

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (“Agreement”) is entered into on the last day of execution below by and between Kansas Health Information Network, Inc. (“KHIN”), Wichita Health Information Exchange, Inc. (“WHIE”), and Sedgwick County, Kansas on behalf of its COMCARE of Sedgwick County (“Participant”). KHIN, WHIE, and Participant may be collectively referenced herein as the “Parties” or singularly as a “Party.” KHIN and WHIE may be collectively referenced herein as the Health Information Organization, or the “HIO”.

RECITALS

WHEREAS, HIO are organized to facilitate health information sharing and data aggregation for treatment, payment, health care operations, public health and research-related purposes through the use of HIO System and Services (as defined herein); and

WHEREAS, KHIN is a provider led organization developed to facilitate the electronic transmission, storing and sharing of health information among eligible Participants utilizing electronic health records (“EHR” as defined herein), including individuals maintaining personal health records (“PHR”); and

WHEREAS, WHIE is also a provider led organization developed to facilitate the mobilization of healthcare information electronically across organizations within a region, community or health system/hospital. The goal of WHIE is to facilitate access to and retrieval of clinical data to provide safer, timely, efficient, effective, equitable, patient-centered care in a community or region; and

WHEREAS, WHIE and KHIN are, or shall become, “Approved Health Information Organizations” as that term is defined by the Kansas Health Information Technology and Exchange Act, and may be collectively referred to herein as the HIO; and

WHEREAS, Participant is (a) a legal entity organized to provide health care services to individuals for the medical treatment of such individuals; (b) a public health agency organized for the purpose of providing health care services or aggregating information regarding health services; or (c) an entity otherwise eligible to use the System and Services of HIO for health related purposes; and

WHEREAS, HIO, through its third-party vendor (Informatics Corporation of America (“ICA”)), arranges for the operation of an internet-based, peer-to-peer computer system and search engine for patient health, demographic and related information that assists users in locating and facilitating the sharing and aggregation of patient health data by multiple health care organizations with disparate health information computer applications, including Participant, including without limitation, hosting services; and

WHEREAS, HIO and Participant acknowledge that it is their intent to comply, in all respects, with the Kansas Health Information Technology and Exchange Act (the “KHTEA” or the “Act”) and specifically the requirements of the Act for the Participant to receive immunity from civil, criminal, and administrative liability under the Act; and

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NOW, WHEREFORE, HIO and Participant (collectively, the “Parties”), for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, agree as follows:

DEFINITIONS

The definitions as used in this Agreement shall be given meaning as follows, except to the extent such definitions conflict with the Kansas Health Information Technology and Exchange Act (“KHITEA”). The definitions in the KHITEA shall control the meaning in this Agreement, and any disagreement regarding the definition of a term in this Agreement shall be resolved by applying the definition in the KHITEA. Any term used in this Agreement which is undefined in this section, shall be given meaning in accordance with the KHITEA.

- A. **“Authorized User”** means the Participant, or an individual designated by the Participant, to use the System and Services of HIO on behalf of the Participant, including without limitation, an employee of the Participant, a credentialed member of the Participant’s medical staff, a vendor to the Participant who has access to Participant’s health records. Participant shall identify any Authorized User prior to accessing the System and Services of HIO.
- B. **“Confidential Information”** shall have the meaning set forth in Section VII.
- C. **“Wichita Health Information Exchange, Inc.”** (WHIE) is defined as the mobilization of healthcare information electronically across organizations within a region, community or health system/hospital. The goal of WHIE is to facilitate access to and retrieval of clinical data to provide safer, timely, efficient, effective, equitable, patient-centered care in a community or region.
- D. **“Data Source”** means a Participant, which has entered into this Agreement to provide information to HIO for use through the HIO System and Services.
 - A. **“Data User”** means a Participant that receives or accesses data from the System and Services for any purpose, which may include Use or Disclosure as defined herein.
 - B. **“Disclosure”** means the release of, transfer of, provision of, access to, or divulging in any other manner, information outside the entity holding the information.
 - C. **“Electronic Health Record”** means an electronic record of health-related information on an individual that is created, gathered, managed or consulted by authorized health care clinicians and staff.
 - D. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996 (as amended by the American Recovery and Reinvestment Act (“ARRA”)) and

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the regulations promulgated in 45 CFR Parts 160, 162 and 164, as amended from time to time.

- E. **“Individual”** means the person who is the subject of the Protected Health Information maintained or accessed through the HIO and its Participants or who otherwise maintains a PHR with the HIO.
- F. **“Participant”** means the Party executing this Agreement and any Authorized User identified by the Participant and accepted by the HIO pursuant to this Agreement. Such Participant may act as a Data Source and/or as a Data User consistent with the information provided by the Participant in the Participant Application Profile provided at the time of execution of this Agreement and incorporated herein by reference.
- G. **“Patient Data”** means information provided through HIO pursuant to this Agreement by the Participant.
- H. **“Personal Health Record”** (“PHR”) shall have the same meaning as that term is defined in ARRA Sections 13400 (11) and 13407(f)(2).
- I. **“Protected Health Information”** (“PHI”) shall have the meaning set forth in 45 CFR § 164.501, including without limitation 42 CFR Part 2.
- J. **“Services”** mean those Services offered by HIO including, without limitation, the information sharing and aggregation services for which the Participant registers as described herein.
- K. **“System”** means HIO’s internet-based authenticated computer-to-computer system and search engine for patient health, demographic and related information that assists its users in locating Patient Data and facilitates the sharing and aggregation of such Patient Data held by multiple Participants and which also allows Authorized Users to authenticate and communicate securely over a network to provide access to and maintain the integrity of Patient Data from all Participants.
- L. **“Use”** means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such information within an entity that maintains such information.

II. RELATIONSHIP OF PARTIES

- A. **Purpose.** This Agreement sets forth the terms and conditions that apply to the operation of the HIO System, as maintained by them and by their third-party vendor, the provision of Services, and the relationship between HIO, and Participant (and any subcontractors or vendors utilized by Participant) with

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respect to this Agreement, and includes all provisions set forth herein obligating one or more parties to comply with this Agreement. This Agreement incorporates by reference any Business Associate Agreement (“BAA”), as that term is used by HIPAA, between the Parties. This Agreement also incorporates by reference the policies and procedures of HIO relative to the ongoing operations of the System and eligibility for use of the available Services.

- B. Modification. HIO is solely responsible for the establishment of policies and procedures governing the relationship of the Parties and may amend, repeal or replace the terms and conditions of any policy or procedure of HIO at any time HIO determines it is appropriate. HIO shall give 45 days written notice, in advance, to all Participants of any changes to the terms and conditions of this Participation Agreement of HIO prior to the implementation of the change. The Participant will have 15 days to notify HIO of objections to the change in writing. If there are no objections during the 15 days allowed, then the change will take place. If there are objections to the change the Parties shall attempt to negotiate a resolution, and any such resolution shall be reduced to writing as an amendment to this Agreement. If the Parties cannot resolve the issue, the terms and conditions shall not be modified, unless the change is required in order for the Parties or this Agreement to comply with the Kansas Health Information Technology and Exchange Act, or other applicable federal or state laws or regulations. In such event, HIO and Participant shall amend this Agreement to bring it into compliance or terminate the Agreement.

