.7 “Healthix Services” shall have the meaning set forth in the Statements of Work attached as Exhibit A. .

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

1.9 “SHIN-NY SOPs” means the existing and anticipated standard operating policies and procedures that are developed and amended from time to time govern the SHIN-NY.

1.10 “SHIN-NY Standards” means the SHIN-NY Regulations, SHIN-NY SOPs, SHIN-NY Policies and Procedures found at https://www.health.ny.gov/technology/regulations/shin-ny/docs/privacy_and_security_policies.pdf.

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

1.12 “Value-Added Services” means any services provided by the Healthix to a Participant that are neither Required Participant Services nor duplicative of Required Participant Services, but that require access to or use of data in the SHIN-NY. Value-Added Services may include, but are not limited to, providing a SHIN-NY participant with access to additional data to be included in the SHIN-NY. For the avoidance of doubt, if the Healthix provides services that do not involve data held on in the SHIN-NY, the services shall not be considered Value-Added Services, but may be Services provided hereunder and shall be outside the SCPA requirements altogether.

ARTICLE II HEALTHIX SERVICES

2.1 Healthix Services.

2.1.1 Healthix Services made available by Healthix to the Participant hereunder shall be specified in individual Statements of Work, attached as Exhibit A. All Healthix Services shall only include services that are within the QE Permitted Purposes.

2.1.2 Fees for the Healthix Services are set forth in the Statements or Work set forth in Exhibit A.

2.1.3 Healthix Services provided hereunder may include Value Added Services. Value-Added Services may not duplicate or mimic any Required Participant Service available to Participant, provided that any Value-Added Service will not be considered to be duplicative of or mimicking any Required Participant Service if it solely consists of either providing Participant with, or Participant’s receipt of additional data, from the SHIN-NY.

2.1.4 In no event will the Healthix Services offered under this Services Agreement ever include Required Participant Services; provided, however, with respect to a Participant for which the Healthix is acting as an Additional HIN under the SCPA, Participant agrees to make payment for such Required Participant Services as permitted by SHIN-NY Standards.

2.1.5 Participant shall ensure that it and all Authorized Users that obtain access to Healthix Services or the Healthix System shall be in full compliance with this Agreement, including but not limited to compliance with applicable law, SHIN-NY Standards and Healthix Policies and Procedures.

ARTICLE III PARTICIPANT'S OBLIGATIONS

3.1 Grant of License.

3.1.1 To the extent necessary to provide the Healthix Services, Healthix grants to Participant, and Participant shall be deemed to have accepted, a nonexclusive, personal, nontransferable, limited license to have access to and to use the Healthix System and the Healthix Services during the term of this Services Agreement, subject to the Participant's full compliance with the Healthix Policies and Procedures, the SHIN-NY Standards, the SCPA and this Services Agreement. Healthix retains all other rights to the Healthix System and all the components thereof. The Participant shall obtain any rights to the Healthix System except for the limited rights to use the Healthix System expressly granted by this Agreement.

3.1.2 Throughout the term of this Services Agreement and as necessary to perform the Healthix Services, the Participant grants to the Healthix a worldwide, non-exclusive, non-transferable, limited, royalty-free right to (a) access, use and disclose the Patient Data in accordance with applicable law and (b) permit other Healthix participants, other Qualified Entities and the other SHIN-NY participants to access through the Healthix System and use all Patient Data provided by the Participant in accordance with the SHIN-NY Standards and the Healthix Policies and Procedures.

3.2 Permitted Uses. Participant may use the Healthix System, the Healthix Services and the SHIN-NY Applications only for the QE Permitted Purposes described in the Healthix Policies and Procedures and the SHIN-NY Standards.

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

ARTICLE IV HEALTHIX' OPERATIONS AND RESPONSIBILITIES.

4.1 Compliance with Laws and Regulations. Without limiting any other provision of this Services Agreement, Healthix agrees to comply with applicable federal, state and local laws, ordinances and regulations relating to its operation of the Healthix System and provision of the Healthix Services.

4.2 Responsibility for Other Qualified Entities and their participants. The Participant acknowledges and agrees that the Healthix shall have no responsibility for the acts or omissions of any other Qualified Entity or the participants of the SHIN-NY.

