

**ST. JOSEPH HEALTH INFORMATION EXCHANGE PARTICIPATION  
AGREEMENT**

This ST. JOSEPH HEALTH INFORMATION EXCHANGE PARTICIPATION AGREEMENT (this “Agreement”) is entered into this \_\_\_\_\_, between St. Joseph Health System (“SJHS”) and \_\_\_\_\_ (“Participant”).

**RECITALS**

A. SJHS seeks to facilitate the adoption of and promote the use of health information technology in the interests of quality of care, patient safety, and health care efficiency, while also maintaining patient data security and privacy.

B. In support of these objectives, SJHS will act as a health information organization and will support a health information exchange (“HIE”) which will permit (i) Participant to contribute, as a “Data Provider,” clinical patient information to a consolidated clinical document which is made available to other participants of the HIE, and/or (ii) Participant’s Authorized Users with the ability to access such consolidated clinical records, as “Data Recipients,” as indicated below.

C. Participant is a legal entity organized to provide health care services to individuals for the medical treatment of such individuals, is eligible to use the HIE for health related purposes, as set forth in the Policies and Procedures (as defined below), and wishes to participate in the HIE in accordance with the terms and conditions of this Agreement.

**AGREEMENT**

In consideration of the foregoing Recitals (which are incorporated herein) and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Effective Date. The Effective Date of this Agreement shall be the date last set forth in the signature block.

2. Participation. Participant shall participate in the HIE, as and to the extent described in this Agreement, and all Exhibits attached hereto, and subject to and in accordance with the relevant terms of this Agreement, and all Exhibits attached hereto. Participant may be a Data Provider, a Data Recipient, or both (each as defined on Exhibit A). Participant hereby declares that Participant is a (*check all that apply*):

Data Provider

Data Recipient

3. Incorporation of Exhibits. This Agreement hereby incorporates by reference and includes the Exhibits attached hereto, as and to the extent set forth below:

(a) Exhibit A (Standard Definitions). The Standard Definitions set forth on Exhibit A are hereby incorporated into this Agreement.

(b) Exhibit B (St. Joseph Health System Clinical Portal / HIE Terms of Use). Participant hereby agrees, and shall cause its Authorized Users to agree to the extent that Participant is a Data Recipient, to the terms of Exhibit B.

(c) Exhibit C (Data Provider Terms of Use). To the extent that Participant is a Data Provider, as indicated above, Participant hereby agrees to comply with the terms set forth on Exhibit C.

(d) Exhibit D (Business Associate Addendum). SJHS and Participant hereby agree to the terms of the Business Associate Addendum attached hereto on Exhibit D. In addition to the obligations set forth in the Business Associate Addendum on Exhibit D, the each party shall report to the other any use or disclosure of Patient Data not provided for by this Agreement or the Policies and Procedures of which it becomes aware, any security incident (other than an Unsuccessful Security Incident) concerning electronic Patient Data and any Breach of Privacy or Security. This report shall be made without unreasonable delay and in no case later than three (3) business days following discovery.

(e) Exhibit E (Lab Interface Consents). To the extent that Participant is a Data Provider, Participant hereby agrees to comply with the terms set forth on Exhibit E, attached hereto.

(f) Exhibit F (Fee and EHR Subsidy Agreement). The parties agree to the terms and conditions related to fees and any applicable EHR subsidies set forth on Exhibit F.

4. Description of the HIE Services. SJHS provides or arranges for the provision of data transmission and related services to allow Participants to conduct searches for Patient Data, and to exchange Patient Data identified from those searches, from an aggregate record of Patient Data that facilitates the sharing of Patient Data among disparate Participants. SJHS's services include establishing and applying standards for such exchange of Patient Data. SJHS has access to and is responsible for maintaining some or all of such Patient Data in the performance of SJHS's services. SJHS maintains an aggregated repository of Patient Data.

5. Policies and Procedures. The Policies and Procedures (as defined on Exhibit A), in effect from time to time, are hereby incorporated into this Agreement, and SJHS and Participant shall be required to comply with the applicable provisions of the Policies and Procedures. SJHS may amend, repeal and replace the Policies and Procedures at any time, and shall give Participant notice of such changes not less than thirty (30) days prior to the implementation of those changes. However, if the change is required in order for the HIE to comply with applicable laws or regulations, SJHS may implement the change within a shorter period of time as SJHS determines is appropriate under the circumstances. Any such change to the Policies and Procedures shall automatically be incorporated by reference into this Agreement, and be legally binding upon SJHS and the Participant, as of the effective date of the change.

6. Term and Termination.

a. Term. This Agreement shall be effective as of the Effective Date and shall remain in effect for a period of two (2) year(s) (the “Initial Term”). Thereafter, the term of this Agreement will automatically be extended for an additional period of one (1) year (each, a “Renewal Term”), unless either SJHS or the Participant gives the other written notice of termination not less than ninety (90) days prior to the expiration of the then-current term.

b. Termination Based on Objection to Change. Notwithstanding Section 5, SJHS shall not make any change to the Policies and Procedures that either (a) materially reduces the rights or increases the obligations of a Participant, (b) materially reduces the obligations of SJHS, or (c) substantially changes the provisions of the Policies and Procedures regarding the privacy or security of Patient Data, without providing to the Participant the right to terminate this Agreement by giving SJHS written notice thereof not more than thirty (30) days following SJHS’s notice of the change. Such termination of this Agreement shall be effective as of the effective date of the change to which the Participant objects; provided, however, that any change to the Policies and Procedures that SJHS determines is required to comply with any federal, state, or local law or regulation shall take effect as of the effective date SJHS determines is required, and the termination of this Agreement based on the Participant’s objection to the change shall be effective as of SJHS’s receipt of the Participant’s notice of termination.

c. Termination Without Cause. Following the Initial Term, either party may terminate this Agreement any time without cause by giving not less than ninety (90) days prior notice to the other party.

d. Termination Upon Uncured Breach. Either party may terminate this Agreement upon the other party’s failure to perform a material responsibility arising out of this Agreement, and that failure continues uncured for a period of sixty (60) days after the non-breaching party has given the breaching party notice of the breach.

7. Participant Responsible for Conduct of Authorized Users. Participant shall be solely responsible for all acts and omissions of Participant and/or Participant’s Authorized Users, and all other individuals who access Patient Data through the Portal and/or make Patient Data available to the HIE, and all such acts and omissions shall be deemed to be the acts and omissions of Participant. Participant shall require that all of its Authorized Users use the Portal and the HIE only in accordance with the terms of this Agreement and the Policies and Procedures. Participant shall discipline appropriately any of its Authorized Users who fail to act in accordance with this Agreement and the Policies and Procedures in accordance with the Participant’s disciplinary policies and procedures.