II. TERM AND TERMINATION

- A. Term. This Agreement is effective on the last date of execution hereunder, (“**Effective Date**”) for an Initial Term of three (3) years (“**Initial Term**”) and shall automatically renew for additional one (1) year terms (“**Renewal Term**”) upon the anniversary date of the Effective Date at the end of the Initial Term unless terminated by either Party pursuant to the terms of this Agreement.
- B. Termination. This Agreement may be terminated as follows:
- (1) Any Party to this Agreement may terminate this Agreement without cause by providing notice to the others, ninety (90) days in advance of the noticed termination date;
 - (2) By mutual agreement of HIO and Participant;
 - (3) By HIO immediately upon breach of this Agreement by the Participant involving breach of confidentiality of Protected Health Information upon written notice of termination by HIO to Participant stating the reason for termination, or breach of any duty or obligation set forth in the BAA between the Parties;

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- (4) With the exception of termination under Section B(2) above, upon written notice by a Party to the other Party stating breach of the Agreement by the receiving Party; provided, however, the receiving Party shall have thirty (30) days to cure such breach and provide written confirmation of such cure to the alleging Party. In the event of a breach that is not feasible to cure within the thirty (30) day period, the Parties may agree to a longer period of time provided the Party in breach initiates the cure without delay and completes the cure within the time period agreed upon. In the event the breach is not cured within the stated period the Agreement shall terminate at the end of the cure period;
 - (5) Upon termination of business associate agreement, if applicable;
 - (6) By giving written notice to the other Parties if a receiver is appointed for a Party or for substantially all of a Party's assets, or if a Party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business, or makes an assignment for the benefit of its creditors, or if any proceedings are commenced by, or for, another Party under bankruptcy, insolvency, or debtor's relief law, or if a Party is sequestered by an government authority or is liquidated or dissolved; or
 - (7) By any Party, immediately based on a change in law that the terminating Party determines (in its sole discretion) makes it impractical for any Party to perform its contractual duties.
- C. Effect of Termination. Upon termination of this Participation Agreement, the following provisions shall survive such termination and the Parties shall be obligated in accordance with the terms and conditions of such provisions: Sections IV.D, VI, VII, VIII, and X.
- D. Rights Upon Termination. Upon the earlier of the termination or expiration of this Agreement, HIO shall have the right to oversee and verify the removal of all copies of the System Software from Participant's facilities and computer systems; and Participant shall have the right to oversee and verify the removal of all Participant data from HIO and the System. The Participant shall return all HIO related documents or sign a document attesting to the destruction of the documents. HIO shall return all Participant data or sign a document attesting to the destruction of all such data. Participant shall have the right to migrate its data to third-party systems and, upon the Parties' agreement, HIO will provide assistance to Participant to assist with such migration, at Participant's sole cost on a time and materials basis at HIO then current standard time and material rates. Within five (5) days of the effective date of the termination, Participant may notify HIO in writing that Participant desires a transition period of up to three (3) months from the effective date of the termination ("Transition Period"). During the Transition Period, the parties will continue to be bound by and perform in accordance with the Participation Agreement, and HIO will assist Participant in

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the orderly and efficient transition of services to a third-party designated by Participant. If Participant initially designates a Transition Period of less than three (3) months, it may extend the Transition Period prior to its expiration upon five (5) days' advance notice to HIO, so long as the total Transition Period does not exceed three (3) months.

II. TERMS OF PARTICIPATION

C. Participation Requirements.

- (1) Participant Application Profile. Each Participant shall provide the information required by the Participant Application Profile, **Exhibit A**, and shall attest that it is able to satisfy hardware and software requirements necessary to participate as identified in **Exhibit B**. HIO reserves the right to approve or disapprove each Participant Application Profile based upon the information provided in **Exhibits A and B** and such other criterion as HIO may reasonably determine.
 - (a) Only Participants who provide full and complete information to the HIO shall be authorized to access the System and use the Services. A Participant may be allowed access to HIO as a Data Source or as a Data User or as both. Participant, if approved, shall be entitled to participate in the Services specified by Participant in the Participant Application and shall be entitled to amend its Participant Application to participate as a Data Source or Data User upon reasonable notice to HIO.
 - (b) A Participant shall fully describe in the Participant Application Profile the following: (a) Participant's type of activity; (b) whether a Participant is a Data Source or a Data User, or both; (c) if the Participant is registered as a Data User, which of the services the Participant may use; and (d) such other terms and conditions as HIO may reasonably determine.
 - (c) HIO shall review each Participant Application Profile and any other information reasonably requested by HIO and shall approve or disapprove each Participant in accordance with the terms and conditions of this Agreement and as HIO determines in its sole discretion as appropriate. HIO shall not be required to approve any Participant application.
- (2) Identification of Authorized Users. Participant shall provide HIO with a list in a medium and format approved by HIO identifying all of Participant's Authorized Users and all information required to be provided to HIO. Participant acknowledges and agrees that such information is

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necessary for HIO to be able to establish a unique identifier for each Authorized User. Participant shall update immediately the list of Authorized Users whenever an Authorized User is added or removed for any reason from Participant's list of Authorized Users.

- (3) Certification. At the time that Participant identifies an Authorized User to HIO, Participant shall certify to HIO that the Authorized User:
 - (a) Has completed a training program conducted by WHIE and Participant, but prescribed by HIO, addressing HIO System and Services as well as compliance training for HIO Policies and Procedures and federal and state laws addressing confidentiality and security of PHI;
 - (b) Has been given permission by Participant to utilize the System and Services of HIO only as reasonably necessary for the performance of Authorized User's activities for which the Participant is registered with HIO and subject to any limitations on or other restrictions applicable to Participant;
 - (c) Has signed a confidentiality agreement with Participant and provides assurance of such to HIO, and has agreed to the Terms of Use with Participant, assuring non-disclosure of any PHI acquired by the Authorized User in accordance with this Agreement and federal and state laws and regulations except as authorized by law or this Agreement; and
 - (d) Acknowledges in writing that the failure to comply with the terms and conditions of this Agreement or the Terms of Use or federal, state, or local laws or regulations protecting the confidentiality, security, and privacy of PHI may result in the withdrawal of privileges of Authorized User to use the System and the Services of HIO and may constitute cause for termination of the Agreement.

- (4) Security Mechanisms. Based on information provided by Participant regarding each Authorized User of Participant, Participant shall issue a user name and password or other suitable security measure acceptable to HIO for each Authorized User that shall permit the Authorized User to access the HIO System and use the Services. Participant shall provide each such user name and password or other security measure and the Participant shall be responsible to communicate that information to the appropriate Authorized User and HIO. If Participant removes any individual from its list of Authorized Users, Participant must inform HIO within twenty-four (24) hours of such action and Participant shall cancel the user name and password or other security measure specific to such individual.

