

**GREATER HOUSTON HEALTHCONNECT  
MASTER PARTICIPATION AGREEMENT**

The Participant identified below hereby requests participation in Greater Houston Healthconnect (“GHH”). By submitting this Participation Agreement to GHH, Participant acknowledges and agrees to the following:

1. The individual submitting this Agreement on behalf of Participant has the authority to act on behalf of, and to bind, Participant in requesting participation, and participating in, GHH.
2. Participant’s participation in GHH is subject to all the terms of the Participation Agreement and the Business Associate and Qualified Service Organization Agreement, as each may be amended from time to time.

Upon acceptance by GHH, the Participation Agreement will be effective until it is terminated as provided in the Participation Agreement.

Greater Houston Healthconnect

Participant :

(Signature) \_\_\_\_\_

(Signature) \_\_\_\_\_

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

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

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

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

Email: \_\_\_\_\_

Email: \_\_\_\_\_

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

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

## GREATER HOUSTON HEALTHCONNECT

### PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”), by and between **GREATER HOUSTON HEALTHCONNECT**, a health information exchange (“GHH” or “Exchange”) and \_\_\_\_\_ (“Participant”).

#### RECITALS

**WHEREAS**, GHH owns and operates an Internet-based system that provides for a secure electronic exchange of Protected Health Information (“PHI”) through GHH’s HUB Service; and

**WHEREAS**, Participant wishes to subscribe to the HUB Service to exchange PHI with other health care providers, entities and individuals who are Participants of GHH; and

**WHEREAS**, GHH and Participant (collectively referred to in this Participation Agreement as “Parties”) each wish to enter into this Participation Agreement.

**NOW THEREFORE**, for and in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

#### I. OBLIGATIONS OF GHH

**1.1 GHH’s HUB SERVICE.** GHH owns and operates an Internet-based system that provides for secure electronic exchange of Protected Health Information (“PHI”) among persons or entities subject to a Participation Agreement. The primary service offered by GHH is the “HUB Service”. The HUB Service consists of a Master Patient Index (“MPI”), a Provider Directory (“PD”), a Record Locator Service (“RLS”), a point-to-point messaging service (“Direct”), and a technology platform (collectively referred to as the “Subscription”) that enables the MPI, PD and RLS to operate and process Queries and Responses and Direct messages through the HUB Service.

1.1.1 The MPI is a system that assigns a unique identifier to each Individual whose PHI is exchanged through GHH according to pre-selected algorithms. The PD is a list of all GHH Participants who may request that GHH obtain and transfer to it PHI from another Participant (“Query”) or send or make PHI available for GHH to transfer to another Participant (“Response”). The RLS is a system that identifies Participants that have PHI relating to a particular Individual in response to a Query by a Participant and facilitates the Response to the Query. Direct is a system that enables Participants and GHH to push secure messages to other designated Participants.

1.1.2 GHH agrees to make available to Participant its HUB Service consisting of its MPI,

PD, RLS, Direct and Subscription through which Participant can send to, and receive from, other Participants PHI regarding Individuals who have executed GHH and Health Information Portability and Accountability Act of 1996 (“HIPAA”) compliant Authorizations to allow data exchange through GHH.

1.1.3 GHH will maintain and operate the HUB Service subject to the terms and conditions of this Participation Agreement, the GHH Privacy Manual, the GHH Security Manual, the applicable Texas Health Services Authority (“THSA”) and eHealth Exchange requirements, and the Business Associate and Qualified Service Organization Agreement, attached as **Exhibit A**.

1.1.4 GHH may use agents and subcontractors to maintain and operate the HUB Service, each of whom will be required, through a written agreement, to comply with the applicable terms and conditions of this Participation Agreement.

1.1.5 GHH will make all reasonable efforts to make the HUB Service available to Participant 24 hours a day, 7 days a week; however, the HUB Service availability may be temporarily suspended for scheduled maintenance or unscheduled interruptions. GHH will use its best efforts to provide reasonable advance notice of any such suspension or interruption and to restore service as quickly as practicable.

**1.2 AUDITS.** GHH will conduct audits of the exchange of data through the HUB Service, including the date and time of a Query by a Participant and the date and time of a Response by a Participant. GHH will not maintain a copy of the data exchanged.

