PARTICIPATION AGREEMENT

STATE OF NORTH DAKOTA
NORTH DAKOTA HEALTH INFORMATION NETWORK
SFN 60134 (6-2017)

This Participation Agreement (the “Participation Agreement”) is made by and between the State of North Dakota, which acting through its Department of Information Technology is administering the North Dakota Health Information Network (the “State” or “NDHIN”), and each of the participating entities who execute a counterpart to this Participation Agreement (each, a “Participant” and collectively, the “Participants”). The effective date of this Participation Agreement with respect to any Participant is the last date indicated on the counterpart of this Participation Agreement executed by the NDHIN and the Participant.

ARTICLE I

DEFINITIONS.

1.1 “Administrative User” means an individual who is an employee, business associate, or other agent of the Department of Information Technology [“ITD”] authorized by the NDHIN to perform services necessary for operating and maintaining the NDHIN.

1.2 “Advisory Committee” means the Health Information Technology Advisory Committee established under N.D.C.C. § 54-59-25.

1.3 "Application" means the signed and notarized Participation Agreement submitted by a potential Participant to access the Hosted System and use the Hosted Applications, as described in Section 4.2.

1.4 “Authorized User” means an individual who is authorized by a Participant to participate in the NDHIN and includes, health care providers, employees, contractors, agents, or Health Insurance Portability and Accountability Act (HIPAA) business associates of a participant. The types of employees, independent contractors, or credentialed professional staff members of a Participant who may qualify as Authorized Users may be further defined in the NDHIN Policies and Procedures.

1.5 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 C.F.R. Parts 160 and 164.

1.6 “Hosted Applications” means software applications of NDHIN's information technology Vendor and other software applications provided to participants, authorized users, and administrative users of the North Dakota Health Information Network.

1.7 "Hosted System" means collectively, the Hosted Applications and the Hosting and Management Services.

1.8 “Hosting and Management Services” means the ongoing services that NDHIN's information technology Vendor and other vendors will perform to host, manage, and enable the State, i.e., the North Dakota Health Information Network, to access and use the Hosted Applications.

1.9 “Intellectual Property Rights” means patent rights, copyrights, trade secrets, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.10 “NDHIN Policies and Procedures” means the policies and procedures adopted by the Health Information Technology Advisory Committee (“Advisory Committee”) for the operation of the Hosted System and the participation by Participants in the Hosted System, as described in Article III. Copies of the NDHIN Policies and Procedures in effect as of the date of this Participation Agreement are attached to the Agreement as Exhibit A.

1.11 “Participant” means an organization, health care provider or institution, health plan, or health care clearinghouse who has executed a written Participation Agreement.

1.12 “Participation Agreement” means the Agreement between the NDHIN and a Participant which authorizes the Participant to have access to the Hosted System.

1.13 “Participation Agreement Approval” means the written approval by the NDHIN of a potential Participants Participation Agreement as described in Section 4.4.

1.14 “Patient Data” means information made accessible by a Participant pursuant to Section 6.2, including, any “protected health information” as defined in the HIPAA privacy rule, 45 C.F.R. Parts 160 and 164, and any other individually identifiable information, uploaded to, stored in, or processed by the Hosted Applications.

1.15 “Protected Health Information” means Individually Identifiable Health Information (e.g., any oral or recorded information

relating to the past, present, or future physical or mental health of an Individual; the provision of health care to the Individual; or the payment for health care) that is maintained by any medium and transmitted by electronic media or in any other form or medium.

ARTICLE II

HOSTED SYSTEM.

2.1 Services. The Hosted Applications and Hosting and Management Services made available through the Hosted System are described or referenced in the NDHIN Policies and Procedures.

2.2 Change or Termination of Hosted System.

2.2.1 Procedures for Change or Termination of Hosted System. The NDHIN may change the Hosted System, or may cease providing the Hosted Applications, at any time as the NDHIN, subject to the approval of the Advisory Committee, determines is appropriate. The NDHIN shall notify all Participants of any changes to the Hosted System or the Hosted Applications at least thirty (30) days prior to the implementation of the change; provided that, if the change requires modifications to the Participant's system or may otherwise materially affect the Participant's operations or obligations under this Participation Agreement, the NDHIN shall notify the Participant at least ninety (90) days prior to the implementation of the change. Notwithstanding the foregoing, if the change is required in order for the NDHIN or any Participant to comply with applicable laws or regulations, the NDHIN may implement the change within a shorter period of time as the NDHIN determines is appropriate under the circumstances; provided that the NDHIN shall provide the Participants with as much notice of the change as reasonably possible.

2.2.2 Participants Rights in the Event of a Change in Services. If a change to the Hosted System or the Hosted Applications affects a material right or obligation of a Participant under this Agreement and the Participant objects to that change, that Participant may terminate this Participation Agreement by giving the NDHIN written notice of the termination not more than thirty (30) days following the NDHIN's notice of the change. The termination shall be effective as of the effective date of the change to which the Participant objects; except that any change to the Hosted System or the Hosted Applications that the NDHIN reasonably determines is required to comply with any federal, state or local law or regulation shall take effect as of the effective date the NDHIN reasonably determines is required, and the termination of this Participation Agreement based on the Participant's objection to the change shall be effective as of the NDHIN's receipt of the Participant's notice of termination.