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- (5) Restricted Access. Participant shall restrict access to the System and to the use of the HIO's Services to only those Authorized Users the Participant has identified pursuant to this Agreement.
- (6) Participant Liability. Participant is responsible for the acts and omissions of the Participant and Participant's Authorized Users and any other individuals who access the System and/or use the Services either through the Participant or by use of any password, identifier or other security measure issued to Participant or Participant's Authorized Users. All such acts and omissions shall be deemed to be acts and omissions of the Participant. This paragraph shall not relieve HIO of liability, if any, for failing to timely cancel and terminate the privileges of an Authorized User upon notice from the Participant. Participant shall not be liable to HIO or to any third party for failing to provide PHI, Patient Data, or any other data or information to HIO.
- (7) Conforming Use. Participant shall be responsible for its Authorized Users utilizing the HIO System and Services in accordance with the terms and conditions of this Agreement, including without limitation, any terms and conditions governing the confidentiality, privacy and security of PHI. Participant shall immediately notify HIO of any action taken by Participant involving any Authorized User or Participant resulting in disciplinary action, which affects Authorized User's access to the System.

B. Licensure/Obligations of Licensee.

- (1) Scope. HIO, through its license arrangements with its third-party vendor establishing the System and providing Services, grants to each Participant (as a sub licensee), and each Participant shall be deemed to have accepted a non-exclusive, personal, non-transferable, limited right to have access to and to use the System and the Services for which that Participant has agreed, subject to compliance with the terms and conditions of this Agreement and Terms of Use. Participant shall have no right to obtain any rights to the System except for the limited right to use the System granted by this Agreement.
- (2) Ownership of Data. All issues concerning any rights to the use of the data and information obtained through the System shall be governed by HIO policies and procedures, which are incorporated herein by reference. HIO claims no ownership of the data in their System or provided through their Services. The Participant shall retain all right, title, and interest in the data and information disclosed in accordance with this Agreement, except for the limited use rights specifically described herein.

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(3) Permitted Uses by Data User.

- (a) Participant, as a Data User, may use the System and Services only for the permitted uses described in the Data User's Participant Application Profile and that apply to this Participant in its capacity as a Data User. Nothing shall prohibit a Participant from having rights as a Data User if it is a Data Source.
- (b) In addition, Data User shall not use or permit the use of the System or the Services of or any prohibited Use as described in the policies and procedures of HIO. Specifically, Data User shall not re-disclose data obtained through the System or Services to a third-party without notification and consent of HIO except as authorized by law.

(4) Obligations of Data Source.

- (a) Data Identification. Data Source shall provide such data and data source(s) as set forth in Data Source's Participant Profile. Data Source shall be solely responsible for the authenticity and accuracy of the Patient Data provided and shall respond to reasonable and specific requests of HIO to review the authenticity or accuracy of the Patient Data.
- (b) Data Compliance. Each Data Source shall, in accordance with the policies and procedures of HIO, use reasonable and appropriate efforts to ensure that all Patient Data it provides to the System is accurate, free from substantive error, complete (for the purposes for which the data is being provided), and provided in a timely manner.
- (c) Use of Data Source's Data. Subject to the terms and conditions of this Agreement, the Data Source grants to HIO non-exclusive, royalty-free right (a) to access and/or otherwise permit others to access through HIO's System and use all Patient Data provided by Data Source pursuant to the terms of this Agreement; and (b) to use such Patient Data to carry out HIO's duties to the Participants, including without limitation, system administration, testing, problem identification and resolution, management of the system, data aggregation activities as permitted by applicable state and federal laws and regulations, and such use as HIO determines is necessary and appropriate to comply with and carry out their obligations under all applicable federal, state and local laws and regulations. Participant shall not be obligated to provide PHI or Patient Data to HIO until such time as HIO is designated as an

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“Approved HIO” as that term is defined by the Kansas Health Information Technology and Exchange Act.

C. Equipment Requirements.

- (1) Participant and HIO shall identify appropriate persons in their business enterprises to be the primary contact person for communications with each other.
- (2) HIO reserves the right to restrict the software and/or hardware required for each Participant to access the System to enable Participant to connect to the System and utilize the Services of HIO available at the time.
- (3) Each Participant shall be responsible for procuring all equipment and software necessary for it to access the System, utilize the Services, and provide to HIO all information required to be provided by the Participant. However, all interface programs necessary for Participant access to the System shall be provided by HIO to Participant at no charge to Participant. Each Participant shall conform to HIO then current specifications. In the event HIO requires Participant to make equipment or software procurements, or adopts specifications which are deemed unreasonable by Participant, Participant shall be entitled to immediately terminate this Agreement. HIO may implement reasonable changes to the specifications from time to time upon appropriate prior notice to the Participant. Participant shall be responsible for ensuring that Participants’ computers used to interface with the HIO’s System are configured, in accordance with specifications, as reasonably determined by HIO, including but not limited to, the operating system, system security, web browser and Internet connectivity. Each Participant shall have a thirty (30) day period in which to review, inspect and test the System and its performance. Any problems impeding performance of the system shall be reported to HIO who shall arrange with its third-party vendor to correct the problem and attain appropriate performance standard within a reasonable time. Participant shall use reasonable efforts to ensure that connections and use their HIO System 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, viruses, worms and Trojan Horses) which will disrupt the proper operation of any of their System or any part thereof or any hardware or software used any Party in connection therewith.
- (4) Participant shall not copy, modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create the software or the System utilized by HIO or to create any derivative works from the software or the System utilized by HIO. Participant shall not modify the software with any other software or

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services not provided or approved by HIO in advance. With respect to any open source software utilized, Participant has no right or claim to the data and may not claim it as proprietary under any circumstances.

- (5) Participant shall implement such security measures with respect to the utilization of their respective Systems and Services in accordance with the policies and procedures of each of them as well as the terms and conditions of this Agreement, HIPAA and the Business Associates Agreement (BAA). In the event of conflict between the language of this Agreement and the BAA, the BAA shall control.
- (6) The System includes certain third-party software, hardware and services, which may be subject to separate licenses or other agreements or may require the Participant to enter into agreements with third-party vendors. Participant shall execute such agreements as may be reasonably required for the use of such software, hardware or services and to comply with the terms of any applicable license or other agreement relating to such products.

D. Protected Health Information.

- (1) HIO and Participant shall comply with the standards for confidentiality, security, and use of PHI applicable under federal, state and local laws and regulations including without limitation, such Protected Health Information described in HIPAA, including without limitation, 42 CFR Part 2, and as also set forth in their respective policies and procedures.
- (2) Without limitation, if applicable to HIO, and/or Participant, HIO, and Participant shall report to the other any suspected or actual unauthorized Use or Disclosure of PHI not provided for by the terms and conditions of this Agreement. If HIO or Participant become aware of any security incident concerning electronic Protected Health Information each shall report to the other any suspected or actual breach of such information. Any such notice shall be provided to the other Parties without unreasonable delay but in no event later than forty-eight (48) hours of an actual breach, and three (3) business days of a suspected breach, by telephone with a written report of the investigation to be submitted within ten (10) days of the first notice unless the other Parties grant an extension of time based upon the nature of the breach.
- (3) The Parties shall enter into a BAA substantially in the form of **Exhibit C** hereto and incorporated herein by reference. HIO acknowledges and agrees that HIO is a Business Associate of Participant as defined by HIPAA. HIO shall enter into BAA's in substantial conformity with Exhibit C with all of their agents, vendors or subcontractors who may have access to PHI.