**1.3 SUBSCRIPTION.** GHH will grant to Participant for the term of this Participation Agreement a non-exclusive, nontransferable, non-assignable except as described in this Participation Agreement, non-sub-licensable, and limited subscription to the Secure HUB Service for the sole purpose of participating in GHH under the terms and conditions of this Participation Agreement (“Subscription”). Participant acknowledges that the Subscription may have been licensed to GHH by third parties, and that the Subscription granted under this Agreement is subject in every respect to GHH's grant of license from such third parties; and if Participant is to be bound by such third-party license agreement/sublicense, such sublicense to Participant by GHH shall be expressly permitted by the third-party license agreement and such third-party license agreement shall be provided to Participant, in either electronic or hard-copy format. If additional subscriptions are developed by or for GHH, they shall become subject to this Participation Agreement upon written notice to Participant, including written notice of the terms and conditions of such additional subscriptions to which Participant is subject, and such notice shall constitute an amendment to this Participation Agreement. This Section 1.3 applies only to the Subscription that is installed on hardware to enable data exchange through GHH and not to any other hardware that Participant may use in providing treatment to patients or for Participant's business operations.

1.3.1 Access to the HUB Service is provided over various facilities and communications lines, and information will be transmitted over local network and Internet backbone carrier lines and through routers, switches, and other devices (“Carrier Lines”) owned, maintained, and

serviced by third-party carriers, utilities, and Internet service providers, all of which are beyond GHH's control. Participant acknowledges that GHH is not responsible for outages, delays or inability to access or use the HUB Service due to the Carrier Lines. GHH assumes no liability and does not make any warranties with respect to Carrier Lines.

**1.4. BUSINESS ASSOCIATE AND QUALIFIED SERVICE ORGANIZATION AGREEMENT.** The provision of the HUB Service entails access, use and disclosure of PHI to and by GHH such as Individual names, dates of birth or other personal identifiers necessary to establish the MPI which must be created to enable the exchange of PHI between Participants. This Participation Agreement shall be supplemented by GHH's Business Associate and Qualified Service Organization Agreement attached as **Exhibit A**, as required by law and to enable GHH to obtain PHI from Participant to build the MPI.

**1.5. LIST OF GHH PARTICIPANTS.** GHH shall maintain a list of all current GHH Participants on its website to be available to Participant when obtaining Authorization from Individuals whose PHI will be transmitted through the HUB Service.

## **II. OBLIGATIONS OF PARTICIPANT**

**2.1 USE BY PARTICIPANT.** Only members of Participant's Workforce who are authorized by Participant under the terms of this Participation Agreement ("Participant Users") shall be authorized to access and use the HUB Service. Use of the HUB Service is limited to transmitting PHI to and from other Participants for purposes consistent with the Authorization of the Individual whose PHI is the subject of a transmission. Participant shall be responsible for compliance with this Participation Agreement by its Participant Users, as well as any other individuals who lawfully conduct any GHH activity by use of any user name or password or other security device received or obtained, directly or indirectly, from Participant or any of Participant's Users. Participant Users' and other such individuals' acts and omissions shall be deemed to be the acts and omissions of Participant. Participant shall be solely responsible for selecting, training, and managing Participant Users.

**2.2 USERS, USER NAMES AND PASSWORDS.** Each Participant will be issued a unique user name and password by GHH which will enable Participant to access the HUB Service. Participant then may identify Participant Users who may access the HUB Service through Participant's user name and password. Participant must use commercially reasonable efforts based on Participant's resources to maintain the security of the user name and password and to limit access to GHH, the user name and password only to persons authorized under the terms of this Participation Agreement.

**2.3 AUTHORIZATION OF PARTICIPANT USERS.** Participant agrees to authorize as Participant Users only those current members of its Workforce whose job responsibilities require that they have access to and use of GHH Services for the purpose of Participant's business activities and operations. Participant shall maintain a list of people Participant has authorized or given access to in a manner that will allow an audit of the HUB Service activity.

**2.4 MANAGEMENT AND PROTECTION OF GHH USER NAMES AND PASSWORDS.** Participant and each Participant User, referred to in this section collectively as "User" or "Users"

is responsible for any use of a user name or password issued by GHH or by Participant to enable access to GHH's HUB Service, and is required to manage and protect the user name and password as follows:

2.4.1 Users may not share user names or passwords with any other person, or allow anyone else to use their user names or passwords to access or use the HUB Service.

2.4.2 Users must protect user names and passwords against being seen, copied or stolen by anyone.

2.4.3 If any User believes anyone else may have used, learned, seen, copied or stolen a user name or password, he or she must notify Participant immediately, and Participant must notify GHH immediately.

2.4.4 Users may only access and use the HUB Service from a personal computer, workstation, laptop, hand-held PC, personal digital assistant ("PDA"), "smart phone" or other electronic device which has been approved for use for that purpose by Participant ("Authorized Device") and meets the HIPAA Security requirements.