8. Insurance. At all times during the term of this Agreement, (i) each party shall procure, or self-insure, and maintain comprehensive general liability insurance covering itself and its employees and agents providing services pursuant to the Agreement, and (ii) Participant shall procure, or self-insure, and maintain professional liability insurance covering itself and its employees and agents, each with coverage limits which are commensurate with industry standards in the State that Participant renders care. Both parties shall maintain worker’s compensation coverage equal to statutory limits. Both parties shall provide to the other party (upon request) a certificate of insurance evidencing that such coverage is in effect during the term of this Agreement.

9. Applicable Law. The interpretation of the terms of this Agreement and the resolution of any disputes arising under the terms of this Agreement shall be governed by the laws of the State of California. If any action or other proceeding is brought on or in connection with the this Agreement, the venue of such action shall be exclusively in Orange County, in the State of California.
10. Non-Assignability. No rights of the Participant under this Agreement may be assigned or transferred by the Participant, either voluntarily or by operation of law, without the prior written consent of SJHS, which it may withhold in its sole discretion.
11. Third-Party Beneficiaries. There shall be no third-party beneficiaries of this Agreement.
12. Supervening Circumstances. Neither the Participant nor SJHS shall be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. This Section 12 (Supervening Circumstances) shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.
13. Severability. Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.
14. Notices. Any and all notices required or permitted under this Agreement shall be sent by prepaid certified United States mail return receipt requested, overnight delivery service, or facsimile transmission to the address provided by the Participant to SJHS or such different addresses as a party may designate in writing.
15. Waiver. No provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.
16. Independent Contractors. In the performance of their respective responsibilities under this Agreement, SJHS and the Participant are and shall be at all times acting as the independent contractor of the other, and not by virtue of this Agreement or otherwise acting as an employee, agent, or partner of, or joint venture with, the other.
17. Complete Understanding. This Agreement (including all Exhibits hereto) contain the entire understanding of the parties, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement. All modifications or amendments to this Agreement shall be in writing and signed by all parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officer as of the date set forth above.

\_\_\_\_\_  
(“PARTICIPANT”)

**ST. JOSEPH HEALTH SYSTEM**  
(“SJHS”)

Printed Name: \_\_\_\_\_

Printed Name: Michael Marino, DO

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Chief Medical Information Officer (CMIO)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**STANDARD DEFINITIONS**

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below.

1.1.1. “Authorized User” means the individual Participant, or an individual designated by the Participant, to use the Portal or the HIE on behalf of the Participant, including without limitation, an employee of the Participant and/or a credentialed member of the Participant’s medical staff.

1.1.2. “Breach of Privacy or Security” is a use or disclosure of Patient Data other than in compliance with the terms of this Agreement that either, (a) pursuant to applicable laws or regulations, must be reported to affected individuals and/or government officials, including without limitation federal or state data breach notification rules, or (b) adversely affects (i) the viability of SJHS; (ii) the trust among Participants; or (iii) the legal liability of SJHS or any Participant.

1.1.3. “Data Provider” means a Participant that is registered to provide health information to SJHS for use through the HIE.

1.1.4. “Data Recipient” means a Participant that uses the Patient Portal or the HIE to obtain health information.

1.1.5. “HIE” shall mean the health information exchange network and the interface supported by SJHS which allows participants to provide Patient Data to the network.

1.1.6. “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.

1.1.7. “HITECH” means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title W of Division B of the American Recovery and Reinvestment Act of 2009 (commonly known as “ARRA”), Pub. L. No. 111-5 (February 17, 2009).

1.1.8. “Patient Data” means information provided, or made available for exchange, by a Data Provider through HIE.

1.1.9. “Participation Agreement” means a legally binding agreement between SJHS and a party pursuant to which that party acts as a Participant in accordance with, and agrees to comply with, this Agreement.

1.1.10. “Policies and Procedures” means, collectively, the policies and procedures adopted by SJHS’s using approved processes for the operation and use of the Portal and the HIE, including without limitation any operations manual, privacy and/or security policies, and technical specifications for the Portal and/or the HIE.

1.1.11. “Portal” means the clinical portal through which a Participant that is a Data Recipient, or such Participant’s Authorized Users, can access Patient Data on the HIE.

1.1.12. “Unsecured Protected Health Information” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health & Human Services (“HHS”) through guidance issued pursuant to HITECH.

1.1.13. “Unsuccessful Security Incident” means a Security Incident (as defined at 45 C.F.R. § 164.304) that does not result in: (1) the unauthorized access, use, disclosure, modification or destruction of information; or (2) material interference with system operations in a party’s information system. Unsuccessful Security Incidents include, without limitation, activity such as ping and other broadcast attacks on that party’s firewall, port scans, unsuccessful log-on attempts, denial of service and/or any combination of the foregoing, so long as such incident does not result in unauthorized access, use or disclosure of electronic protected health information.

**EXHIBIT B**  
**ST. JOSEPH HEALTH SYSTEM CLINICAL PORTAL / HIE TERMS OF USE**

**SECTION 1. ACCESS TO PORTAL / HIE**

**1.1 Grant of Access.** St. Joseph Health System (“**SJHS**”) grants to Authorized Users a limited, non-exclusive, non-transferable, personal, revocable license to access and use the portal maintained by SJHS for the purpose of clinicians and their staff accessing clinical records of patients (the “**Portal**”), until the Authorized User’s access to the Portal is terminated in accordance with the terms of these Terms of Use for the purposes expressly authorized by SJHS in these Terms of Use (and not for service bureau, time-sharing or similar services), together with any documentation provided by SJHS, and any modifications, upgrades and new versions provided to an Authorized User by SJHS. SJHS further grants to Participants a limited, non-exclusive, non-transferable, personal revocable license to use the health information exchange interface maintained by SJHS which permits Participants (and their Authorized Users) to make clinical records available to the health information exchange network maintained by SJHS (the “**HIE**”). “**Authorized Users**” shall mean any person authorized to access the Portal and “**Participants**” shall mean any entity that has entered into a Health Information Exchange Participation Agreement (“**Participation Agreement**”) with SJHS. This Agreement does not permit access to the Portal by persons who are not Authorized Users nor access to the HIE by person who are not Participants or Authorized Users of Participants.

**1.2 Ownership.** Access to the Portal and the HIE is licensed and not sold. No Authorized User or Participant shall, by virtue of this Agreement or otherwise, acquire any rights whatsoever in the Portal or the HIE aside from the limited licenses granted herein, and each Authorized User and Participant hereby expressly disclaims any other rights therein. SJHS shall have and retain all right, title and interest in and to the Portal and the HIE and all SJHS Intellectual Property (defined below) comprising the Portal and the HIE as well as any modifications or enhancements made thereto. Each Authorized User and each Participant hereby irrevocably assigns to SJHS ownership of any and all suggestions, modifications, enhancements, improvements, alterations, changes or revisions to the Portal or the HIE (collectively, “**Modifications**”) made or suggested by an Authorized User or a Participant. Each Authorized User and each Participant will cooperate with SJHS, take any and all necessary actions, and provide any necessary documentation requested by SJHS to confirm such assignments and SJHS’ ownership of the Modifications.