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III. OBLIGATIONS OF HIO

- A. KHIN and WHIE shall at all times, while this Agreement remains in effect, be an "Approved HIO" as that term is defined by the Kansas Health Information Technology and Exchange Act, and shall provide proof of such designation to Participant upon reasonable request.
- B. HIO shall offer the following support services to Participants: (a) system support; (b) installation support; (c) training for Participant's Authorized Users; (d) establishment of a help desk for Participant's use; (e) problem resolution; (f) auditing and reporting access and use (without charge); and (g) reporting unauthorized users and security incidents. HIO may charge Participant a fee as agreed upon in advance and in writing between the Parties.
- C. HIO, through its third-party vendors, shall maintain the functionality of their Systems and the Services in accordance with the policies and procedures mutually determined by the Parties and the contractual obligations of such third-party vendor to HIO, and shall provide such service, security and other updates as the Parties determine are appropriate from time to time.
- D. HIO shall provide support and assistance in resolving difficulties in accessing and using the HIO's Systems and/or Services. Critical services shall be available by both telephone and email support in accordance with the requirements of the HIO's third-party vendor Severity Level procedures.

IV. PARTICIPANT'S FEES AND CHARGES

Participant shall be obligated to pay to HIO fees and charges agreed upon in advance and in writing between the Parties established by HIO during the Initial Term and any Renewal Term for Services provided to Participant. A list of Services and related fees and charges shall be provided to Participant in advance of the Effective Date. An initial and future list of Services is attached hereto as Exhibit D and incorporated herein by reference. A corresponding fee schedule is attached hereto as Exhibit E. HIO reserves the right to amend the Services it makes available to Participants with notice to the Participants.

V. CONFIDENTIAL INFORMATION

- A. In the performance of its respective duties and obligations pursuant to this Agreement, HIO, and Participant may come into the possession of certain Confidential Information of the other. "Confidential Information" means all trade secrets, business plans, marketing plans, data, contracts, documents, scientific and medical concepts, member and patient lists, costs, financial information, referral sources, products, operations, management, pricing, strategic plans, and other written or verbal information that is identified as confidential in nature by the Party claiming Confidential Information. Confidential Information shall not

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include any information that (a) is in the public domain; (b) is already known or obtained by the other Party other than in the course of its performance pursuant to this Agreement; (c) is independently developed by any Party; (d) becomes known from an independent source having the right to disclose such information.

- B. HIO, and Participant (a) shall keep and maintain in strict confidence all Confidential Information received from the other, or from any of the other's representatives, including without limitation, employees, accountants, attorneys, consultants or other representatives in connection with the performance of their respective obligations pursuant to this Agreement; (b) shall not use, reproduce, distribute or disclose any such Confidential Information except as permitted by this Agreement; and (c) shall prevent its employees, accountants, attorneys, consultants and other agents and representatives from making any such use, reproduction, distribution or disclosure.
- C. All Confidential Information represents a unique intellectual product of the Party disclosing such Confidential Information ("**Disclosing Party**"). The unauthorized disclosure of such Confidential Information is recognized as having a detrimental impact on the Disclosing Party. The damages resulting from such disclosure would be difficult to ascertain but would result in an irreparable loss. Disclosing Party shall be entitled to seek equitable relief in preventing a breach of this section and such equitable relief is in addition to any other rights or remedies available to the Disclosing Party.
- D. Notwithstanding any other provision herein, nothing in this section shall prohibit or be deemed to prohibit a Party hereto from disclosing any Confidential Information to the extent that such Party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency other governmental body of competent jurisdiction or as authorized by the Kansas Open Record Act, K.S.A. 45-215, *et.seq.* Such disclosures are expressly permitted hereunder. A Party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder shall provide the other Party with notice within five (5) calendar days, or if compliance is sooner, at least three (3) business days before such disclosure is made to allow the other Party to seek a protective order or other appropriate remedy. In no event shall a Party be deemed to be liable hereunder for compliance with any such subpoena, order of a court, administrative agency or other governmental body of competent jurisdiction.

VI. DISCLAIMERS

- A. Delays or Interruptions in System or Services. Neither HIO nor Participant nor their licensors, licensees, third-party providers (including their officers, directors, employees, affiliates, agents, representatives or subcontractors) (collectively, the "Service Providers") shall be liable for any loss or liability resulting, directly or

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indirectly, from the unavailability of the System or Services or for the failure to provide patient Data to the System or for failure to provide PHI or Patient Data to the System.

- B. Access to the System, the provision of PHI or Patient Data by Participant, or use of HIO Services and the information obtained by a Data User are provided as is and as available without any warranty of any kind, expressed or implied, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Neither Participant nor HIO, are responsible for any acts or omission taken or made in reliance on the System or the information in the System, including inaccurate or incomplete information. It is expressly agreed that in no event shall HIO or Participant be liable to each other, or to a third party for any special, indirect, consequential or exemplary damages, including but not limited to, loss of profits or revenues, loss of use, or loss of information or data, whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability. HIO and Participant disclaim any and all liability to each other and to third parties for erroneous transmissions and loss of service resulting from communication failures by telecommunication service providers to the System.
- C. LIMITATION ON LIABILITY. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL HIO OR PARTICIPANT BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, LOSS CAUSED BY TRANSMISSION OR MISTRANSMISSION, OR BY ANY PARTY'S USE OR INABILITY TO USE, CHANGES TO, INACCESSIBILITY OF, DELAY, FAILURE, UNAUTHORIZED ACCESS TO OR ALTERATION OF THE SERVICES AND ANY INFORMATION MADE AVAILABLE THEREBY, 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, AND EVEN IF A PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. HIO AND PARTICIPANT DISCLAIM TO EACH OTHER AND TO ALL THIRD PARTIES ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION OR OTHER SERVICE PROVIDERS. IN NO EVENT SHALL ANY PARTY'S TOTAL LIABILITY TO ANY OTHER PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR NEGLIGENCE, INCLUDING WITHOUT LIMITATION, THE NEGLIGENCE OF HIO OR PARTICIPANT, OR OTHERWISE) ARISING FROM THE USE OF THE SERVICES AND ANY INFORMATION MADE AVAILABLE THEREBY,

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EXCEED THE ACTUAL DAMAGES INCURRED. THIS LIABILITY SHALL BE COMPLETE AND EXCLUSIVE REGARDLESS OF WHETHER IT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND IS AN ESSENTIAL ELEMENT FORMING THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

HIO, AND PARTICIPANT ARE NOT INSURERS WITH REGARD TO THE PERFORMANCE OF THE SERVICES. THE DISCLAIMER OF WARRANTIES AND THE LIMITATIONS OF LIABILITY AND REMEDIES IN THIS AGREEMENT ARE A REFLECTION OF THE RISKS ASSUMED BY THE PARTIES, IF ANY, IN ORDER FOR EACH OF THEM TO OBTAIN THE RIGHT TO USE THE SERVICES AT THE SPECIFIED PRICE, AND TO AGREE TO PROVIDE PATIENT DATA TO THE SYSTEM.