ARTICLE III

ESTABLISHMENT OF NDHIN POLICIES AND PROCEDURES.

3.1 Generally. The NDHIN Policies and Procedures shall apply to the operation of the Hosted System, the provision of the Hosted Applications, and the relationships among the NDHIN and Participants. The NDHIN and each Participant agrees to comply with the NDHIN Policies and Procedures attached as Exhibit A applicable to the Participant, and, subject to the provisions of Section 3.2 of this Agreement, with any amendments to the NDHIN Policies and Procedures.

3.2 Amendment of NDHIN Policies and Procedures.

3.2.1 Procedures for Amendment of NDHIN Policies and Procedures. The NDHIN is solely responsible for the development of the NDHIN Policies and Procedures, and may amend, or repeal and replace, the NDHIN Policies and Procedures at any time as the NDHIN determines is appropriate, provided that any such amendment, repeal or replacement of the NDHIN Policies and Procedures requires the approval of the Advisory Committee. The NDHIN shall notify Participants of any proposed changes to the NDHIN Policies and Procedures and allow Participant's reasonable opportunity to comment upon such proposed changes in writing and/or to comment upon such proposed changes to the Advisory Committee. The NDHIN shall notify all Participants of any changes to the NDHIN Policies and Procedures at least thirty (30) days prior to the implementation of the change; provided that, if the change requires modifications to the Participant's system or may otherwise materially affect the Participant's operations or obligations under the Participation Agreement, the NDHIN shall notify the Participant at least ninety (90) days prior to the implementation of the change. Notwithstanding the foregoing, if the change is required in order for the NDHIN and/or Participants to comply with applicable laws or regulations, the NDHIN may implement the change within a shorter period of time as the NDHIN reasonably determines is appropriate under the circumstances; provided that the NDHIN shall provide the Participants with as much notice of any such change as reasonably possible.

3.2.2 Participant's Rights in the Event of Amendment of NDHIN Policies and Procedures. Any change to the NDHIN Policies and Procedures shall automatically be incorporated by reference into this Participation Agreement, and be legally binding upon the NDHIN and the Participant, as of the effective date of the change. If a change to the NDHIN Policies and Procedures affects a material right or obligation of a Participant and the Participant objects to that change, that Participant

may terminate this Participation Agreement by giving the NDHIN written notice of the termination not more than thirty (30) days following the NDHIN's notice of the change. Any such termination shall be effective as of the effective date of the change to which the Participant objects; except that any change to the NDHIN Policies and Procedures that the NDHIN reasonably determines is required to comply with any federal, state, or local law or regulation shall take effect as of the effective date the NDHIN reasonably determines is required, and the termination of this Participation Agreement based on the Participant's objection to the change shall be effective as of the NDHIN's receipt of the Participant's notice of termination.

ARTICLE IV

PARTICIPATION AGREEMENT REQUIREMENTS.

4.1 Participation Agreement Required. Only an organization or a person that enters into a Participation Agreement with the NDHIN is permitted to access the Hosted System and use the Hosted Applications. A Participant may apply to use some or all of the Hosted Applications, as specified in that Participant's Agreement. A separate agreement is required for each physically separate facility unless that physical site is connected to the Network through the facility's virtual private network (VPN).

4.2 Participation Agreement. An individual health care provider or organization that wishes to apply to the NDHIN and become a Participant must submit a signed and notarized Participation Agreement and must agree to comply with the terms and conditions required by the NDHIN Policies and Procedures.

4.3 Review of Participation Agreement. The NDHIN may reject an application if the applicant fails to obtain minimum required hardware and software standards, or fails to pass specified preliminary tests and the NDHIN specifies in writing the basis of the rejection.

4.4 Approval of Participation Agreement. Any Participation Agreement Approval shall be in writing and shall specify such terms and conditions as may be required under the NDHIN Policies and Procedures. Upon the NDHIN's approval of a Participation Agreement executed by an applicant, the applicant shall become a Participant and shall be permitted to use the Hosted System and access Hosted Applications, subject to the provisions of this Participation Agreement and the NDHIN Policies and Procedures.

ARTICLE V

AUTHORIZED USERS.

5.1 Identification of Authorized Users. Each Participant shall identify, in accordance with the NDHIN Policies and Procedures, all of the Participant's Authorized Users and the level of access to the Hosted System and the Hosted Applications to be provided to each Authorized User. The NDHIN shall establish a user name and password for each Authorized User.

5.2 User Names and Passwords. User Names and Passwords for each Authorized User will be issued in accordance with the NDHIN Authentication Policy, pursuant to Section 5.1 that permits each such Authorized User to access the Hosted System and use the Hosted Applications. If an individual is removed as an Authorized User by reason of termination of employment or otherwise, the Participant shall disable the user name and password of that individual within twenty-four hours.

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

5.4 Responsibility for Conduct of Participant and Authorized Users. As between the Participant, on the one hand, and the NDHIN and the other Participants, on the other hand, the Participant is solely responsible for all acts and omissions of the Participant and the Participant's Authorized Users (if the acts or omissions of those Authorized Users were due to the negligent or intentional failure of the Participant to comply with its obligations under this Article or the HIPAA Security Rule) with respect to the Hosted System, the Hosted Applications, any confidential, and other information accessed in connection with the NDHIN. In addition, as between the Participant, on the one hand, and the NDHIN and the other Participants, on the other hand, the Participant is solely responsible for all acts or omissions of any other individual who accesses the Hosted System or uses the Hosted Applications either through the Participant or by use of any password, identifier or log-on received or obtained from the Participant if the access or use was due to the negligent or intentional failure of the Participant to comply with its obligations under this Article or the HIPAA Security Rule.