**1.3 Prohibitions.** Neither Authorized Users nor Participants may copy, use, modify, display, rent, resell, sublicense or distribute the Portal or the HIE or access thereto without SJHS’ prior written approval. No identifying marks, SJHS Intellectual Property or other proprietary right notices of SJHS or other parties may be deleted from, altered or obscured on the Portal or the HIE or materials produced by or using the Portal or the HIE. Authorized Users and Participants may not translate, decompile, disassemble, reverse compile, reverse engineer, decrypt or otherwise seek to recreate the source code of the Portal or the HIE, adapt the Portal or the HIE in any way or use it to create a derivative work, or grant any other person or entity the right or access to do so, without the prior written approval of SJHS. SJHS is not responsible for providing any updates, enhancements, modifications, revisions, additions, replacements or conversions to the Portal or the HIE, or for otherwise maintaining the Portal and the HIE, except as otherwise expressly set forth in this



Agreement. Authorized Users and Participants agree not to use any communications systems provided by the Portal or the HIE for any commercial solicitation.

**1.4 Reserved Rights.** All rights not specifically granted to Authorized Users or Participants hereunder are reserved by SJHS. Nothing herein shall prevent SJHS or its licensors from promoting, selling, providing, licensing or sublicensing access to the Portal and/or the HIE to other parties in its sole discretion.

## **SECTION 2. OBLIGATIONS OF AN AUTHORIZED USER AS A DATA RECIPIENT**

**2.1 Permissible Use of the Portal.** Authorized Users may only use the Portal in accordance with these Terms and Conditions and any relevant policies and procedures developed by SJHS related to the Portal and/or the HIE. Authorized Users may use the Portal only to request or seek access to patient information that the Authorized User is permitted to request pursuant to applicable laws and regulations and any relevant policies and procedures. Authorized Users shall not use the Portal to aggregate data to compare the performance of other Authorized Users, without the express written consent of SJHS and each of the relevant Authorized Users, or to respond to subpoenas or other judicial or administrative requests or demands. Authorized Users shall not use the Portal to access information for their own commercial or marketing purposes, or for the commercial or marketing activities of a third party. All patient information accessed through the Portal is strictly confidential and is subject to the protections of the Health Insurance Portability and Accountability Act of 1996, and the implementation regulations thereunder, including but not limited to 45 C.F.R. Part 164, Subparts C and E, as may be amended from time to time, as well as other applicable federal and state laws related to the confidentiality of patient health information.

**2.2 Password Security and Management.** Authorized Users shall be solely responsible for the security and confidentiality of the username and password assigned to him or her to access the Portal, and Authorized User shall not disclose to any other person his or her password. Authorized User acknowledges that he or she is the only individual authorized to use his or her username and password, and Authorized User shall be solely responsible for any access to the Portal using his or her username and password and any and all actions thereunder. Authorized User shall not attempt to learn or utilize the username or password of another Authorized User. Authorized User is required to comply with all SJHS policies and procedures related to password management. Authorized User agrees to use his or her best efforts to ensure that all access to the Portal and any other information and materials produced or disclosed in connection therewith are protected against unauthorized use, dissemination or disclosure. SJHS reserves the right to revoke an Authorized User's username and password at any time.

**2.3 Monitoring Authorized Users' Use of the Portal.** SJHS will conduct and maintain and audit trail of all accesses to the Portal and to patient information accessed through the Portal. Such monitoring may include, but is not limited to, recording the machine name, internet protocol (IP) address number, user number, date, and content of all accesses to the Portal and information accessed thereon that an Authorized User may make.

**2.4 Authorized Users Acknowledgement of Clinical Responsibilities.** Authorized Users are solely responsible for any medical or clinical decisions made, advice or treatment rendered, or other

actions taken based on information obtained using the Portal. Authorized Users acknowledge and understand that any and all information obtained through the Portal is not to be used as a substitute for his or her own medical judgment. Authorized Users are solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management of patients resulting or in any way related to the use of any information obtained through the Portal.

**2.5 Patient Data.** All patient data accessed through the Portal is beyond the control of SJHS. SJHS neither originates nor creates all of the patient information nor is it obligated to monitor the specific content or accuracy of the patient information. Without limiting the generality of any other provision of these Terms of Use, SJHS shall have no responsibility for or liability related to the accuracy, content, currentness, completeness, or delivery of the patient information. All patient information accessed through the Portal 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 patient health condition, the passage of time, and other factors.

### **SECTION 3. GENERAL OBLIGATIONS OF THE PARTIES**

**3.1 Technology and Systems.** Authorized Users and Participants shall have the sole responsibility for acquiring, installing and maintaining its or their own technology environment and equipment necessary to properly access, operate and utilize the Portal and the HIE, including, without limitation: servers, Internet access, LANs and WANs; for any communications or other costs incurred in operating, accessing and using the Portal and the HIE, and for any other expenses relating to the foregoing. Any necessary equipment and connections shall conform to SJHS's then-current specifications for the Portal and/or the HIE. Authorized Users and Participants shall be responsible for ensuring that all computers connecting to the Portal and the HIE are properly configured, including but not limited to the operating system, web browser, and internet connectivity. Authorized Users and Participants shall be responsible for selecting and training adequate personnel with the requisite experience necessary to operate their systems, who are also familiar with the records accessed/transmitted through the Portal and the HIE. Authorized Users and Participants shall establish adequate operational back-up systems and procedures to ensure recovery and continuity of their systems and operations in the event of a failure.

**3.2 Regulatory Compliance.** Authorized Users and Participants assume sole and complete responsibility for ensuring that its or their use of the Portal and the HIE, as applicable, are in compliance with all applicable federal, state and local laws and regulations, including, without limitation: (a) federal and state laws and regulations relating to the confidentiality and security of patient health information, including but not limited to, drug and substance abuse information, other behavioral health information, and HIV/AIDS-related information; and (b) state laws and regulations requiring Authorized Users or Participants to obtain any license, authorization or other permit to provide or arrange for the provision of services involving information accessed through the Portal or made available through the HIE.

**3.3 Access; Availability.** SJHS will use commercially reasonable efforts to make the core functions and features of the Portal and the HIE available to Authorized Users and Participants during normal business hours (8:00am – 6:00pm PST Monday through Friday excluding holidays). Each Authorized User and Participant understands and agrees that, from time to time,

the Portal and the HIE and/or certain features or functionalities of the Portal and the HIE may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment or Portal or HIE malfunctions; (ii) periodic maintenance procedures or repairs which SJHS may undertake from time to time; or (iii) causes beyond the control of SJHS or which are not foreseeable by SJHS.