- D. Participant and HIO shall be solely responsible for any damage to their computer systems, loss of data, and any damage to the Systems caused by any of them or any Authorized User or a member of their work force.

HIO and Participant are not responsible to each other or to third parties for unauthorized access to their transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft or destruction of their data files, procedures, or information through the System, whether by accident, fraudulent means or devices, or any other method. Participant and HIO are responsible for validating the accuracy of all output and reports and protecting their data in programs from loss by implementing appropriate security measures, including routine back-up procedures. Participant and HIO waive any damages occasioned by loss or corrupt data, in corrupt reports, or incorrect data files resulting from programming error, operating error, equipment or a software malfunction, security violations or the use of third-party software. HIO and Participant are not responsible for the content of any information transmitted or received through the provision of their Services.

- E. HIO is not the original source or Data Source of Patient Data. Consequently, data to which access made through the System and its Services originates from Participants and third-parties, including Individuals who maintain a PHR utilizing the HIO Systems and Services, making data available through HIO and from HIO is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. Without limiting any other provision of the terms and conditions herein, HIO shall have no responsibility for or liability related to the accuracy, content, currency, completeness, or delivery of any data either provided by a Participant, pursuant to the terms and conditions of this Agreement.
- F. Without limiting any other provision of this Agreement, HIO shall not be responsible for clinical care decisions and actions taken or not taken involving

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patient care, utilization management, or quality management for patients resulting from or in any way related to the use of the System or the Services or the data made available. HIO and Participant waive any claims they may have or acquire against each other for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the System and the Services or the data made available.

- G. Notwithstanding anything in the terms and conditions to the contrary, to the maximum extent permitted by applicable laws, the liability of HIO and Participant and their officers, directors, employees and other agents, under any Participant's Participant Profile, regardless of theory of liability, shall be limited to the aggregate fees actually paid by the Participant, if any, in accordance with the terms and conditions for the 12-month period preceding the event first giving rise to liability or alleged liability.

VII. INSURANCE

- A. If available and affordable, Participant and HIO shall obtain and maintain insurance coverage in accordance with their respective duties and obligations pursuant to this Agreement and as is generally applicable to Parties engaged in the utilization of the System and Services described in this Agreement. Each may request verification of insurance coverage of the other prior to execution of this Agreement and while this Agreement is in effect.

VIII. INDEMNIFICATION

- A. Indemnification. To the extent allowed by law, Participant and HIO agree to release, indemnify, defend, and hold harmless each other, their respective licensors, and third-party providers (including the officers, directors, members, employees, affiliates, agents, representatives or contractors of the foregoing) from and against all claims brought by any third person arising from or relating to their (or any of their agents', and, in the event that any of them are the parent or guardian of a minor child, children, or other dependents that have been granted Participant name(s) and password(s) to access the System and Services, such minor child(ren)'s or dependent's) acts or omissions including, without limitation, their use or misuse of the System and Services or the information made available thereby, any of their failure to comply with or perform their obligations under this Agreement, their provision, modification, or use of content, and any breach by any of them of a representation or warranty under this Agreement. Any indemnification made pursuant to this Agreement shall include payment of all costs associated with defending the claim or cause of action involved, whether or not such claims or causes of action are meritorious, including reasonable attorneys' fees and any settlement by or judgment against the Party to be indemnified. The indemnification obligations of the Parties shall not, as to third-parties, be a waiver of any defense or immunity otherwise available, and the indemnifying Party, in indemnifying the indemnified Party, shall be entitled to

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assert in any action every defense or immunity that the indemnified Party could assert on its own behalf.

IX. GENERAL PROVISIONS

- A. The interpretation of the terms and conditions and the resolution of any disputes arising under the terms and conditions of this Agreement shall be governed by the laws of the State of Kansas. If any action or other proceeding is brought in connection with this Agreement, the venue of such action shall be exclusively in Sedgwick County, in the State of Kansas.
- B. No rights of any Party under this Agreement may be assigned or transferred, either voluntarily or by operation of law, without the prior written consent of the other Parties, which shall not be unreasonably withheld.
- C. There shall be no third-party beneficiaries to this Agreement or any Participant Application Profile.
- D. Neither Participant nor HIO 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; and (g) any other circumstances that are not within their reasonable control.
- E. Any provision of the terms and conditions of the Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair or invalidate any other provision of the terms and conditions of this Agreement and each of the others shall remain in full force and effect.
- F. Any and all notices required or permitted under the terms and conditions of this Agreement shall be sent by certified United States Mail, receipt requested to the address provided by the Participant, or such different address as the Party may designate in writing. If any Party has supplied the other Parties with an electronic mail address, the noticing Party may give notice by email message addressed to such address (es).
- G. No provision of this Agreement shall be deemed waived and no breach excused, unless such a 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 or express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed, as of the day and year first written above.

Participant: Sedgwick County, Kansas

Kansas Health Information Network, Inc.

By: _____

By: Laura McCrary

Name: David M. Unruh

Name: *Laura McCrary C.D.E.*

Title: Chairman, Board of Commissioners

Title: Executive Director

Date: _____

Date: 12/2/11

ATTEST:

Kelly B. Arnold, County Clerk

APPROVED AS TO FORM:

Jennifer Magaña
Jennifer Magaña, Deputy County Counselor

Wichita Health Information Exchange, Inc.

By: *Ronald C. Brown*

Name: Ronald C. Brown, MD

Title: President

Date: 12-5-2011

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed, as of the day and year first written above.

Participant: Sedgwick County, Kansas

Kansas Health Information Network, Inc.

By: _____

By: Laura McCrary

Name: David M. Unruh

Name: _____

Title: Chairman, Board of Commissioners

Title: Executive Director

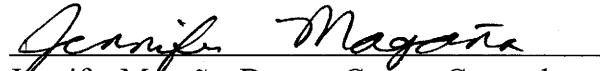
Date: _____

Date: _____

ATTEST:

Kelly B. Arnold, County Clerk

APPROVED AS TO FORM:



Jennifer Magaña, Deputy County Counselor

Wichita Health Information Exchange, Inc.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

PARTICIPANT APPLICATION PROFILE

This Participant Application is incorporated into and part of the Participation Agreement. Participant must provide complete information as indicated below and fill out with HIO **Addendum 1**.