2.4.5 Users must have policies in place that include technology solutions to avoid unauthorized use of the HUB Service.

**2.5 TEMPORARY SUSPENSION OF AUTHORIZATION TO ACCESS AND USE GHH's HUB SERVICE.** A Participant and Participant User's authorization to access and use the HUB Service may be temporarily suspended or terminated under the following conditions:

2.5.1 Services will automatically terminate for Participant and Participant's Users upon termination of Participant's Participation Agreement.

2.5.2 Upon request by Participant, a Participant User's authorization to use the HUB Service will be suspended or terminated.

2.5.3 Upon termination of service as a member of Participant's Workforce, a Participant will immediately notify GHH to request that a Participant User's authorization be terminated.

2.5.4 Upon a change in a Participant User's duties for or on behalf of Participant which make access to or use of the HUB Service inappropriate, Participant will immediately notify GHH to request that a Participant User's authorization be terminated.

2.5.5 GHH may temporarily suspend authorization upon written notice to the Participant to use the HUB Service by a Participant or Participant User at any time GHH has reason to believe that the HUB Service is being and/or has been used (a) for any unlawful purpose, (b) in order to infringe or facilitate the infringement of any copyright or other intellectual property right, or (c) otherwise in violation of this Participation Agreement. GHH shall provide prompt notice of such temporary suspension. However, if practicable under the circumstances, GHH will make reasonable efforts to notify the Participant of any suspected activity requiring the aforementioned authorization to be suspended for such Participant User.

2.5.6 Upon written notice to Participant that after reasonable investigation, GHH determines that there is adequate evidence demonstrating (a) use of the HUB Service for any unlawful purpose, (b) use of the HUB Service in order to infringe or facilitate the infringement of any copyright or other intellectual property right, (c) repeated violation of this Participation Agreement, (d) use of the HUB Service in a fashion causing or creating a material risk of harm to the HUB Service, GHH, Participant or Participant User, or any third party, (e) provision of materially false information for purposes of registration as a Participant or Participant User, (f) conviction of a crime involving identity theft or a violation of HIPAA, or (g) being named as a defendant in a criminal proceeding for identity theft or a violation of HIPAA.

**2.6 PARTICIPANT FEES.** Participant shall pay an annual fee to GHH in order to use the HUB Service and any other services provided by or through GHH as listed in **Exhibit B**, attached and incorporated into this Participation Agreement.

**2.7 PARTICIPANT SUPPORT OBLIGATIONS.** The effective, secure and legally compliant access to and use of the HUB Service is dependent on Participant's cooperation and support. Participant shall be responsible for procuring and maintaining minimal standards for all required hardware and software necessary to access and use the HUB Service. The required hardware and software for the HUB Service shall conform to any specifications provided in the applicable HUB Service Technology Vendor Agreement(s) between GHH and its technology vendor(s). GHH or the Texas Health Services Authority ("THSA") may change the specifications for required hardware and software from time to time in their sole discretion upon not less than sixty (60) days prior notice to the Participant, unless required sooner by THSA.

**2.8 OBLIGATION TO RESPOND TO QUERIES.** Participant will enable the HUB Service to identify, locate and make available for transmission through GHH PHI that is the subject of a Query by another Participant.

**2.9 ACCESS BY OTHER PARTICIPANTS TO SECURITY POLICIES.** Participant shall provide other GHH Participants access to Participant's HIPAA and HITECH Security Policies in a mutually agreeable manner, upon request.

**2.10 PROHIBITED USES OF THE GHH HUB SERVICE.** Participant and Participant Users may not use the HUB Service for any purpose or activity which may be illegal; may cause harm to any person's rights or property; may cause harm to individual or public health or safety; or may interfere with the effective functioning of GHH. For example, and not as a limitation, when using the HUB Service, Participant and Participant Users may not:

2.10.1 Seek to obtain, view, copy, alter, destroy, disclose or transmit any information, including PHI, unless duly authorized to do so in the course of duties for or on behalf of Participant, and for purposes of healthcare treatment, payment, or operations.

2.10.2 Violate any applicable laws or regulations, state or federal, including the privacy and security regulations issued under HIPAA and HITECH or 42 C.F.R. Part 2 related to Alcohol and Drug Abuse Treatment.

2.10.3 Use any user name and/or password, other than one issued by GHH to access GHH's HUB Service.

2.10.4 Use the HUB Service in any way that could damage, disable, overburden, or impair GHH, the HUB Service or interfere with any other Participant's use of the HUB Service.