**3.4 Designated Contacts.** Authorized Users employed or contracted by the same entity that utilize the Portal and Participants in regards to utilization of the HIE shall designate and identify from time to time a limited number of personnel who are authorized to contact SJHS to request support on behalf of the Authorized Users or the Participant (“**Designated Contacts**”). Designated Contacts must qualify as Authorized Users in order to have access to the Portal and/or the HIE on the Participant’s or the Authorized Users’ behalf. The number of Designated Contacts may not exceed a number that SJHS, in its sole discretion, deems reasonable and specific to the relevant Authorized Users and/or the Participant. SJHS reserves the right to provide services under these Terms of Use only to and at the request of one of a Designated Contact. A Participant or a group of Authorized Users may change its or their Designated Contacts at any time by giving written notice of the change to SJHS.

#### **SECTION 4. RESPONSIBILITY FOR USE**

**4.1 Acceptable Use.** Authorized Users and Participants assume sole and complete responsibility for ensuring that no unauthorized use of the Portal and/or the HIE occurs through its or their credentials or system. Unauthorized use includes, without limitation: (a) use of the Portal and/or the HIE to access non-Portal/non-HIE resources; (b) attempts to gain access to data about individuals other than for permissible purposes, as set forth in these Terms of Use and the applicable policies and procedures; (c) alteration or modification of individual data or of any Portal or HIE configuration values from the originally delivered values; (d) accessing the Portal and/or the HIE through any technology or means other than through the user account information provided to Authorized Users by SJHS or the method specified by SJHS; or (e) any use of the Portal and/or the HIE or the information contained therein in violation of any applicable law or regulation. Additionally, Authorized Users and Participants will each use best efforts to ensure compliance with the following requirements; (i) Authorized Users and Participants must not enter or transmit any information using the Portal and/or the HIE that is unlawful, false, offensive, defamatory, or infringes the rights of any person; (ii) Authorized Users and Participants must not use the Portal and/or the HIE in a way that disrupts use of the Portal and/or the HIE by others; and (iii) Authorized Users and Participants must not use any information obtained through the Portal and/or the HIE except for the purpose for which the information was provided, and must not attempt to use the Portal and/or the HIE to gain unauthorized access to information.

**4.2 Suitability.** Each Authorized User and Participant shall be responsible for determining the suitability of the Portal and/or the HIE for its operations and whether the Portal and/or the HIE will achieve the results it desires. As with manually kept records, records transmitted using the Portal and/or the HIE may contain errors, whether resulting from incorrect input or recording of information, errors, or other causes. Authorized Users and Participants are solely responsible for understanding the limitations of the Portal and/or the HIE.

**4.3 Authorized Users and Participant Representations.** Each Authorized User and each Participant represents, warrants and covenants that it: (a) is authorized to access or use the Portal and/or the HIE, as applicable; (b) all instructions and information entered into the Portal and/or the HIE will be accurate and complete; (c) will verify and remain solely responsible for all instructions and information entered into the Portal and/or the HIE; (d) will not upload, transmit, distribute or otherwise publish through the Portal and/or the HIE any materials that contain a virus, worm or other harmful component or that would cause the Portal or the HIE to malfunction; and (e) will not decompile, reverse engineer, disassemble or unlawfully use or reproduce any of the Portal or the HIE or other copyrighted or trademarked material, trade secrets or other proprietary information.

## **SECTION 5. TERMINATION**

**5.1 Termination.** Each Authorized User's or Participant's license to use and access the Portal and/or the HIE, as applicable, will terminate immediately upon SJHS's revocation of the Authorized User's username and password or termination or expiration of the relevant Participation Agreement. In addition, an Authorized User's or Participant's license to use and access the Portal and/or the HIE, as applicable, shall terminate immediately and without action from SJHS in the event (a) the Authorized User or Participant materially breaches these Terms of Use; (b) SJHS gives an Authorized User or Participant notice of additional terms and conditions that will govern use of or access to the Portal or the HIE, as applicable, and the Authorized User or Participant, as applicable, does not accept the additional terms and conditions; (c) SJHS ceases providing access to the Portal and/or the HIE in general; (d) in the case of an Authorized User, the Authorized User does not access the Portal for a period of three (3) consecutive months; or (e) in the case of a Participant, the Participant is the subject of a voluntary or involuntary bankruptcy, reorganization or liquidation proceeding, is insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay debts when due.

**5.2 Consequences Upon Termination.** Upon the termination or expiration of an Authorized User's or a Participant's license to use and access the Portal and/or the HIE, as applicable: (a) the Authorized User's or Participant's use of the Portal or the HIE, as applicable, shall immediately and automatically terminate, (b) the Authorized User or the Participant shall cease use of any SJHS Intellectual Property related to the Portal or the HIE; (c) the Authorized User or the Participant shall immediately return to SJHS any SJHS Intellectual Property, SJHS Confidential Information, documentation and any other SJHS property in Authorized User's or Participant's possession; and (d) the Authorized User or the Participant shall certify its compliance with this Section to SJHS in writing upon request. SJHS will retain data collected using the Portal or the HIE for any minimum period required by applicable law and regulations. Thereafter, SJHS may delete the data in accordance with SJHS's data retention policy as then in effect and as modified from time to time.

## **SECTION 6. LIMITED WARRANTY, DISCLAIMER, LIMITATION OF LIABILITY & INDEMNIFICATION**

**6.1 Limited Warranty.** SJHS warrants that the components of the Portal and the HIE are either owned by SJHS or used under license if owned by third parties, and that, to the best of SJHS's knowledge, Authorized Users' and Participants' access and use of the Portal and/or the HIE, as

applicable, as contemplated by these Terms of Use without modification and in accordance with the documentation will not infringe the rights of any third party.

**6.2 Disclaimer.** THE WARRANTIES SET FORTH IN SECTION 6.1 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY SJHS. TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, SJHS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY, INTEGRATION, CURRENTNESS, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE. SJHS DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE PORTAL OR THE HIE WILL MEET ANY AUTHORIZED USER'S OR PARTICIPANT'S REQUIREMENTS, THAT ACCESS TO OR OPERATION OR USE OF THE PORTAL OR THE HIE WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS IN THE PORTAL OR THE HIE, IF ANY, WILL BE CORRECTED, OR THAT RESULTS WILL BE TIMELY, ACCURATE, ADEQUATE OR COMPLETE. SJHS DOES NOT WARRANT OR REPRESENT THAT USE OF THE PORTAL OR THE HIE WILL RESULT IN COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, AND EACH AUTHORIZED USER AND EACH PARTICIPANT UNDERSTANDS THAT IT IS SOLELY RESPONSIBLE FOR ENSURING COMPLIANCE WITH ANY AND ALL APPLICABLE LAWS AND REGULATIONS.