ARTICLE VI

PARTICIPANT'S OBLIGATIONS AS A PROVIDER, RECIPIENT, OR USER OF DATA.

6.1 Permitted Uses. A Participant may use the Hosted System and the Hosted Applications only for the permitted uses described in the NDHIN Policies and Procedures.

6.2 Grant of Rights to Participants. Throughout the term of this Participation Agreement, the NDHIN grants to each Participant, and each Participant shall be considered to have accepted, a nonexclusive, personal, nontransferable, limited right to have access to and to use the Hosted System for the purposes of complying with the obligations described in this Article, subject to the Participant's full compliance with the NDHIN Policies and Procedures and the terms of this Participation Agreement. The NDHIN retains all other rights to the Hosted System and all the components of the System. A Participant may not obtain any rights to the Hosted System except for the limited rights to use the Hosted System expressly granted by this Participation Agreement and the NDHIN Policies and Procedures.

6.3 Provision of Data to NDHIN.

6.3.1 Generally. Each Participant shall make accessible through the Hosted System the information described in the NDHIN Policies and Procedures as required for a Participant. A Participant must use reasonable efforts to provide Patient Data that accurately reflects the relevant data in the Participant's electronic records at the time the Patient Data is made accessible through the Hosted System.

6.3.2 No Warranties. EACH PARTICIPANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES REGARDING THE PATIENT DATA OF THE PARTICIPANT THROUGH THE HOSTED SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF ACCURACY, COMPLETENESS, FITNESS FOR A PARTICULAR USE AND ANY OTHER EXPRESS OR IMPLIED WARRANTIES. EACH PARTICIPANT ACKNOWLEDGES AND AGREES THAT ANY DATA ACCESSED BY THE PARTICIPANT OR ITS AUTHORIZED USERS IS PROVIDED ON AN “AS-IS” AND “WHERE-IS” BASIS, AND THE NDHIN AND EACH DATA PARTICIPANT SHALL TAKE ALL REASONABLE EFFORTS NECESSARY TO INFORM AUTHORIZED USERS OF THEIR RESPONSIBILITY TO REVIEW, UPDATE AND CONFIRM THE ACCURACY OF ANY INFORMATION ACCESSED THROUGH THE HOSTED SYSTEM. USE OF THE HOSTED SYSTEM IS NOT A SUBSTITUTE FOR A HEALTH CARE PROVIDERS STANDARD OF PRACTICE OR PROFESSIONAL JUDGMENT. ANY DECISIONS WITH RESPECT TO THE APPROPRIATENESS OF DIAGNOSES OR TREATMENTS OR THE VALIDITY OR RELIABILITY OF INFORMATION IS THE SOLE RESPONSIBILITY OF THE PATIENTS HEALTH CARE PROVIDER. NOTHING IN THIS SECTION IS INTENDED TO LIMIT A PARTICIPANT'S OBLIGATIONS UNDER SECTION 6.3.1 OF THIS AGREEMENT.

6.4 Grant of Rights to NDHIN.

6.4.1 Grant of Rights. Throughout the term of this Participation Agreement, the Participant grants to the NDHIN a worldwide, non-exclusive, non-transferable, limited, royalty-free right (i) to permit other Participants to access through the Hosted System and use all Patient Data provided by the Participant in accordance with the NDHIN Policies and Procedures, and (ii) subject to Section 6.4.2, to use the Patient Data to carry out the NDHIN's duties under the NDHIN Policies and Procedures, including without limitation system administration, testing, problem identification and resolution, management of the Hosted System, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as the NDHIN determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations.

6.4.2 Limitations on Use of Patient Data. Notwithstanding Section 6.4.1, Patient Data provided by a Participant may not be used by the NDHIN or any Participant for any of the following purposes:

(a) Uses Prohibited by NDHIN Policies and Procedures. Any use that is prohibited by the NDHIN Policies and Procedures.

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

(c) Comparative Studies. The performance of comparisons of the performance of the Participants or data aggregation without the express written consent of each of the Participants being compared.

(d) Third Parties. A Participant may use the Hosted System only for the Participant's own account and for its Authorized Users, and may not use any part of the Hosted System or Hosted Applications to provide separate services or sublicenses to any third party, including providing any service bureau services or equivalent services to a third party.

6.5 No Limitations on Participant's Use of Its Own Data. Nothing in this Article or elsewhere in this Participation Agreement is intended to or may be considered to in any way limit Participant's use of its own Patient Data.

6.6 Patient Consent. Prior to making Patient Data available through the NDHIN, i.e., through the Hosted System, Participants shall comply with all applicable laws governing patient consent to the disclosure of information such as 42 C.F.R. Part 2, relating to the diagnosis and treatment of drug and alcohol abuse.

ARTICLE VII

SOFTWARE AND HARDWARE PROVIDED BY THE NDHIN.