2.10.5 Attempt to gain unauthorized access to any information, documents, records, accounts, devices, systems or networks connected to the HUB Service through hacking, password cracking, IP spoofing or any other means.

2.10.6 Knowingly upload or distribute files that contain viruses, Trojan horses, worms, spy ware, time bombs, cancel bots, corrupted files, or any other similar software or programs that may damage electronic data or the operation of any device or software.

2.10.7 Use the HUB Service for any personal or unauthorized commercial use, surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).

2.10.8 Defame abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

2.10.9 Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, material or information.

2.10.10 Upload, or otherwise make available, files or messages that contain images, photographs, movies, music, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) without the legal right to do so.

2.10.11 Advertise or offer to sell or buy any goods or services for any business purpose.

2.10.12 Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.

2.10.13 Unlawfully or without proper authority, restrict or inhibit any Participant or Participant User from using any GHH Service.

2.10.14 Harvest or otherwise collect information about Participants or Participant Users, including e-mail addresses, or about Individuals whose information is maintained or available through any GHH Service.

2.10.14 Use the Subscription for any other purpose whatsoever outside of access to GHH's HUB Service or copy or incorporate the Subscription into any other computer program, hardware firmware or product.

## **2.11 COMPLIANCE IN USING, DISCLOSING AND OBTAINING INFORMATION.**

Participant acknowledges that the information it may provide to or obtain from other Participants through the HUB Service will include PHI, which is subject to protections or limitations on use and disclosure under federal and Texas laws. GHH and each Participant is separately responsible for ensuring that it complies with applicable Texas and federal laws in using,

disclosing and accessing information using the HUB Service.

**2.12 OWNERSHIP OF INFORMATION.** Unless otherwise agreed between the Participants of GHH, the disclosure of information by one Participant through the HUB Service to another Participant conveys to the receiving Participant rights to use such information subject to any legal obligations, limitations and conditions applicable to the recipient's use and disclosure of such information by law, including but not limited to HIPAA, HITECH and Texas law, or by contract, including but not limited to the Participation Agreement.

**2.13 IDENTIFICATION OF PARTICIPATION.** Participant agrees that GHH may identify Participant as a participant of GHH, including use of the Participant's logos, trademarks and service marks ("Marks") for that limited purpose only and Participant may identify itself as a Participant and subscriber to GHH, including use of GHH's logos, trademarks and service marks for that limited purpose only. Each party shall comply with the other party's reasonable usage guidelines, and shall not knowingly use such Marks in any manner likely to diminish their value and shall not assert any ownership interest in or transfer rights to such Marks.

### **III. GHH HUB SERVICE USER PRIVACY**

**3.1 MONITORING OF COMMUNICATIONS AND TRANSACTIONS.** Communications, transactions and other activities through the GHH HUB Service may be monitored:

3.1.1 By GHH for purposes of managing and operating the HUB Service, provided that except in case of emergency or to ensure system security GHH will not access the content of any communications or transactions without Participant's authorization.

3.1.2 By Participant, according to Participant's Privacy and Security policies.

**3.2 USE AND DISCLOSURE OF USER PERSONAL INFORMATION BY GHH.** In registering Participant and Participant Users, GHH may be provided with personal information including the names of Participant and Participant Users. Additional personal information concerning communications and transactions ancillary to use of the HUB Service may also be incidentally obtained by GHH in the course of managing and operating the HUB Service. Participant's and Participant Users' personal information may be used and disclosed by GHH as follows:

3.2.1 GHH may maintain, use and disclose registration-related personal information disclosed by Participant or Participant Users for purposes of managing and operating the GHH Service, including but not limited to enforcing compliance with GHH Policies.

3.2.2 GHH may disclose registration-related personal information to a Participant and Participant User upon that Participant's/Participant User's request. Upon receipt of a registration-related information request, if there is additional personal information maintained by GHH related to the Participant and Participant User, GHH will notify the requesting Participant and Participant User that such information exists, and permit the requesting Participant and Participant User to review same.

3.2.3 GHH may disclose personal information as part of an Accounting of Disclosures



under HIPAA, providing the respective Participant and Participant User is provided a copy or access to same.

3.2.4 GHH may disclose personal information in response to a court order, as required by law, or under other circumstances if GHH has credible, objective, and substantive reason(s) to believe Participant or Participant User is using or has used the HUB Service for unlawful purposes. In the event of disclosure of Participant's or Participant User's personal information pursuant to a court order, subpoena or other legal or regulatory process requiring disclosure, GHH will provide written notice of such required disclosure to Participant prior to disclosure to afford Participant the opportunity to contest such disclosure, unless such notice is prohibited by order of the court or regulatory agency of appropriate jurisdiction.