**6.3 Limitation of Liability.** SJHS SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THESE TERMS OF USE OR OTHERWISE FOR LOST PROFITS, LOSS OF DATA, WORK STOPPAGE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULL EXTENT ALLOWED UNDER APPLICABLE LAW, THE AGGREGATE LIABILITY OF SJHS FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM SHALL BE LIMITED TO THE AMOUNT OF FEES PAID TO SJHS BY THE AUTHORIZED USER OR PARTICIPANT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE PARTIES UNDERSTAND THAT THE FOREGOING DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY ARE MATERIAL TERMS OF THESE TERMS OF USE AND A REFLECTION OF THE RISKS ASSUMED BY THE PARTIES IN ORDER FOR SJHS TO PROVIDE AUTHORIZED USERS AND PARTICIPANTS WITH ACCESS TO THE PORTAL AND THE HIE FOR THE SPECIFIED FEES, IF ANY.

**6.4 Indemnification by Authorized Users and Participants.** Each Authorized User and each Participant will, at its own expense, indemnify and hold SJHS and its shareholders, members, directors, officers, employees and agents harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses (including reasonable attorneys' fees) to the extent that the foregoing result from or pertain to Authorized User's or Participant's use, misuse and operation of the Portal or the HIE, breach of these Terms of Use, gross negligence, or willful misconduct.

## **SECTION 7. CONFIDENTIALITY**

**7.1 Confidential Information.** Either party (the “**Disclosing Party**”) may from time to time disclose to the other party (the “**Recipient**”) Confidential Information (as defined below). As used herein, “**Confidential Information**” means: (a) any nonpublic information regarding the Disclosing Party’s existing or proposed business, technology, products, services, internal structure and strategies of the Disclosing Party, specifically including, without limitation, the Portal, the HIE, documentation, end-user materials, Intellectual Property, proposals, designs, concepts, methodologies, inventions, source or object code, developments, research, programs, databases, referral sources, customers, prospective customers, inventions, developments, “know-how,” procedures, financial information or licensing and access policies; (b) any nonpublic information about Disclosing Party’s financial condition; (c) any nonpublic information regarding these Terms of Use; (d) any information of the Disclosing Party when presented in printed, written, graphic, photographic or other tangible form (including information received, stored or transmitted electronically) and marked “Confidential” or similarly by the Disclosing Party; (e) any information disclosed orally by the Disclosing Party, if the Disclosing Party states at the time of first disclosure that such information is of a confidential nature and the Disclosing Party confirms the confidentiality of such information with the Recipient in writing within ten (10) days after first disclosure; and (f) all such information that, by its nature, a reasonable party would consider to be confidential or proprietary. Without limiting the generality of the foregoing, all information pertaining to Authorized Users or Participants provided to SJHS using the Portal or the HIE shall be deemed to be Confidential Information of Authorized Users or Participants, as applicable. Confidential Information shall not include information that: (i) is or becomes publicly available through no fault of Recipient; (ii) is or has been received in good faith by Recipient without restriction on use or disclosure from a third party having no obligation of confidentiality to Disclosing Party; or (iii) is or has been independently developed by Recipient without reference to Confidential Information received from Disclosing Party, as evidenced by Recipient’s written records. Patient health information shall not be considered Confidential Information of any party, but shall be subject to the confidentiality protections otherwise set forth in these Terms of Use.

**7.2 Confidentiality and Non-Use.** Recipient will use reasonable efforts to avoid unauthorized disclosure of the Disclosing Party’s Confidential Information. Recipient will protect the Disclosing Party’s Confidential Information from unauthorized disclosure by taking at least those steps that Recipient uses to protect its own Confidential Information, but in no event less than reasonable efforts. Recipient will not use the Disclosing Party’s Confidential Information except for purposes of fulfilling its obligations under these Terms of Use. Recipient may disclose the Disclosing Party’s Confidential Information to its employees, agents, service providers and other persons who need to know such Confidential Information in connection with these Terms of Use. Before doing so, Recipient will take reasonable steps to ensure that such persons will comply with the restrictions imposed on Recipient by these Terms of Use. The obligation to protect Confidential Information will continue as long as Recipient possesses Confidential Information.

**7.3 Permitted Disclosure.** Recipient may disclose Confidential Information as required by law or in compliance with any court or administrative order; provided that Recipient gives the Disclosing Party reasonable notice as permitted by law that such Confidential Information is being sought by a third party in order to afford the Disclosing Party the opportunity to limit or prevent such disclosure.

**7.4 Confidentiality of Information Under HIPAA.** The parties acknowledge that SJHS transmits through the Portal and the HIE protected health information (“**PHI**”) that is subject to certain requirements of the federal Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”). SJHS has implemented and maintains administrative, physical and technological safeguards that SJHS believes reasonably and appropriately protect the confidentiality, integrity and availability of all personal information, including PHI. SJHS will maintain the confidentiality of all PHI that is within its possession, consistent with the requirements of such federal and state laws and regulations that are lawfully in effect and applicable to SJHS.

## **SECTION 8. INTELLECTUAL PROPERTY**

**8.1 SJHS Intellectual Property.** The SJHS Intellectual Property (as defined below) is the valuable, confidential property of SJHS and its licensors. International intellectual property laws protect such SJHS Intellectual Property. Authorized Users and Participants may use the Portal or the HIE as permitted herein and may not otherwise modify, adapt, translate, or create derivative or collective works based on the Portal or the HIE without the prior written consent of SJHS. As between the parties, SJHS owns all right, title, and interest in and to the Portal and the HIE and including, without limitation, all current and future enhancements, revisions, new releases and updates thereof and any derivative or collective works based thereon and all documentation thereto, all copyrights, trademarks, trade secrets, patents and goodwill therein, and all images, photographs, illustrations, graphics, audio and video created by or for SJHS therein (collectively, the “**SJHS Intellectual Property**”).

**8.2 Trademarks.** Any trademarks owned or controlled by SJHS, whether or not included in the Portal or the HIE and any logos relating to the foregoing are trademarks or service marks of SJHS and its licensors (collectively, the “**SJHS Trademarks**”). All other trademarks, service marks and logos used in the Portal or the HIE, if any, are the trademarks, service marks or logos of their respective owners.

**8.3 Use of Intellectual Property.** Authorized Users and Participants may not copy, reproduce, republish, store, upload, post, transmit, analyze, adapt, reformat, print, distribute, commercially exploit or publicly display the SJHS Intellectual Property, the Portal, the HIE, the SJHS Trademarks or the SJHS Confidential Information or any portion thereof in any manner whatsoever without the prior written consent of SJHS. Authorized Users and Participants may not remove, reproduce, alter, use, display, modify, copy or obscure any copyrighted material, trademark, service mark, legal or other proprietary notices in or on any portions of the SJHS Intellectual Property, the Portal, the HIE, the SJHS Trademarks, or the SJHS Confidential Information or any portion thereof.