7.1 Description. The NDHIN shall provide to each Participant certain software or hardware required to access the Hosted System and use the Hosted Applications the Participant has registered to receive, as more particularly described in the NDHIN Policies and Procedures (the “Associated Software” and “Associated Hardware,” respectively). Certain Participants as specified in the NDHIN Policies and Procedures may be required to establish a virtual private network (VPN) connection to the Hosted System. Any installation, maintenance or support obligations, if any, of the NDHIN with respect to the Associated Software and the Associated Hardware shall be as set forth in the NDHIN Policies and Procedures.

7.2 Grant of License. Throughout the term of this Participation Agreement, the NDHIN grants to each Participant a non-exclusive, personal, nontransferable, limited license to use the Associated Software and the Associated Hardware during the term of this Participation Agreement for access to or use of the Hosted System and for the purpose of obtaining the Hosted Applications.

7.3 Copying. The Participant may not, without the NDHIN's prior written consent, copy any of the Associated Software.

7.4 Modifications; Derivative Works. The Participant may not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create the Associated Software or the Hosted System, or to create any derivative works from the Associated Software or the Hosted System. The Participant may not modify the Associated Software or combine the Associated Software with any other software or services not provided or approved by the NDHIN.

7.5 Third-Party Software, Hardware and/or Services. The Associated Software includes certain third-party software and services which may require that a Participant enter into separate subscription, licensing or other agreements with third-party vendors, or which may be open-source. Prior to receipt or access by the Participant to any such Associated Software, the Participant shall execute such agreements as may be required for the use of such software or services. The NDHIN shall, upon request, provide the Participant with the terms of any license or other agreement held by the NDHIN, and any open-source or similar licenses, relating to third-party products included in Associated Software, and each of the NDHIN Participants shall comply with those terms.

7.6 Open-Source Software. Nothing in the NDHIN Policies and Procedures may be construed to limit any use of open-source software in accordance with the applicable open source software license.

ARTICLE VIII

PROTECTED HEALTH INFORMATION.

8.1 Compliance with HIPAA, NDHIN Policies and Procedures, and Other Laws and Regulations. The NDHIN and each Participant shall comply with all applicable standards for the confidentiality, security, and use of any Patient Data or Protected Health Information under HIPAA, the NDHIN Policies and Procedures, and any other applicable federal, state, and local laws. Except as provided in Section 8.1.1, each Participant agrees to report promptly to the NDHIN following its discovery by the Participant, and the NDHIN agrees to report promptly to the Health Information Technology Advisory Committee following its discovery by the NDHIN, any material breach of the provisions of this Section that relates to this Agreement. In addition, the NDHIN agrees to report promptly to the other Participants any material breach of the provisions of this Section. For the purpose of this Section "report promptly" means to report the discovery of any material breach of this Section AS SOON AS POSSIBLE AND IN ANY CASE within five (5) days of the time NDHIN or a Participant, as applicable, becomes aware of any such breach.

8.1.1 In addition to any other requirements, because NDHIN has joined the Sequoia project (formerly Healtheway), the public-private partnership that operationally supports the nationwide eHealth Exchange, Participant agrees to comply with the provisions in Section 15.04 of the Restatement I of the Data Use and Reciprocal Support Agreement (September 30, 2014) (“DURSA”) that require the Participant:

(a) To comply with all Applicable Law;

(b) To reasonably cooperate with NDHIN regarding issues related to the DURSA;

(c) To Request, retrieve and send data only for a Permitted Purpose as defined in the DURSA (which is more restrictive than HIPAA);

(d) To use data received from NDHIN or another Sequoia Participant in accordance with the terms and conditions of the DURSA;

(e) To refrain from disclosing to any other person any passwords or other security measures issued to the Participant or to an Authorized User of the Participant by the NDHIN; and

(f) To as soon as reasonably practicable (as required by Section 14.03 of the DURSA); but no later than:

(1) one (1) hour after discovering information that leads a NDHIN Participant to reasonably believe that a Breach related to Transacting Message Content pursuant to the DURSA may have occurred, alert NDHIN to the suspected breach; and

(2) twenty-four (24) hours after determining that a Breach related to Transacting Message Content pursuant to the DURSA has occurred, provide a Notification of any such Breach to NDHIN.

In other words, if a breach (or suspected breach) occurs WHILE the Participant is sending, requesting, receiving, or accessing an electronic transmission of health information through the Sequoia Project, the breach must be reported as required by this subsection. BUT IF the breach was from the Participants EHR or electronic records system and did not occur while (i.e., at the same time) the Participant or the Participants Authorized user was using the Sequoia Project (even though the information is ePHI received or accessed through the Sequoia Project), the breach is considered to be not directly related to the Sequoia Project and should not be reported under this subsection. (Although the Participant may be required to report the breach under other NDHIN and HIPAA Notification rules).

An incident is not considered to be a breach under the DURSA and should not be reported under this subsection if [for example]: (1) the breach is an unintentional access or disclosure of information accessed through the DURSA by an employee or individual acting in good faith and within the course and scope of the employment or other professional relationship of the individual with the Participant, and (2) the information is not further accessed or disclosed by the individual.

As used in Subsection (f), “Transacting Message Content pursuant to the DURSA” means sending, requesting, receiving, asserting, responding to, submitting, routing, subscribing to, or publishing information contained within an electronic transmission of health information transacted by an NDHIN Participant using the DURSA Specifications, including any information contained in an electronic transmission, or accompanying any such transmission such as Protected Health Information (PHI), de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. § 164.514), individually identifiable information, pseudonymized (partially de-identified) data, metadata, Digital Credentials, and schema.