Participant's Legal Name: Sedgwick County, Kansas

If Participant uses an alias, please provide: COMCARE of Sedgwick County

Identify Participant's legal status (individual, partnership, limited partnership, limited liability company, corporation, other (specify)): government

Participant Contact Person (include name, title and email address):
Roger Clark, IT Director, rwclark@sedgwick.gov

Address: COMCARE
635 N. Main
Wichita, KS 67203

Participant types for which each Participant may identify their respective role in the health care system are as follows:

- (a) Physician or medical group
- (b) Hospital
- (c) Public health agency
- (d) Pharmacy
- (e) Pharmacy benefit manager
- (f) Behavioral health
- (g) Health plan or insurer or other payer
- (h) Laboratory
- (i) Researcher
- (j) Any additional provider type not listed above

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Participant's primary participation category:

Health care provider (non-institutional)

Health care provider (institutional)

Health plan, insurer or other payer

Public health authority

Other government agency

Researcher

Other (please identify)

Participant's status (circle): DATA SOURCE DATA USER

CIRCLE ALL THAT APPLY:

What system (EMR) utilized:

Data User

Clinic

FQHC

Dental

Social Services

Ancillary Service

Other (Describe):

-

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

EXHIBIT B

REQUIRED SOFTWARE/HARDWARE

INTRODUCTION. In meeting their obligations pursuant to Section IV.C of this Agreement, Participant and HIO acknowledge and agree that those regulations promulgated pursuant to HIPAA, HITECH, and KHITEA (as amended) shall constitute the minimum standards for securing the Protected Health Information provided or used by them during the Term, or any Renewal Term, of this Agreement.

During the initial project phase, the Participant and HIO will identify the hardware and software requirements for the Participant based on the scope of services.

Kansas Health Information Network, Inc.;
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EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is made and entered into by and between ComCare of Sedgwick County (“Covered Entity”), Kansas Health Information Network, Inc. (“KHIN”) and Wichita Health Information Exchange, Inc. (“WHIE”) (the “Business Associates”). This Agreement is effective as of the date last written below (“Effective Date”).

RECITALS

WHEREAS, the parties to this Business Associate Agreement have a relationship where Covered Entity may provide Business Associate access to Protected Health Information, which shall include electronic Protected Health Information (“PHI”), that Business Associate will use to fulfill its contractual obligations to Covered Entity; and

WHEREAS, Covered Entity and Business Associate acknowledge that each Party has certain obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended, including those provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”) specifically the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and the statutes implementing regulations to maintain the privacy and security of PHI and the parties intend this Agreement to satisfy those obligations including, without limitation, the requirements of 45 CFR 164.504(e).

NOW THEREFORE, in consideration of the mutual promises below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

I. DEFINITIONS

- a) “Administrative Safeguards” shall mean the administrative actions, policies and procedures to manage the selection, development, implementation and maintenance of security measures to protect PHI and to manage the conduct of Covered Entity’s workforce in relation to the protection of that PHI.
- b) “Business Associate” means KHIN and WHIE.
- c) “Covered Entity” shall mean the health care provider, individual or entity named above.
- d) “Data Aggregation Services” shall mean, with respect to PHI created or received by Business Associate in its capacity as a Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the protected health information received by the Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health

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care operations of the respective covered entities, as defined in 45 CFR § 164.501 and as such term may be amended from time to time in this cited regulation.

- e) “Designated Record Set” shall mean a group of records maintained by or for Covered Entity that consists of the following: (a) medical records and billing records about Individuals maintained by or for a health care provider; (b) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used in whole or in part, by or for Covered Entity to make decisions about Individuals. For these purposes, the term “record” means any item, collection, or group of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.
- f) “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, the implementation regulations promulgated thereunder by the U.S. Department of Health and Human Services, the HITECH (as defined below) and any future regulations promulgated thereunder, all as may be amended from time to time.
- g) “Individual” shall have the same meaning as the term “individual” as defined in 45 CFR 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- h) “Physical Safeguards” shall mean the physical measures, policies and procedures to protect Covered Entity’s electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- i) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164.
- j) “Protected Health Information” and/or “PHI” shall have the same meaning as the term “protected health information” as defined in 45 CFR 160.103, and any amendments thereto, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- k) “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- l) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- m) “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- n) “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162 and 164.

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- o) “Technical Safeguards” shall mean the technology and the policy and procedures for its use that protect PHI and control access to it.
- p) “Underlying Agreement” means the written contract for services between Covered Entity and Business Associate generally described in this Provider Participation Agreement.
- q) Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning ascribed to them in HIPAA, the Privacy Rule, the Security Rule, or HITECH or any future regulations promulgated or guidance issued by the Secretary.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a) Use and Disclosure. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- b) Safeguards to be in Place. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. Additionally, Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the Security Rule.
- c) Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or the Privacy Rule and to communicate in writing, such procedures to Covered Entity.
- d) Business Associate’s Agents and Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees, in writing, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including implementation of reasonable and appropriate safeguards to protect PHI.
- e) Duty to Provide Access. To the extent Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, to the PHI in the Designated Record Set to Covered Entity or, as directed by Covered Entity, to the Individual, in order to meet the requirements under 45 CFR 164.524. Any denial by Business Associate of access to PHI shall be the responsibility of, and sufficiently addressed by, Business Associate, including, but not limited to, resolution of all appeals and/or complaints arising therefrom.

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- f) Amendment of PHI. Business Associate agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and within a reasonable time and manner.
- g) Duty to Make Internal Practices Available. Business Associate agrees to make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, and any PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- h) Documenting Disclosures/Accounting. Business Associate agrees to document any disclosures of PHI and information in its possession related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate agrees to provide to Covered Entity information collected in accordance with Section II(h) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- i) Reporting Disclosures to Covered Entity. In addition to the duty to mitigate under Section II(c), Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement or the Privacy Rule of which it or its officers, employees, agents or subcontractors become aware, including any Security Incident of which it becomes aware, as soon as practicable but no longer than three (3) business days after the discovery of such disclosure. Notwithstanding the foregoing, Covered Entity agrees that this Agreement shall constitute notice and reporting by Business Associate to Covered Entity of unsuccessful Security Incidents, which are not reasonably considered by Business Associate to constitute an actual threat to an information system of Business Associate.
- j) Notification of Breach. Business Associate shall notify Covered Entity within three (3) business days after it, or any of its employees or agents, reasonably suspects that a breach of unsecured PHI as defined by 45 CFR 164.402 may have occurred. Business Associate shall exercise reasonable diligence to become aware of whether a breach of unsecured PHI may have occurred and, except as stated to the contrary in this Section, shall otherwise comply with 45 CFR 164.410 in making the required notification to Covered Entity. Business Associate shall cooperate with Covered Entity in the determination as to whether a breach of unsecured PHI has occurred and whether notification to affected individuals of the breach of unsecured PHI is required by 45 CFR 164.400 et seq., including continuously providing the Covered Entity with additional information related to the suspected breach as it becomes available. In the event that Covered Entity informs Business Associate that (i) Covered Entity has determined that the affected individuals must be notified because a breach of unsecured PHI has

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occurred and (ii) Business Associate is in the best position to notify the affected individuals of such breach, Business Associate shall immediately provide the required notice (1) within the time frame defined by 45 CFR 164.404(b), (2) in a form and containing such information reasonably requested by Covered Entity, (3) containing the content specified in 45 CFR 164.404(c), and (4) using the method(s) prescribed by 45 CFR 164.404(d). In addition, in the event that Covered Entity indicates to Business Associate that Covered Entity will make the required notification, Business Associate shall promptly take all other actions reasonably requested by Covered Entity related to the obligation to provide a notification of a breach of unsecured PHI under 45 CFR 164.400 et seq. Business Associate shall indemnify and hold Covered Entity harmless from all liability, costs, expenses, claims or other damages that Covered Entity, its related corporations, or any of its or their directors, officers, agents, or employees, may sustain as a result of a Business Associate's breach of its obligations under this Section.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the purposes set forth in III(b), if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity.
- b) Specific Use and Disclosure Provisions.
1. Business Associate may use and disclose PHI to perform services for Covered Entity, including specific services, as set out in the Underlying Agreement, and any additional services necessary to carry out those specific services in the Underlying Agreement.
 2. Business Associate may use PHI in its possession for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
 3. Business Associate may disclose PHI in its possession for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the third-party to whom the information is disclosed in substantial compliance with Attachment A to this Exhibit C that such PHI will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third-party, and the third-party notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached and provided that upon completion of work, third-party will permanently destroy all PHI by shredding all PHI and permanently delete and erase any electronic data containing PHI received from or created

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using PHI, or by other method necessary to guarantee such permanent destruction. Business Associate may de-identify any and all PHI in its possession obtained from Covered Entity with Covered Entity's prior written consent, and use such de-identified data, in accordance with all de-identification requirements of the Privacy Rule.

4. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1). Covered Entity shall be furnished with a copy of all correspondence sent by Business Associate to a federal or state authority.
5. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Covered Entity.
6. Any use or disclosure of PHI by Business Associate shall be in accordance with the minimum necessary policies and procedures of Covered Entity and the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this Agreement and the Underlying Agreement.

IV. OBLIGATIONS OF COVERED ENTITY

- a) Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b) Covered Entity shall notify Business Associate in a timely manner of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such change may affect Business Associate's permitted or required use or disclosure of PHI.
- c) Covered Entity shall notify Business Associate in a timely manner of any restriction to the use and/or disclosure of PHI, which the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

V. TERMINATION

- a) Term. The term of this Agreement shall be effective as of the Effective Date and shall terminate upon termination of the Underlying Agreement and when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to

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Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions of Section (V)(c)(2).

- b) Termination for Cause. Upon either Party's knowledge of a material breach by the other Party, such Party shall either:
1. Provide an opportunity for the breaching Party to cure the breach, end the violation, or terminate this Agreement if the breaching Party does not cure the breach or end the violation within thirty (30) days;
 2. Immediately terminate the Agreement if the breaching Party has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure is feasible, the non-breaching Party shall report the violation to the Secretary.
- c) Effect of Termination.
1. Except as provided in paragraph V(c)(2) of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification in writing of the conditions that make return or destruction infeasible. Upon verification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If it is infeasible for Business Associate to obtain, from a subcontractor or agent, any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.
- d) Judicial or Administrative Proceedings. Notwithstanding any other provision herein, Covered Entity may terminate the applicable Underlying Agreement, effective immediately, upon a finding or stipulation that Business Associate violated any applicable standard or requirement of the Privacy Rule or the

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Wichita Health Information Exchange, Inc.; and Participant

Security Rule or any other applicable laws related to the security or privacy of PHI, relating to the Underlying Agreement, in any criminal, administrative or civil proceeding in which the Business Associate is a named Party.

VI. MISCELLANEOUS

- a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended and for which compliance is required.
- b) Amendment. No change, amendment, or modification of this Agreement shall be valid unless set forth in writing and agreed to by both parties, except as set forth in Section VI(1) below.
- c) Indemnification. Business Associate shall indemnify Covered Entity for any and all claims, inquiries, costs or damages, including but not limited to any monetary penalties, that Covered Entity incurs arising from a violation by Business Associate of its obligations hereunder. To the extent allowed by law, Covered Entity shall indemnify Business Associate for any and all claims, inquiries, costs or damages, including but not limited to any monetary penalties, that Business Associate incurs arising from a violation by Covered Entity of its obligations hereunder.
- d) Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
- e) Interpretation. Any ambiguity or inconsistency in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule, the Security Rule, and the ARRA.
- f) No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity and its respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- g) Notices. Any notices to be given to either Party under this Agreement shall be made in writing and delivered via certified US mail return receipt requested to the address given below.

If to Business Associate: _____

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

Fax: _____

If to Covered Entity: COMCARE

Attn: Compliance Officer

635 N. Main

Wichita, KS 67203

Fax: (316) 660-7510

- h) Headings. The section headings are for convenience only and shall not be construed to define, modify, expand, or limit the terms and provisions of this Agreement.
- i) Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of Kansas, without giving effect to its conflict of law provisions.
- j) Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
- k) Effect on Underlying Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.
- l) Modification. The parties acknowledge that State and Federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary to implement the standards and requirements of HIPAA and other applicable state and federal laws relating to the security or confidentiality of PHI as determined solely by Covered Entity.

In the event that a federal or state law, statute, regulation, regulatory interpretation or court/agency determination materially affects this Agreement, as is solely determined by Covered Entity, the parties agree to negotiate in good faith any necessary or appropriate revisions to this Agreement. If the parties are unable to reach an agreement concerning such revisions within the earlier of sixty (60) days after the date of notice seeking negotiations or the effective date of the change in law or regulation, or if the change in law or regulation is effective immediately,

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- a) Access to PHI in an Electronic Format. If Business Associate uses or maintains PHI in an Electronic Health Record, Business Associate must provide access to such information in an electronic format if so requested by an individual. Any fee that Business Associate may charge for such electronic copy shall not be greater than Business Associate's labor costs in responding to the request. If an individual makes a direct request to Business Associate for access to a copy of PHI, Business Associate will promptly inform the Covered Entity in writing of such request.

- b) Prohibition on Marketing Activities. Business Associate shall not engage in any marketing activities or communications with any individual unless such marketing activities or communications are allowed by the terms of the Underlying Agreement and are made in accordance with HITECH or any future regulations promulgated thereunder. Notwithstanding the foregoing, any payment for marketing activities should be in accordance with HITECH or any future regulations promulgated thereunder.

- c) Application of the Security Rule to Business Associate. Business Associate shall abide by the provisions of the Security Rule and use all appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, Business Associate shall:
 - (i) Adopt written policies and procedures to implement the same administrative, physical, and technical safeguards required of the Covered Entity; and
 - (ii) Abide by the most current guidance on the most effective and appropriate technical safeguards as issued by the Secretary.

If Business Associate violates the Security Rule, it acknowledges that it is directly subject to civil and criminal penalties.

VIII. OBLIGATIONS OF BUSINESS ASSOCIATE EFFECTIVE FEBRUARY 17, 2011

Beginning effective February 17, 2011, Business Associate shall not receive any remuneration, directly or indirectly, in exchange for any PHI, unless so allowed by the terms of the Underlying Agreement and in accordance with HITECH and any future regulations promulgated thereunder.

IX. ENFORCEMENT

- (a) Business Associate acknowledges that, in the event it violates any applicable provision of the Security Rule or any term of this Agreement that would constitute a violation of the Privacy Rule, Business Associate will be subject to and will be directly liable for any and all civil and criminal penalties that may result from such violation.

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

(a) Business Associate acknowledges that, in the event it violates any applicable provision of the Security Rule or any term of this Agreement that would constitute a violation of the Privacy Rule, Business Associate will be subject to and will be directly liable for any and all civil and criminal penalties that may result from such violation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date reflected below.