## **SECTION 9. GENERAL PROVISIONS**

**9.1 Relationship of the Parties.** The relationship of SJHS and Authorized Users or Participants established by these Terms of Use shall be solely that of independent contractors, and nothing herein shall create or imply any other relationship. SJHS does not grant Authorized Users or Participants the power or authority to make or give any agreement, statement, representation, warranty or other commitment on behalf of SJHS, or to enter into any contract or otherwise incur

any liability or obligation, express or implied, on behalf of SJHS, or to transfer, release or waive any right, title or interest of SJHS. SJHS shall have the right to determine the method, details, and means of performing any services pursuant to these Terms of Use.

**9.2 Assignment.** Authorized Users and Participants may not assign, transfer or sell (voluntarily or by operation of law) its rights or obligations under these Terms of Use, or delegate its duties hereunder to any other person, without SJHS's prior written consent. A transfer of a controlling interest or other change in control in a Participant shall constitute an assignment. Any purported assignment without SJHS's consent will be void and will constitute a breach of these Terms of Use. SJHS may assign its rights under these Terms of Use or delegate or subcontract its obligations under these Terms of Use at any time.

**9.3 Entire Agreement; Modification.** SJHS may, at any time, enhance and/or make changes to these Terms and Conditions, and will provide Authorized User and Participants with notice of such changes, in its sole discretion, via hardcopy, e-mail, or by posting such changes on the Portal and/or the HIE. An Authorized User's continued use of the Portal and a Participant's continued use of the HIE following the provision of such notice shall constitute the Authorized User's or Participant's acceptance of the changes.

**9.4 Notices.** Any notices must be given in writing directed to the current address of each party or to such other address as either party may provide by written notice to the other. Notices will be deemed given (a) when personally delivered; (b) if sent by recognized overnight national courier service, on the second business day after deposit with the courier, properly addressed and fee prepaid or billed to sender; or (c) when sent by fax or e-mail, upon receipt of proper confirmation of sending, provided a copy of the notice is concurrently sent by mail.

**9.5 Attorneys' Fees.** In the event of a breach of these Terms of Use, the breaching party will reimburse the non-breaching party for all costs and expenses reasonably incurred by the non-breaching party in connection with the breach, including, without limitation, attorneys' fees. Additionally, in the event any suit or action is brought to enforce or interpret any of these Terms of Use, the prevailing party will be entitled to recover from the other party all reasonable attorney fees incurred at trial, on appeal, and on any petition for review, together with such other expenses, costs, and disbursements as may be allowed by law.

**9.6 Remedies.** The parties expressly agree that SJHS shall be entitled to injunctive and other equitable relief to prevent such a breach, in addition to any other remedy to which SJHS might be entitled. The parties waive the posting of any bond or surety prior to the issuance of an injunction hereunder. In the event a court refuses to honor the waiver of bond hereunder, the parties expressly agree to a bond in the amount of \$100.00. All remedies for such a breach shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedy with respect to the subject matter hereof.

**9.7 Governing Law; Venue.** This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of California, without reference to its conflicts or choice of law principles. The parties agree that the sole and exclusive jurisdiction and venue for any and all disputes arising under these Terms of Use shall be in any court located in or



having jurisdiction over Orange County, California. Each of the parties hereby irrevocably submits and consents to the personal jurisdiction of such courts.

**9.8 Force Majeure.** Neither party will be liable for any delay in performing its obligations (other than payment of money) if the delay is caused by any event beyond the reasonable control of the party, including, without limitation, acts of nature, war or insurrection, civil commotion, destruction of production facilities or materials by earthquake, fire, storm or flood, material or products shortages, labor disturbances, epidemic, disruption or slow speed of the Internet, break-downs of security or introduction of computer viruses (and the like) by third parties, any manufacturer or supplier delay in delivery or non-delivery, governmental action, terrorist attack or other similar event.

**9.9 Severability.** If any term or provision of these Terms of Use shall be held to be invalid, illegal or unenforceable, the remaining terms and provisions shall remain in full force and effect, and such invalid, illegal or unenforceable term or provision shall be deemed not to be part of these Terms of Use.

**9.10 Third Parties; Waiver.** Nothing in these Terms of Use, express or implied, shall create or confer upon any person or entity that is not the Authorized User or the Participant any legal or equitable rights, remedies, liabilities or claims with respect to these Terms of Use, except as expressly provided herein. Except as specifically provided in a written waiver signed by a duly authorized representative of the party seeking enforcement, the failure to enforce or the waiver of any provision in these Terms of Use shall not constitute the waiver of such term at any time or in any circumstances and shall not give rise to any restriction on or condition to the prompt, full and strict enforcement of these Terms of Use.

**9.11 Headings.** The captions and headings of these Terms of Use are included for ease of reference only.

**9.12. Action.** No action arising under these Terms of Use may be brought by an Authorized User or a Participant more than one (1) year after the cause of action has accrued.

**9.13 Survival.** All of the terms and provisions in these Terms of Use which are by their nature intended to survive an Authorized User's or Participant's license to use the Portal or the HIE, as applicable shall survive any termination or expiration of the license.

**EXHIBIT C**  
**DATA PROVIDER TERMS OF USE**

1. Provision of Data. Participant shall make Patient Data available to the HIE in accordance with the Policies and Procedures and applicable state and federal law. To the extent that Participant provides any Patient Data constituting information subject to the restrictions set forth in California Welfare and Institutions Code § 14100.2, Participant represents that such information is being disclosed for purposes directly connected with the administration of the Medi-Cal program.
2. Measures to Assure Accuracy of Data. Participant shall use reasonable and appropriate efforts to assure that all of the Patient Data it makes available to the HIE is accurate, free from serious error, reasonably complete, and provided in a timely manner.
3. Permissions to Use Patient Data. Participant grants to SJHS for purposes of the HIE and other HIE participants a perpetual, fully-paid, non-exclusive, royalty-free right and license to permit others to access all Patient Data it has made available to the HIE through the HIE in accordance with the Policies and Procedures and this Agreement for all Permitted Uses.
4. Effect of Termination Upon Data Provider. Upon termination of this Agreement, Participant shall have no obligation to make Patient Data available to the HIE. Participant further acknowledges and agrees that any Patient Data made available to the HIE prior to termination of the Agreement will remain in the HIE and will not be returned to Participant, nor destroyed.
5. Malicious Software, Viruses, and Other Threats. Participant shall use reasonable efforts to ensure that its connection to and use of the HIE, including without limitation the medium containing any data or other information provided to the HIE, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or “malware,” viruses, worms, and Trojan Horses) which will disrupt the proper operation of the HIE or any part thereof or any hardware or software used by SJHS in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the HIE or any part thereof or any hardware, software or data used by SJHS or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.
6. Other Participants. Participant acknowledges that other participants have access to the Patient Data it makes available to the HIE through the HIE. Such other participants have agreed to comply with the terms similar to those found in this Agreement and the Policies and Procedures, concerning use of the information; however, the actions of such other parties are beyond the control of SJHS. Accordingly, SJHS does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any Patient Data on the HIE resulting from any participant’s actions or failures to act, which are beyond the control of SJHS.
7. Unauthorized Access; Lost or Corrupt Data. SJHS is not responsible for unauthorized access to Participant’s transmission facilities or equipment by individuals or entities using the HIE or for unauthorized access to, or alteration, theft, or destruction of Participant’s data files, programs, procedures, or information through the HIE, whether by accident, fraudulent means or