3.2.5 GHH may use agents or contractors to manage or operate the HUB Service. If such agents or contractors are provided with access to personal information, GHH will require them to protect the information and prohibit them from using the information for any purpose other than the provision of their services to or for GHH and to otherwise comply with the requirements of this Participation Agreement.

3.2.6 In the event that management and operation of the HUB Service is transferred to another party, personal information may be transferred to the party assuming management and operation of the Service, and the transferee shall use and maintain such information subject to the terms of this Participation Agreement.

**3.3 PROTECTION OF USER PERSONAL INFORMATION.** GHH will maintain Reasonable and Appropriate Safeguards to prevent unauthorized use or disclosure of personal information, but cannot guarantee that personal information will never be disclosed in a manner inconsistent with this Agreement.

**3.4 PARTICIPANT USE AND DISCLOSURE OF USER PERSONAL INFORMATION.** This Section 3 of this Agreement is not binding upon Participant. The use and disclosure of personal information obtained by Participant regarding its own Participant Users depends upon Participant's policies and practices.

#### **IV. TERMINATION**

**4.1 IMMEDIATE TERMINATION BY PARTICIPANT.** Failure to deliver or inadequacy in the HUB Service by GHH which is not caused by a Force Majeure or Participant or Participant User's failure to comply with an obligation under this Participation Agreement shall be deemed a Curable Breach. However, if HUB Service failure interrupts all access by Participant for greater than ten (10) consecutive days in duration, such HUB service failure shall be considered a non-Curable Breach, upon which Participant may, at their sole discretion, elect immediate termination of this Participation Agreement, effective upon written notice to GHH. A failure which is caused by Force Majeure or Participant or Participant User's failure to comply shall not be considered a breach by GHH.

**4.2 TERMINATION BY GHH.** This Participation Agreement, and Participant's privilege to subscribe to HUB Service, may be terminated by GHH as follows:

4.2.1 Termination by GHH of HUB Service Without Cause. GHH may terminate the HUB Service at any time without cause, by giving not less than ninety (90) days written notice to all Participants, as well as the Texas Health Services Authority.

4.2.2 Termination for Failure to Cure Breach. GHH may terminate this Participation Agreement in the event Participant fails to remedy a breach which can be cured by action of Participant (“Curable Breach”). In the event of a Curable Breach, GHH shall give written notice identifying the breach and demanding a cure. In the event that Participant fails to cure the breach within sixty (60) days of such notice, or if the breach by its nature is not reasonably susceptible to cure within sixty (60) days, and Participant fails to commence and diligently pursue a cure within such time period, GHH may terminate the Participation Agreement effective upon written notice.

4.2.3 Termination for Cause. GHH may, in its sole discretion, terminate the Participation Agreement, upon written notice to Participant, in the event Participant receives (i) a Criminal Conviction for any offense involving fraud, theft or malicious intent, or (ii) is named as a defendant in a criminal proceeding for a violation of HIPAA; or an intentional or grossly negligent violation of HIPAA, HITECH or 42 C.F.R. Part 2, or any other state or federal privacy or security law, as amended from time to time.

**4.3 TERMINATION BY PARTICIPANT.** This Participation Agreement, and GHH’s obligations hereunder, may be terminated by Participant as follows

4.3.1 Termination Without Cause. Participant may any time, without cause, terminate this Agreement by giving not less than ninety (90) days written notice to GHH.

4.3.2 Termination for Change in Agreement or GHH Policy. If a change to any GHH policy, agreement or document, which is incorporated by reference into this Participation Agreement, materially affects Participant, Participant may terminate this Agreement by giving GHH thirty (30) days written notice.

4.3.3 Termination for Failure to Cure Breach. In addition to Section 4.1 (Immediate Termination by Participant), Participant may terminate this Participation Agreement in the event GHH fails to remedy a breach which can be cured by action of GHH (“Curable Breach”). In the event of a Curable Breach Participant shall give written notice identifying the breach and demanding a cure. GHH shall use best efforts to cure the breach as soon as practicable. In the event that GHH fails to cure the breach within sixty (60) days of such notice, or if the breach by its nature is not reasonably susceptible to cure within sixty (60) days fails to commence and diligently pursue a cure within such time period, Participant may terminate the Participation Agreement effective upon written notice to GHH.