8.1.2 The Notification of a DURSA breach under Section 8.1.1(f) should include sufficient information for NDHIN to understand the nature of the Breach.

(a) For instance, the Notification could include, to the extent available at the time of the 24-hour Notification, the following information:

(1) One or two sentence description of the breach

(2) Description of the roles of the people involved in the breach (e.g. employees, Participant Users, service providers, unauthorized persons, etc.)

(3) The type of Message Content breached

(4) Participants likely impacted by the breach

(5) Number of individuals or records impacted or estimated to be impacted by the breach

(6) Actions taken by the Participant to mitigate the breach

(7) Current status of the breach (whether under investigation or resolved)

(8) Corrective action taken and steps planned to be taken to prevent a similar breach

(b) The Participant shall supplement the information contained in the Notification as it becomes available and cooperate with other Participants and NDHIN in investigating and taking corrective action in response to the breach.

8.1.3 The requirements of Section 8.1.1(f) do not apply to any acquisition, access, disclosure or use of information contained in or available through the Sequoia Project if the acquisition, access, disclosure or use:

(a) Is not directly related to Transacting Message Content through the DURSA; or

(b) Is an unintentional acquisition, access, disclosure, or use of Message Content by an employee or individual acting under the authority of the NDHIN or Participant if -

(1) the acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the NDHIN or Participant and

(2) the Message Content is not further acquired, accessed, disclosed or used by that employee or individual.

8.1.4 The requirements of Section 8.1.1(f) are addition to and do not supersede a Participants obligations, if any, under relevant security incident, breach notification, or confidentiality provisions of this Participation Agreement, the Participants Business Associate Agreement with NDHIN, the HIPAA Rules, or other applicable law.

8.2 Business Associate Agreement. If, through a Participant's use of the NDHIN Services, the NDHIN's performance of its responsibilities described in the NDHIN Policies and Procedures causes the NDHIN to act as the “business associate” of the Participant (as defined in 45 C.F.R. Part 160.103), the Participant and the NDHIN shall enter into a Business Associate Agreement substantially in the form attached as Exhibit B or in such form as may otherwise be mutually agreed upon by the Participant and the NDHIN.

8.3 Qualified Service Organization Agreement. If, through a Participant's use of the Hosted Applications, the NDHIN's performance of its responsibilities described in the NDHIN Policies and Procedures causes the NDHIN to act as a “Qualified Service Organization” (as defined in 42 C.F.R. Part 2), the Participant and the NDHIN shall enter into a Qualified Service Organization Agreement substantially in the form attached as Exhibit C or in such form as may otherwise be mutually agreed upon by the Participant and the NDHIN.

ARTICLE IX

OTHER OBLIGATIONS OF PARTICIPANTS.

9.1 Compliance with Laws and Regulations. Without limiting any other provision of this Participation Agreement and the NDHIN Policies and Procedures relating to the parties compliance with applicable laws and regulations, each Participant (i) agrees to comply with applicable federal, state, and local laws relating to its use of the Hosted System and the Hosted Applications and (ii) remains responsible for ensuring that any service provided pursuant to this Participation Agreement complies with all applicable provisions of Federal, State and local statutes.

9.2 System Security. Each Participant shall implement security measures with respect to the Hosted System and the Hosted Applications that comply with the requirements of the HIPAA Security Rule and in accordance with the NDHIN Policies and Procedures.

9.3 Software and/or Hardware Provided by Participant. Each Participant is responsible for procuring all equipment and software (other than the Associated Hardware and Software, as defined in Section 7.1) necessary for it to: (i) access the Hosted System, (ii) use the Hosted Applications (including the Associated Software) and (iii) provide to the NDHIN all information required to be provided by the Participant (“Participant's Required Hardware and Software”). Each Participant's Required Hardware and Software shall conform to the NDHIN's then-current specifications, as approved by the Advisory Committee. The NDHIN may change these specifications from time to time upon approval of the Advisory Committee 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 is responsible for properly configuring all the Participant's computers to be used to interface with the Hosted System, including the operating system, web browser, and Internet connectivity.

9.4 Other Resources. Each Participant is responsible for providing such other resources as may be reasonably necessary in connection with the implementation of the Hosted System at the Participant, including making available such Participant staff members as may be necessary for these purposes.

9.5 Viruses and Other Threats. In providing any data to the Hosted System, the Participant must use reasonable efforts to ensure that the medium containing the data does not include, and that any method of transmitting the data will not introduce, any program, routine, subroutine, or data that will disrupt the proper operation of the Hosted System or any part of the System or any hardware or software used by the NDHIN in connection with the System, or that, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the Hosted System or any part of the System or any hardware, software or data used by the NDHIN or any other Participant in connection with the NDHIN, to be destroyed, damaged or rendered inoperable.

9.6 Authorized User Training. Each Participant shall, at its own expense, utilizing the user manuals and other resources provided by the NDHIN pursuant to Section 10.2 of this Agreement and in accordance with the NDHIN Policies and Procedures, provide to all Authorized Users appropriate and adequate training regarding, without limitation, access and use of the Hosted System and the Hosted Applications, and privacy and security of Patient Data obtained using the Hosted System and the Hosted Applications.