devices, or any other method. Participant is solely responsible for validating the accuracy of all output and reports and protecting Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. Participant waives any 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.

## **EXHIBIT D BUSINESS ASSOCIATE ADDENDUM**

Participant (“Covered Entity” or “CE”) and SJHS (“Business Associate” or “BA”), hereby agree to the following in order to fulfill the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable state and federal laws and regulations:

### **1. Definitions**

- a. **Breach** shall have the meaning given to such term under HIPAA, the HIPAA Regulations and the HITECH Act, and as described in Cal. Civil Code Section 1798.82 and Cal. Health & Safety Code Section 1280.15.
- b. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- c. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information.
- d. **Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE's behalf.
- e. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- f. Terms used, but not otherwise defined here, shall have the meaning ascribed to such terms pursuant to the HIPAA Regulations.

### **2. Obligations of Business Associate**

- a. **Permitted Uses.** BA shall not use Protected Information except for the purpose of performing BA's obligations under the Agreement or this Addendum. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information (i) for the proper management and administration of BA, (ii) to carry out the legal responsibilities of BA, or (iii) for Data Aggregation purposes for the Health Care Operations of CE.
- b. **Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA's obligations under the Agreement and as permitted under the Agreement and this Addendum. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE.

However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) agreement from such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach.

- c. **Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by the Agreement or this Addendum. BA further agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI. BA shall comply with Subpart C of Part 164 of the Security Rule.
- d. **Mitigation.** BA agrees to mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI in violation of this Addendum.
- e. **Reporting of Improper Access, Use or Disclosure.** BA shall, following the discovery of any Breach of Unsecured PHI, Security Incident, as defined in the Security Rule, and/or any actual or suspected access, use or disclosure of Protected Information not permitted by the Agreement and this Addendum or applicable law notify CE in writing of such breach or disclosure without unreasonable delay and in no case later than five business days after discovery. Notwithstanding the foregoing, BA and CE acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and CE acknowledges and agrees that no additional notification to CE of such unsuccessful Security Incidents is required.
- f. **Business Associate's Subcontractors and Agents.** In accordance with 45 C.F.R. Sections 164.308(b)(2) and 164.502(e)(1)(ii), BA shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of BA agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI.
- g. **Access to Protected Information.** To the extent BA maintains a Designated Record Set on behalf of the CE, BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within five (5) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524.
- h. **Amendment of PHI.** To the extent BA maintains a Designated Record Set on behalf of CE, within thirty (30) days of receipt of a request from the CE or an individual for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or subcontractors shall make any amendments that CE directs or agrees to in accordance with the Privacy Rule.
- i. **Accounting Rights.** Within thirty (30) days of notice by CE of a request for an accounting of disclosures of Protected Information, BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable

CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528.

- j. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), or Secretary's designated representative, for purposes of determining compliance with the Privacy Rule.
- k. **Minimum Necessary.** BA (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure.
- l. **Compliance with Laws.** BA shall comply with all applicable state and federal privacy and security laws, including but not limited to HIPAA, the HIPAA Regulations, HITECH, and Cal. Civil Code 1798.82, as they may be amended from time to time.
- m. **Delegation of Obligations.** To the extent BA is delegated to carry out CE's obligations under the Privacy Rule, BA shall comply with the requirements of the Privacy Rule that apply to CE in the performance of such delegated obligation.

### 3. Termination

- a. **Material Breach by BA.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement, any provision in the Agreement to the contrary notwithstanding, with or without an opportunity to cure the breach.
  - b. **Effect of Termination.** Upon termination of the Agreement for any reason, BA will not be able to return or destroy Protected Information that BA or its agents or subcontractors maintain due to the nature of the HIE; however, BA shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.
4. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect.
5. **Regulatory References.** A reference in this Addendum to a section of regulations means the section as in effect or as amended, and for which compliance is required.

**EXHIBIT E**  
**LABORATORY TEST RESULT CONSENTS**

1. Participant hereby agrees, and to inform its Authorized Users, that copies of clinical laboratory results for tests ordered by clinicians at Participant will be delivered by any reference clinical laboratories, including but not limited to, Quest Diagnostics and LabCorp, directly to the HIE.
  
2. Participant agrees that it will obtain a written authorization in the form set forth on Exhibit E-1 from all clinicians at Participant who order clinical laboratory tests. Participant shall be responsible for maintaining such authorizations forms and shall provide a copy of such forms to SJHS upon reasonable request.
  
3. Participant further agrees that it will obtain a written authorization from any patient, as necessary for compliance with applicable laws, to permit the electronic delivery of laboratory test results to the HIE.

**EXHIBIT E-1  
ORDERING PROVIDER AUTHORIZATION FOR THE DELIVERY OF TEST  
RESULTS**

**Practice Name:** \_\_\_\_\_

**Please list all laboratories used other than SJHS (Quest, Pathology Inc, etc.):**

Laboratory Name: \_\_\_\_\_ Laboratory Name: \_\_\_\_\_

Account #: \_\_\_\_\_ Account #: \_\_\_\_\_

**Please list all Radiology/Imaging Clinics used other than SJHS:**

Clinic Name: \_\_\_\_\_ Clinic Name: \_\_\_\_\_

Account #: \_\_\_\_\_ Account #: \_\_\_\_\_

I, the undersigned, hereby authorize any clinical laboratory that provides laboratory testing on laboratory tests that I have ordered to disclose a copy of the laboratory test results directly to the St. Joseph Health System Health Information Exchange. I acknowledge that my signature on this authorization will have no effect on the method and manner that such test results are currently directly delivered to me.