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

ARTICLE V DISCLAIMERS, EXCLUSIONS OF WARRANTIES, LIMITATIONS OF LIABILITY

5.1 NO WARRANTIES. DISCLAIMER OR PROVISION OF WARRANTIES ARE SET FORTH IN THE SCPA EXECUTED BY THE PARTIES. NOTWITHSTANDING THE FOREGOING, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT

LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE HEALTHIX SYSTEM.

5.2 Other Participants, Other Qualified Entities. Participant acknowledges that other Healthix participants, other Qualified Entities, as defined by New York law, and the participants of the SHIN-NY may have access to the Healthix System. The actions of such other parties are beyond the control of the Healthix. Accordingly, Healthix does not assume any liability for the acts of Healthix participant's, other Qualified Entity's or other participant of SHIN-NY's actions or failures to act, except where the Healthix has been notified in writing of such participant's, other Qualified Entity's or other participant of SHIN-NY's actions or failures to act and has failed to take action to prevent further improprieties.

5.3 Data. All data which is accessed through the Healthix System and/or the Healthix Services originates from participants of the SHIN-NY and not from the Healthix. All such data is subject to change arising from numerous factors, including without limitation, 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 the SHIN-NY Standards or the Healthix Policies and Procedures, Healthix shall have no responsibility for, or liability related to the accuracy, content, currency, completeness, content or delivery of any data either provided or used by Participant, pursuant to the SHIN-NY Standards and the Healthix Policies and Procedures, except to the extent that the content of such information is distorted or corrupted as a result of the negligent actions or omissions or willful misconduct of the Healthix.

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

ARTICLE VI TERMINATION

6.1 Termination by the Participant.

6.1.1 The Participant may terminate this Services Agreement at any time without cause by giving not less than sixty (60) days prior notice to the Healthix.

6.1.2 The Participant may terminate this Services Agreement upon the Healthix's material breach of its obligations hereunder, which breach is uncured for a period of thirty (30) days after the Participant has given the Healthix notice of that breach and requested that the Healthix cure that breach;

provided that no opportunity to cure shall be provided and termination shall be immediate in the event of (a) a breach that cannot reasonably be cured within thirty (30) days, (b) repeated breaches of the same obligation, or (c) a breach that would expose the Participant to civil or criminal liability or would otherwise cause a violation of applicable laws, rules, regulations or accreditation standards applicable to Participant.

6.2 Termination by the Healthix.

6.2.1 The Healthix may terminate this Services Agreement with respect to the Participant at any time without cause by giving not less than sixty (60) days prior notice to the Participant.

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

6.2.3 The Healthix may terminate this Services Agreement with respect to all Healthix participants at any time upon termination of the Healthix's participation in the SHIN-NY.

6.3 Effect of Termination. Upon any termination of this Services Agreement with respect to the Participant, neither that party nor its Authorized Users shall have any rights to use the Healthix System or the Healthix Services and neither the Healthix nor any of the other Healthix Participants shall have any further access to Patient Data of the Participant through the Healthix System; provided that nothing in this Section 7.3 shall require the return by any other Healthix participant of any Patient Data of the Participant that was accessed prior to such termination.

6.4 Survival of Provisions. Any provision of this Services Agreement that contemplates performance or observance subsequent to any termination of this Services Agreement shall survive any termination of this Services Agreement.

ARTICLE VII GENERAL PROVISIONS.

7.1 General. Business terms regarding insurance, indemnification, confidentiality, venue, assignability, notices, force majeure, waiver, third party beneficiaries, independent contractors, and amendments are set forth in the SCPA.

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

7.3 Complete Understanding. Except as otherwise set forth herein, this Services Agreement, together with the Business Associate Agreement, if any, in effect between the parties, the SHIN-NY Standards and the Healthix Policies and Procedures, contains the entire understanding of the parties hereto, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Services Agreement other than those contained or referenced herein.

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

HEALTHIX, INC

[INSERT PARTICIPANT NAME]

Todd Rogow
President & CEO
Date:

Name:
Title:
Date:

EXHIBIT A
STATEMENTS OF WORK