4.3.4 Violations of Other Laws. Participant may terminate this Participation Agreement in its sole discretion, upon written notice to GHH in the event GHH (i) is named as a defendant in a criminal proceeding for a violation of HIPAA; (ii) violates the terms of the Business Associate and Qualified Service Organization Agreement, attached as **Exhibit A**; or (iii) is excluded or suspended from Medicare, Medicaid or any other federal health care program.

**4.4 EFFECT OF TERMINATION ON HUB SERVICE.** Upon termination of the

Participation Agreement for any reason Participant and Participant Users shall no longer be authorized to access or use the HUB Service. All user names or passwords shall be terminated and any further access by or on behalf of Participant shall be prohibited unless otherwise agreed in writing by GHH. Additionally, if feasible and permitted by law, GHH shall permanently and completely remove any and all personal information about Participant and Participant User from the HUB Service, including the permanent and complete removal of personal information maintained on any storage mechanism, whether such mechanism is owned by GHH or provided by third-party/third-parties under agreement with GHH to maintain and store such personal information.

**4.5 EFFECT OF TERMINATION ON PROTECTED HEALTH INFORMATION.** Upon termination of the Participation Agreement for any reason, GHH shall return or destroy any PHI of Participant which is maintained by or for GHH for purposes of the HUB Service, including any PHI in the possession of GHH Vendors or agents, but excluding PHI provided to GHH under the Business Associate and Qualified Service Organization Agreement to enable GHH to build the MPI; provided that in the event that GHH determines that returning or destroying some or all of the PHI is not feasible, GHH shall promptly notify Participant of the determination and of the conditions that make return or destruction infeasible, and may retain the PHI included in the notification under the protections of the Business Associate and Qualified Service Organization Agreement, GHH Security Policy and this Participation Agreement, provided that GHH and its Vendors or agents limit any further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as GHH, Vendor or agent maintain such PHI.

**4.6 INSOLVENCY AND BANKRUPTCY.** Either party may terminate the Participation Agreement upon written notice at its sole discretion in the event bankruptcy or insolvency proceedings under bankruptcy or insolvency code or similar law, whether voluntary or involuntary, are properly commenced by or against the other party, or the other party is dissolved or liquidated.

## **V. GHH IS NOT A MEDICAL SERVICE**

**5.1 CLINICAL DECISIONS AND ACCURACY OF PHI.** GHH does not make clinical, medical, or other decisions and is not a substitute for the professional medical judgment applied by Participant. Participant is solely responsible for confirming the accuracy of PHI and making all medical, clinical and diagnostic decisions.

**5.2 USE OF GHH SERVICES FOR CLINICAL COMMUNICATIONS.** GHH cannot guarantee the uninterrupted connectivity of the HUB Service or the transmission of any communication or transaction using the HUB Service. GHH disclaims all responsibility and liability for the use of transmitted information for diagnosis, treatment or care, including without limitation the following:

5.2.1 The use of the HUB Service for communications or transactions concerning or supporting patient diagnosis, treatment or care in an emergency or other urgent situation is entirely at your own risk and requires the use of appropriate professional judgment.

5.2.2 The use of the HUB Service for communications or transactions which control or

attempt to control any medical device or equipment, or other application, device or equipment for any use in which a failure of the services could cause death, personal injury, or severe physical, property or environmental damage is entirely at your own risk and requires the use of appropriate professional judgment.

5.2.3 PROTECTED HEALTH INFORMATION EXCHANGED THROUGH THE HUB SERVICE IS NOT A COMPLETE MEDICAL RECORD OR DESIGNATED RECORD SET AS DEFINED BY HIPAA. GHH does not represent that the PHI exchanged through the Hub Service is a complete medical record or Designated Record Set as that term is defined by HIPAA. PHI exchanged through the HUB Service constitutes components of a complete medical record or Designated Record Set only. For example, a patient's lab report, clinical summary, and prescription that are exchanged will be limited to information available on the date that Participants makes an inquiry through GHH of other Participants of GHH for a particular individual. GHH cannot guarantee that another Participant shall read and/or reply to a request for health information in a timely manner and therefore Participant shall not rely upon the availability of another Participant's health information. Participant is responsible for developing and maintaining backup procedures to be used in the event of a failure or unavailability of the HUB Service, and is responsible for implementing any such backup procedures, as determined necessary by Participant.

**5.3 MEDICARE ACCESS TO RECORDS.** If required for purposes of 45 C.F.R. §§ 420.300-420.320, upon written request GHH shall make any necessary books, records and documents available to DHHS or the Comptroller General or their duly authorized representatives, for purposes of verifying the nature and extent of any costs incurred by Participant for services furnished by GHH for which payment may be or have been made under Medicare, Medicaid or other applicable federal reimbursement programs. GHH 's obligation to provide access to records under this Section shall extend for four (4) years from the last date on which services are provided under this Participation Agreement, and survive the termination of this Agreement for such period if applicable.