ON BEHALF OF: Sedgwick County, Kansas
On behalf of its COMCARE of Sedgwick County
(COVERED ENTITY):

Signature

David M. Unruh, Chairman
Printed Name and Title

Date

ON BEHALF OF KHIN
(BUSINESS ASSOCIATE):

Laura McCrary Esq.
Signature

Laura McCrary Executive
Printed Name and Title

12/2/11
Date

ON BEHALF OF WHIE
(BUSINESS ASSOCIATE):

Ronald C. Brown
Signature

Ronald C. Brown, MD - President
Printed Name and Title

12-5-2011
Date

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

(a) Business Associate acknowledges that, in the event it violates any applicable provision of the Security Rule or any term of this Agreement that would constitute a violation of the Privacy Rule, Business Associate will be subject to and will be directly liable for any and all civil and criminal penalties that may result from such violation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date reflected below.

ON BEHALF OF: Sedgwick County, Kansas
On behalf of its COMCARE of Sedgwick County
(COVERED ENTITY):

ON BEHALF OF KHIN
(BUSINESS ASSOCIATE):

Signature

David M. Unruh, Chairman
Printed Name and Title

Date

Signature

Laura McCrary Executive
Printed Name and Title

Date

ON BEHALF OF WHIE
(BUSINESS ASSOCIATE):

Signature

Printed Name and Title

Date

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

EXHIBIT C
ATTACHMENT A

Date

Address

Dear _____:

As you know, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule requires health care providers to maintain the confidentiality of protected health information. Protected health information (“PHI”) includes, among other things, the medical records and billing records relating to medical care given that is maintained in any form, including paper or electronic form. The HIPAA Security Rule requires health care providers to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information (“E-PHI”). E-PHI is information transmitted by, or maintained in, electronic media as defined by 45 C.F.R. 160.103.

_____ may disclose PHI and E-PHI to you for our management and administration purpose, but only if you give reasonable assurance that you will maintain the confidentiality of PHI and E-PHI, use reasonable safeguards to protect PHI, use it only for the purposes for which it was disclosed, and notify _____ of the breach of confidentiality of the PHI of which you become aware. If you agree to these conditions, please sign below and return the letter to _____ promptly. **We will not be able to forward any protected health information to you or your office until you have signed at the bottom of this letter and returned it to _____ at _____.**

We appreciate your cooperation in this matter. Please do not hesitate to contact me at _____ if you have any questions or concerns.

Sincerely,

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

EXHIBIT D

SERVICES AND PRODUCTS

Kansas Health Information Network, Inc. Core Services -- All services listed below are included in the package.

1. INITIAL PRODUCT COMPONENTS

a. CareAlign™ Clinical Portal

- i. Aggregate, longitudinal view of standard and non-standard based patient information across source systems
- ii. CareAlign™ Aggregation Platform
- iii. Automated and user-defined patient lists
- iv. Multiple, user-specific patient views including patient summaries, flowsheet views, etc.
- v. Notification and alerting functions for new results, critical values, reminders and external source system alerts

b. CareAlign™ Data Aggregation Engine

- i. Ability to receive & aggregate CCD/CCR/CDA based data feeds
- ii. Ability to receive & aggregate traditional HL7 data feeds for patient demographics, patient activity, diagnostic/procedure codes and clinical results
- iii. Ability to support custom clinical data feeds from non-standard systems
- iv. Semantic interoperability capabilities for labs, medications and allergies
- v. Connectivity to Surescripts/RXhub for medication history (Surescripts fees not included)

c. CareAlign™ Secure Messaging

- i. Secure clinician-to-clinician messaging across community Participants

d. CareAlign™ Security and Audit Functions

- i. HIPAA-compliant user authentication service including user-id/password and trusted network single sign-on authentication support
- ii. User authorization and administration functions
- iii. Provides Participant Authorized User Directory

e. CareAlign™ Network Master Patient Index

- i. Built-in patient matching and record locator service components

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

- f. **CareAlign™ Data Normalization**
 - ii. Tagging and mapping underlying data to semantic standards where possible

- g. **CareAlign™ Interoperability Service**
 - i. Ability to send and receive standard CCR/CCD documents with external EMR's in compliance applicable IHE protocols
 - ii. Ability to send and receive order and results into external EMR's and other clinical systems
 - iii. Ability to facilitate NHIN to NHIN exchange communication using XDX.b and XDR protocols in compliance with IHE standards

2. **FUTURE PRODUCT COMPONENTS – 2011 AND BEYOND**

- h. **CareAlign™ Disease Management**
 - i. Integrated clinical dashboards tailored to wellness conditions and specific chronic diseases

- i. **CareAlign™ Bio-surveillance and Reporting** (built-in decision support alerts in compliance)
 - i. Ad-hoc query and reporting tool that allows for queries based on patient demographics, activity, diagnosis, procedures and clinical results across patient population
 - ii. Built-in export capabilities to export identified results to external applications
 - iii. Ability to set-up bio-surveillance agents that identify patients with specific characteristics based on data coming into the exchange
 - iv. Ability to export data to and import CCD from state entities as required

- j. **CareAlign™ Patient Portal**
 - i. Ability to share patient summary data, results and notifications with patients
 - ii. CCR/CCD interoperability with commercial PHR's

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

Kansas Health Information Network, Inc. Optional Services -- These services are available at an additional charge.

- a. **CareAlign™ EHR-lite** (optional component - software license not included in base pricing -- monthly fee required)
 - i. Provides a base EMR to ambulatory Participants who are currently licensed to use the CareAlign Clinical Portal
 - ii. Ability to create, send and receive orders for systems including laboratory, radiology and referrals
 - iii. Ability to utilize ePrescribing capabilities including medication list and reconciliation
 - iv. Clinical documentation including vitals, visit summaries, patient encounter standard template, immunizations, clinical values and problem list maintenance
 - v. Provides the requirements to comply with ONC Meaningful Use requirements through 2011 for the functionality listed in items i. through iv. above.

Kansas Health Information Network, Inc.;
Wichita Health Information Exchange, Inc.; and Participant

EXHIBIT E

PRICING SCHEDULE

The purpose of the exhibit is to define the pricing schedule and payment terms agreed to by Participant and HIO for the products and services covered in the Agreement.

1. **HIO Fees associated with CareAlign™ software solutions and Hosting Services provided by HIO.** Payment of the annual fees outlined below by Participant allows Participant and their Authorized Users to use the CareAlign solutions for the time period outlined in the following Table.

WHIE/KHIN ICA CareAlign™ Health Information Exchange:

Payment Table: 2011

A. Implementation Fee: (One-Time, Billed at Data Testing). \$ 5,000

(\$495 x 29 = \$14,355)

(Implementation Fees are based on number of feeds (HL7 &/or CCD)

(One-Time Implementation Fees Capped at \$5,000)

B. Annual Subscription Fee: (Billed at Live Data Exchange). \$ 3,625

(\$125.00 x 29 = \$ 3,625)

The Hospital annual subscription fee will be calculated annually based upon Adjusted Patient Occupied Bed Days from the hospital cost report. Annual Subscription fees will be billed on the anniversary of the live data exchange.