ARTICLE X

NDHIN'S OPERATIONS AND RESPONSIBILITIES.

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

10.2 Participant Training. The NDHIN shall provide training to each Participant regarding access and use of the Hosted System and the Hosted Applications, including such user manuals and other resources as the NDHIN determines appropriate to support the Hosted System and the Hosted Applications, so that the Participant may train all of its Authorized Users regarding the access and use of the Hosted System and the Hosted Applications as required under Section 9.6 of this Agreement.

10.3 Telephone and/or E-Mail Support. The NDHIN shall provide, directly or through a business associate or other agent, by telephone or e-mail, support and assistance in resolving difficulties in accessing and using the Hosted System and the Hosted Applications, in accordance with the NDHIN Policies and Procedures.

10.4 Audits and Reports.

10.4.1 Participant Audits. Each Participant is responsible for performing periodic audits, in accordance with the NDHIN Policies and Procedures, to confirm compliance with this participation Agreement and proper use of the Hosted System and the Hosted Applications in accordance with this Participation Agreement and the NDHIN Policies and Procedures, and for reporting the findings of these audits to the NDHIN or the Advisory Committee as may be required by the NDHIN Policies and Procedures, with any findings of noncompliance to be reported to the full Advisory Committee.

10.4.2 NDHIN Audits. Each Participant is subject to audit by the NDHIN (or a third party engaged by the NDHIN for those purposes) to confirm compliance with this Participation Agreement and proper use of the Hosted System and the Hosted Applications in accordance with this Participation Agreement and the NDHIN Policies and Procedures. Any such audit shall take place during business hours and upon reasonable notice to Participant. These audits shall be performed at the expense of the NDHIN, and in a manner reasonably designed to minimize interference with Participant's day-to-day operations. The results of the audits shall be reported to the NDHIN or the Advisory Committee as may be required by the NDHIN Policies and Procedures, with any findings of non-compliance to be reported to the full Advisory Committee.

10.5 Compliance with Laws and Regulations. Without limiting any other provision of this Participation Agreement and the NDHIN Policies and Procedures relating to the parties compliance with applicable laws and regulations, the NDHIN agrees to comply with applicable federal, state, and local laws relating to its operation of the Hosted System and provision of the Hosted Applications.

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

10.7 Responsibility for Conduct. As between the Participant and the NDHIN, the NDHIN is solely responsible for all acts and omissions of the NDHIN with respect to the Hosted System, the Hosted Applications, including any confidential or other information accessed in connection with the NDHIN, and all such acts and omissions, including the acts or omissions of its Administrative Users, shall be considered to be the acts and omissions of the NDHIN. In addition, as between the Participant and the NDHIN, the NDHIN shall be solely responsible for all acts or omissions of any other individual who accesses the Hosted System or uses the Hosted Applications either through the NDHIN or by use of any password, identifier or log-on received or obtained from the NDHIN if the access or use was due to the negligent or intentional failure of the NDHIN to comply with its obligations under this Agreement.

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

ARTICLE XI

FEES AND CHARGES.

11.1 Service Fees. If the NDHIN determines to charge fees for access to the NDHIN and use of Hosted Applications, the fees shall be charged in accordance with a Fee Schedule adopted by the Advisory Committee and incorporated into the NDHIN Policies and Procedures. A copy of the proposed future fee schedule is attached as Exhibit D of this Agreement. The NDHIN shall notify all Participants of its intent to begin charging or modifying fees at least (90) days prior to the implementation of the change. In the event that a Participant objects to the decision by the NDHIN to begin charging or modifying fees, that Participant

may terminate this Participation Agreement by giving the NDHIN written notice of termination not more than thirty (30) days following the NDHIN's notice of such a decision. The termination shall be effective as of the effective date of the NDHIN's decision to begin charging or modifying fees.

ARTICLE XII

PROPRIETARY INFORMATION.

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

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

ARTICLE XIII

DISCLAIMERS, EXCLUSIONS OR WARRANTIES, LIMITATIONS OF LIABILITY.

13.1 Carrier lines. By using the Hosted System and the Hosted Applications, each Participant acknowledges that access to the Hosted System is to be provided over various facilities and communications lines, and information may be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, “carrier lines”) owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which are beyond the NDHIN's control. The NDHIN is not liable for any damages 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 Participants or Authorized Users risk and is subject to all applicable local, state, national, and international laws.

13.2 NO WARRANTIES. EXCEPT AS SET FORTH IN SECTION 10.8, ACCESS TO THE HOSTED SYSTEM, USE OF THE HOSTED APPLICATIONS AND THE INFORMATION OBTAINED BY A PARTICIPANT PURSUANT TO THE USE OF THOSE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE NDHIN OR THE HOSTED SYSTEM OR THE INFORMATION IN THE SYSTEM, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING 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 THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF THOSE 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 HOSTED SYSTEM.

13.3 Other Participants. By using the Hosted System and the Hosted Applications, each Participant acknowledges that other Participants have access to the Hosted System and the Hosted Applications. The other Participants have agreed to comply with the NDHIN Policies and Procedures, concerning use of the information made available through the NDHIN; however, the actions of these other parties are beyond the control of the NDHIN. Accordingly, the NDHIN does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the system resulting from any Participant's actions or failures to act, except when the NDHIN has been notified in writing of such a

participant's actions or failures to act and has failed to take action to prevent further noncompliance with the NDHIN Policies and Procedures by that Participant.