**\*\*Important:** Signature per provider is required.

<u>Provider Name</u>	<u>Credential</u> (MD, DO, OD, NP, PA)	<u>NPI</u>	<u>Provider Signature</u>

**\*If additional spaces are required, please use the Exhibit E: Extension Form attached at the end of this contract.**



## **EXHIBIT E-2**

### **NOTICE**

#### **The SJH Health Information Exchange (HIE) is now connected to LabCorp.**

SJH has entered into an agreement with Laboratory Corporation of America (LabCorp) to provide the SJH HIE with laboratory result data and valuable clinical insight functionality. LabCorp shares St. Joseph Health's commitment of enhanced patient care and the combination of LabCorp results data with the SJH HIE is expected to greatly enhance providers' clinical decision capabilities.

Providers can request LabCorp to send courtesy copies of lab results to the SJH HIE. Primary delivery of original results (Reports of Record) will continue to be delivered to Ordering and Copied providers via current delivery mechanisms (LabCorp interfaces, faxes, etc.). Results are stored securely in the SJH HIE, as part of each patient's electronic health record, and are available to patients' clinical care teams. This service enhances the community patient medical record which is a fundamental building block of the SJH HIE and helps improve care for patients via provider access to patients' medical histories.

To share LabCorp results with the SJH HIE, contact the HIE Engagement Team for more information at [HIE@stjoe.org](mailto:HIE@stjoe.org) or (844) 256-4443.

**EXHIBIT E-3**

**Provider Authorization**

**Lab Connectivity Terms of Use.** These terms of use are a legal agreement between the medical practice identified below (hereinafter referred to as "Participant") and Laboratory Corporation of America Holdings and its subsidiaries (hereinafter referred to as "LabCorp") governing your connection to LabCorp through St. Joseph Health Information Exchange ("Exchange"). As used in this Agreement, the term "Participant" includes all ordering physicians or other persons in the practice that are authorized to order laboratory tests under applicable laws, rules and regulations.

**Orders and Results.** If LabCorp determines that Participant qualifies for a connection from LabCorp to the Exchange, LabCorp shall arrange with Exchange for the installation of a Uni-Directional Interface which allows LabCorp to electronically transmit patient test results into to the Exchange. By signing this Agreement, Participant acknowledges and authorizes LabCorp to transmit result reports to the Exchange in this manner and based upon Participant's relationship with the Exchange.

**Results Reports.**

initials	<b>Copy Only.</b> Participant understands that the Exchange will not deliver the official chartable report of laboratory testing results that complies with applicable reporting laws or otherwise meets the Participant's needs. Please contact your LabCorp Account Representative to establish the LabCorp means to deliver your official chartable report of the laboratory result.
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**Sharing of Data.** By agreeing to these terms of use, Participant directs LabCorp to submit copies of laboratory tests results to the Exchange. Participant acknowledges that other practices and persons participating in the Exchange will have access to such results and other information. All terms related to participation in the Exchange, and for any permitted use or access of such data, are solely between Participant and the Exchange. LabCorp assumes no responsibility for how information is used once submitted into the Exchange, and Participant shall indemnify, defend and hold LabCorp harmless from and against any claims of any inappropriate use or release of information.

**No Supplies or Equipment.** LabCorp is not providing any supplies or equipment under this agreement. Participant is responsible for arranging separately for all hardware, software, services, items, devices, or supplies necessary for Participant to connect to the Exchange. Likewise, Participant shall be responsible for all maintenance, support and service fees which are related to Participant's system and to connection to the Exchange.

**Compliance with All Laws and Restricted Use.** It is the intent of the parties hereto to comply with all federal, state and local statutes, regulations and ordinances, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Section 1877 of the Social Security Act (commonly known as the "Stark Provisions") and the anti-kickback provisions set forth in the fraud and abuse sections of 42 U.S.C. 1320(a), as well as and any regulations issued thereunder and any applicable similar state laws and regulations. The parties agree that pursuant to this Agreement, LabCorp shall only provide items, devices, or supplies that are used solely to order or communicate the results of, tests or procedures provided for Participant, and that any benefit, consideration or remuneration conferred upon Participant by virtue of this Agreement is not conditioned upon the referral of Medicare or Medicaid testing to LabCorp.

**Warranty/Liability.** The connection from LabCorp to the Exchange is provided on an "as-is" and "as-available" basis. LabCorp disclaims any and all warranties with regard to the Exchange. In no event will LabCorp be liable for incidental, consequential, special or indirect damages. In jurisdictions limiting the effect of such a limitation, LabCorp's liability is limited to the greatest extent permitted by law. LabCorp shall not be responsible for any claim in connection with the establishment or performance of the Exchange, nor for how any person may use the data once submitted to the Exchange. Participant hereby expressly releases LabCorp and agrees to indemnify and hold LabCorp harmless from any and all claims, including any and all claims for property damage, personal injuries and/or consequential, punitive or other damages which arise, or are alleged to have arisen, in connection with the establishment, operation or functioning of the Exchange.

**Term and Termination.** Either Party may terminate this agreement at any time upon 15 days notice.

NAME OF PRACTICE: \_\_\_\_\_ LABCORP ACCT NO: \_\_\_\_\_

FULL ADDRESS: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_

CONTACT: \_\_\_\_\_ TITLE: \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE SIGNED: \_\_\_\_\_

Completed forms and any questions should be directed to your LabCorp Account Representative: \_\_\_\_\_

**EXHIBIT F**  
**FEES AND EHR SUBSIDY AGREEMENT**

As of the Effective Date, Participant shall not be required to pay for the cost of any necessary technical infrastructure for Participant to contribute data to the HIE as a Data Provider because Participant receives no benefit from the provision of such clinical patient information to the HIE, provided, however, SJHS's out of pocket costs related to any necessary technical infrastructure shall be capped at \$15,000. Participant shall contract directly with its electronic medical record system vendor for the creation of the interface. Participant shall submit the vendor's invoice for the services to SJHS and SJHS shall remit to the Participant the cost of the necessary technical infrastructure, subject to the foregoing cap. Additionally, SJHS shall pay for the monthly maintenance fees, if any, related to the interface between Participant and SJHS. Notwithstanding the foregoing, to the extent that in the future, Participant benefits, either directly or indirectly, from being a Data Provider and participating in the HIE, and as may be required for compliance with the federal Anti-Kickback Statute and the Stark Law, Participant acknowledges that it may be required to pay a fee to SJHS equal to the fair market value for such participation. As an alternative to paying a fee to SJHS equal to the fair market value for participation in the HIE if determined necessary by SJHS for compliance purposes, Participant may immediately terminate this Agreement.

**EXHIBIT E-1: EXTENSION FORM**  
**ORDERING PROVIDER AUTHORIZATION FOR THE DELIVERY OF TEST RESULTS**

<u><b>Provider Name</b></u>	<u><b>Credential</b></u> <small>(MD, DO, OD, NP, PA)</small>	<u><b>NPI</b></u>	<u><b>Provider Signature</b></u>