## **VI. LIMITATIONS, REPRESENTATIONS AND WARRANTIES**

**6.1 FORCE MAJEURE.** No party will be liable for any failure to perform its obligations hereunder where such failure results from force majeure, meaning any cause beyond the reasonable control of the party including acts of God, fire, strike, lockout, labor disputes, disputes with suppliers, accidents, delays in transportation, inability to obtain materials, war, civil insurrection, riots, embargoes, or the demands, restrictions or delays of any government.

**6.2 LIMITATIONS ON LIABILITY.** GHH SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE, NON-USE, INABILITY TO ACCESS THE HUB SERVICE, OR A FAILURE OF THE HUB SERVICE TO COMPLY WITH APPLICABLE FEDERAL OR TEXAS LAWS OR REGULATIONS, WHETHER SUCH CLAIM OR LIABILITY ARISES FROM ANY CLAIM BASED ON AN ACTION IN CONTRACT, WARRANTY, STATUTORY VIOLATIONS, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE,

EVEN IF GHH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.3 LIMITATION OF DAMAGES** IN THE EVENT THAT PARTICIPANT SUFFERS FINANCIAL LOSSES OR DAMAGES OR INCURS LIABILITY DUE TO ITS USE, NON-USE, INABILITY TO ACCESS THE HUB SERVICE, OR A FAILURE OF THE HUB SERVICE TO COMPLY WITH AN APPLICABLE FEDERAL OR TEXAS LAW OR REGULATION, PROVIDED PARTICIPANT HAS OTHERWISE COMPLIED WITH APPLICABLE POLICIES AND PROCEDURE AND THIS AGREEMENT, GHH'S TOTAL, AGGREGATE LIABILITY TO PARTICIPANT FOR ANY COVERED LOSSES OR DAMAGES SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE TOTAL SUMS PAID TO GHH BY PARTICIPANT FOR SUBSCRIPTION TO THE HUB SERVICE DURING THE PRECEDING TWELVE (12) MONTH PERIOD. THE PARTIES AGREE THAT THIS LIMITATION OF DAMAGES IS REASONABLE AND WILL APPLY EVEN IF THE HUB SERVICE FAILS IN ITS ESSENTIAL PURPOSE.

**6.4 NO GHH LIABILITY BASED ON PARTICIPANT OR PARTICIPANT USER FAILURE.** IN NO EVENT SHALL GHH BE RESPONSIBLE FOR ANY PENALTIES, DAMAGES OR OTHER LOSSES INCURRED BY PARTICIPANT AS THE RESULT OF ANY EVENT, OCCURRENCE OR FAILURE TO PERFORM BY GHH WHICH WAS MATERIALLY CAUSED OR CONTRIBUTED TO BY A PARTICIPANT'S OR PARTICIPANT USER'S FAILURE TO COMPLY WITH AN OBLIGATION UNDER ANY GHH POLICY, PROCEDURE OR AGREEMENT, OR WITH ANY LAW OR REGULATION.

**6.5 REPRESENTATIONS OR WARRANTIES.** GHH AND ITS TECHNOLOGY VENDORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OR REPRESENTATIONS CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE HUB SERVICE OR THE GOODS AND SERVICES REFERRED TO ABOVE. PARTICIPANT AGREES THAT GHH HAS MADE NO AGREEMENTS, REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND THAT NO FUTURE AGREEMENT, REPRESENTATION OR WARRANTY OF GHH WITH REGARD TO THE HUB SERVICE, INFORMATION, GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO THIS AGREEMENT. NO STATEMENT OR DESCRIPTION INCLUDED IN ANY GHH POLICY, PROCEDURE, AMENDMENT, ADDENDUM OR OTHER DOCUMENTATION PUBLISHED BY GHH FOR ANY PURPOSE SUBJECT TO OR INCLUDED UNDER THIS PARTICIPATION AGREEMENT AND CONDITIONS SHALL BE DEEMED AN AMENDMENT OF THIS PROVISION UNLESS IT EXPRESSLY STATES THAT IT IS INTENDED AS SUCH AN AMENDMENT.