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

13.5 Inaccurate Data. All Patient Data to which access is made through the Hosted System or the Hosted Applications originates initially from Participants and 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 patients health condition, the passage of time and other factors. The NDHIN does not monitor the specific content of data being transmitted. Without limiting any provision of the NDHIN Policies and Procedures, the NDHIN has 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, pursuant to the NDHIN Policies and Procedures, except to the extent that the content of this information is distorted or corrupted as a result of the negligent actions or omissions or willful misconduct of the NDHIN.

13.6 Patient Care. Without limiting any other provision of this Participation Agreement, as between the NDHIN, on the one hand, and the Participant, on the other hand, the Participant is solely responsible for all decisions and actions taken or not taken by the Participant or the Participant's Authorized Users (if the decisions and actions taken or not taken by the Authorized Users were due to the negligent or intentional failure of the Participant to comply with its obligations under this Agreement) involving patient care, utilization management, and quality management for its patients resulting from or in any way related to the use of the Hosted System or the Hosted Applications or the data made available by the System or Services. Participant waives any claims against the NDHIN, for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the Hosted System or the Hosted Applications or the data made available by the System or Services, 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 NDHIN.

13.7 Limitation of Liability. This Participation Agreement does not waive the States immunity from liability or any limitation on damages to which the State, and the NDHIN as a State agency, are entitled under the Eleventh Amendment to the United States Constitution or N.D.C.C. ch. 32-12.2, and nothing in this Participation Agreement may be construed as a waiver of immunity from liability of a health care provider under N.D.C.C. § 54-59-30.

13.8 Liability of Other Parties. Nothing in this Section may be construed as a limitation on any claims by the NDHIN or any Participant against a telecommunications carrier or other third-party vendor.

ARTICLE XIV

INSURANCE.

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

ARTICLE XV

TERMINATION.

15.1 Termination by a Participant.

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

15.1.2 A Participant may terminate this Participation Agreement upon the NDHIN's material breach of its obligations under

the Agreement, which breach is uncured for a period of thirty (30) days after the Participant has given the NDHIN notice of that breach and requested that the NDHIN cure the breach; provided that an opportunity to cure need not be provided and termination may be immediate upon notice to the NDHIN in the event of (a) a breach that cannot reasonably be cured within thirty (30) days, (b) repeated breaches of the same obligation, (c) a breach that would expose the Participant to civil or criminal liability or would otherwise cause a violation of applicable laws, rules, regulations or accreditation standards applicable to Participant, or (d) a breach of the NDHIN's obligations under Exhibit B to this Agreement.

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

15.2 Termination by the NDHIN.

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

15.2.2 The NDHIN may terminate this Participation Agreement with respect to any Participant upon the Participant's material breach of its obligations under the Agreement, which breach continues uncured for a period of thirty (30) days after the NDHIN has given the Participant notice of that breach and requested that the Participant cure that breach ; provided that an opportunity to cure need not be provided and termination may be immediate upon notice to the Participant 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 NDHIN to civil or criminal liability or would otherwise cause a violation of applicable laws, rules, regulations or accreditation standards applicable to the NDHIN.

15.3 Effect of Termination. Upon any termination of this Participation Agreement with respect to a Participant, neither that party nor its Authorized Users have any rights to use the Hosted System or the Hosted Applications and neither the NDHIN nor any of the other Participants may have any further access to Patient Data of that Participant through the Hosted System; provided that nothing in this Section requires the return by any other Participant of any Patient Data of a terminating Participant that was accessed prior to the termination. This section does not apply to the duty of a Participant that ceases operations to store, make arrangements to store, or make available to patients the Participant's Patient Data, which is to subject to other law.

15.4 Survival of Provisions. Any provision of this Participation Agreement that contemplates or requires performance subsequent to any termination of this Participation Agreement survives any termination of the Agreement, including Section 5.2, Article 8, Article 12, Section 13.7, Section 15.3 and this Section.

ARTICLE XVI

GENERAL PROVISIONS.

16.1 Applicable Law. This Participation Agreement shall be governed by the laws of North Dakota, without reference to the principles of North Dakota law respecting conflicts of laws. Any action or other proceeding brought on or in connection with this Participation Agreement, must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota.

16.2 Non-Assignability. The rights of either party under this Participation Agreement may not be assigned or transferred by a party, either voluntarily or by operation of law, without the prior written consent of the other party, which that party may withhold in its sole discretion.

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

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

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

Name of Participant			
Name of CEO or Individual Authorized to Sign on Behalf of Participant	Title		
Address	City	State	ZIP Code
Email Address		Telephone Number	

State of North Dakota/Information Technology Department

Name of Contact	Email Address	Telephone Number	
Sheldon Wolf	shwolf@nd.gov	(701) 328-1991	
Address	City	State	ZIP Code
4201 Normandy Street	Bismarck	ND	58503-1324

16.6 Waiver. No provision of this Participation Agreement shall be considered waived and no breach excused, unless the waiver or consent is 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, does not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

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

16.8 Third Party Beneficiaries. Except as expressly provided in Section 16.7 (with respect to injunctive relief), there are no third party beneficiaries of this Participation Agreement.

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

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

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

16.12 Counterparts. The parties may execute this agreement in counterparts, each of which is considered an original and all of which only constitute one original.

IN WITNESS OF THIS, the Parties who sign below have executed this Participation Agreement as of the date indicated below.

Name of Participant			
Name of CEO or Individual Authorized to Sign on Behalf of Participant	Title		
Address	City	State	ZIP Code
Email Address		Telephone Number	
Signature of CEO or Individual Authorized to Sign on Behalf of Participant		Date	

State of North Dakota acting through its Information Technology Department

Name Sheldon Wolf	Title Health Information Technology Director
Signature	Date

LIMITED PARTICIPATION

If you are an entity who has applied to become a Participant solely to participate in Communicate (Direct Secure Messaging), and do not at this time plan to become a full-fledged Participant in the NDHIN, please so indicate by signing the limited participation section below.

I/We have submitted this application to become a Participant solely to participate in Communicate (Direct Secure Messaging) and agree to comply with the provisions of this Participation Agreement that are applicable to Direct Secure Messaging.

Name of Participant			
Name of CEO or Individual Authorized to Sign on Behalf of Participant	Title		
Address	City	State	ZIP Code
Email Address		Telephone Number	
Signature of CEO or Individual Authorized to Sign on Behalf of Participant		Date	

State of North Dakota acting through its Information Technology Department

Name Sheldon Wolf	Title Health Information Technology Director
Signature	Date

The Authorized Officer or Representative of the Participant on the previous page signed before me and provided a passport, drivers license, or other official photo identification card, and states under oath that he or she is the legal bearer of and the individual named in the identification card who is signing this Amendment on behalf of the Participant.

Type of Identification Card of Authorized Officer or Representative	Last Four Digits of Identification Card Number

State of North Dakota

County

Printed Name of Notary Public	
Signature of Notary Public	Date

Stamp of Notary Public

Participant's Principal Contact

IMPORTANT: EACH PARTICIPANT MUST DESIGNATE A "PRINCIPAL CONTACT" who will serve as a point of contact for all communications with NDHIN, including designation of the Participant's authorized users.

Name of Participant's Principal Contact	Title of Principal Contact		
Address	City	State	ZIP Code
Email Address		Telephone Number	

Exhibit A

Policies and Procedures

https://www.nd.gov/itd/statewide-alliances/ndhin/about-us/policies

Exhibit B

Terms of Business Associate Agreement (or BA to Participation Agreement Separately Circulated)

https://www.nd.gov/itd/sites/itd/files/NDHIN/policies/businessassociateagreementsfn60132.pdf

Exhibit C

Terms of Qualified Service Organization Agreement

The NDHIN and the Participant hereby enter into a Qualified Service Organization Agreement, under which the NDHIN agrees to provide to the Participant the services described in the Participation Agreement between the parties (the "Participation Agreement") and the NDHIN Policies and Procedures (as such term is defined in the Participation Agreement).

Furthermore, the NDHIN:

1. Acknowledges that in receiving, storing, processing or otherwise dealing with any information about patients in any covered alcohol and drug abuse treatment program operated by the Participant, NDHIN 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 covered alcohol and drug abuse treatment program operated by the Participant otherwise than as expressly permitted by in the federal confidentiality regulations, 42 C.F.R. Part 2.

Effective Date

Name of Participant			
Name of CEO or Individual Authorized to Sign on Behalf of Participant	Title of Authorized Representative		
Address	City	State	ZIP Code
Email Address		Telephone Number	
Signature of CEO or Individual Authorized to Sign on Behalf of Participant		Date	

North Dakota Health Information Network Participant

Name of Authorized Representative Sheldon Wolf	Title of Authorized Representative Health Information Technology Director		
Address 4201 Normandy Street	City Bismarck	State ND	ZIP Code 58503-1324
Email Address shwolf@nd.gov		Telephone Number (701) 328-1991	
Signature of NDHIN Official		Date	

Exhibit D

Proposed Fee Schedule

Proposed Fee Schedule

The 2017 and 2018 fee schedule for providers, payers and government agencies is identified below. Final fees are subject to review and approval by the Health Information Technology Advisory Committee before any Participant becomes obligated to pay any fee to participate in the ND Health Information Network.

Stakeholder	Method	2017	2018
Hospitals			
0 - 10,000,000	Net Patient Revenue	$3,600.00	$3,600.00
10,000,001 - 25,000,000	Net Patient Revenue	3,600.00	3,600.00
25,000,001 - 100,000,000	Net Patient Revenue	7,500.00	7,500.00
100,000,001 - 650,000,000	Net Patient Revenue	39,000.00	39,000.00
650,000,001 and above	Net Patient Revenue	78,000.00	78,000.00
Providers	Per Provider[1]	360.00	360.00
Government Agencies	State 1/3 of cost	State 1/3 of cost	State 1/3 of cost
Payers	Per Member	1.00	1.00
Long-Term Care	Facility[2]	400.00	400.00
Pharmacies	Facility[2]	400.00	400.00
Labs	Facility[2]	400.00	400.00
Radiology	Facility[2]	400.00	400.00
Home Health Care	Facility[2]	400.00	400.00
Public Health Care	Facility	400.00	400.00
Other Facility	Contact ND Health Information Network		

Notes:

[1] Per individual who has prescribing authority.
[2] If part of a hospital, fee is included in the hospital net patient revenue fee identified above. These are for independent entities.