**6.6 INDEMNIFICATION.** Subject to the limitations afforded any party that is an agency or entity of the state of Texas, and to the extent permissible under the laws and constitution of the state of Texas, the Parties will defend, indemnify and hold harmless the other party its employees and agents from any damages, expenses, and costs, (including reasonable attorneys' fees), from claims by third-parties arising from the other Party's breach of this Participation Agreement.

## **VII. INTERPRETATION OF PROVISIONS.**

**7.1 INTERPRETATION.** This Participation Agreement, GHH Privacy Manual, applicable Texas Health Services Authority (“THSA”) requirements and the Business Associate and Qualified Service Organization Agreement, attached as **Exhibit A** shall be interpreted as an integrated set of agreements, obligations and requirements; provided that any ambiguity or material conflict between any of their provisions shall be resolved as follows: (a) The provisions of the Participation Agreement and applicable THSA requirements shall control all other provisions; and (b) the GHH Privacy Manual shall control all provisions except those of the Participation Agreement.

**7.2 REVIEW AND AMENDMENT OF AGREEMENT.** GHH will periodically review and may amend the terms of this Agreement, the Business Associate and Qualified Service Organization Agreement or any GHH Policy and/or Procedure upon no less than sixty (60) days prior written notice unless a longer period is specified in the notice. In the event that any law or regulation applicable to this Agreement is amended, GHH shall provide Participants thirty (30) days prior written notice of such amendment. If Participant is unwilling or unable to comply with the amendment, Participant may terminate this Agreement effective upon thirty (30) days written notice.

**7.3 APPLICABLE LAW.** This Participation Agreement shall be interpreted consistently with federal law applicable to the Parties, including but not limited to HIPAA and HITECH, provided that state law issues shall be exclusively interpreted according to the laws of the State of Texas, without regard to choice of law principles.

**7.4 SEVERABILITY.** If any portion of this Participation Agreement shall for any reason be invalid or unenforceable, such portions shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining portions shall remain valid and enforceable and in full force and effect.

**7.5 DISPUTE RESOLUTION.** In the event of any dispute between the parties arising from or pertaining to the GHH HUB Service or the Participation Agreement the Parties shall use their best efforts to resolve the dispute through face-to-face good faith negotiations. Disputes not resolved within sixty (60) days following notice of the dispute shall be submitted to binding arbitration in Harris County, Texas in accordance with the rules of the American Health Lawyers Association then in effect and judgment on the award rendered may be entered by any court having jurisdiction over the parties. The arbitrator may award the prevailing party the cost and reasonable attorney’s fees expended in such arbitration.

**7.6 NO WAIVER.** No delay or omission by either party hereto to exercise any right, power or remedy occurring upon any noncompliance or default by the other party with respect to any of the terms of the Participation Agreement or any Agreement, GHH Policy, THSA applicable requirement shall impair any such right, power or remedy or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. No waiver of a breach on one occasion shall be deemed a waiver on another occasion.

**7.7 THIRD PARTY BENEFICIARIES.** This Participation Agreement is not intended for the benefit of any third party, and no third party shall have any cause of action arising from or pertaining to it.

**7.8 ASSIGNMENT.** This Participation Agreement, and all rights and obligations under it, may be assigned or transferred, in whole but not in part, by either party by sale or merger of such party, upon written notice to the other party and upon the acquiring party's written agreement to be bound by the terms of the Participation Agreement.

**7.9 NO EXCLUSION.** GHH represents and warrants to Participant, and Participant represents and warrants to GHH, that neither party nor their respective employees or agents have been placed on the sanctions list issued by the office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. 1320a(7), have been excluded from government contracts by the General Services Administration or have been convicted of a felony or any crime relating to health care. GHH and Participant will provide one another immediate written notice of any such placement on the sanctions list, exclusion or conviction.

#### **7.10 ELECTRONIC SIGNATURES.**

7.10.1 Signatures and Signed Documents. Participant, at GHH's request, will adopt as its signature an electronic identification consisting of symbols or codes that are to be affixed to or contained in a Query or Response made by the Participant ("Signatures"). Participant agrees that any Signature of such party affixed to or contained in any Query or Response will be sufficient to verify that the party originated such Query or Response. Any properly transmitted Query or Response made pursuant to this Participation Agreement shall be considered a "writing" or "in writing" and any such Query or Response when containing, or to which there is affixed, a Signature shall be deemed for all purposes: (a) to have been "signed;" and (b) to constitute an original when printed from electronic files or records established and maintained in the normal course of business.

7.10.2 Validity of Signed Documents. Participant will not contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings will be admissible as between the parties to the same extent and under the same condition as other business records originated and maintained in paper form.

**7.11 NOTICES.** All notices, requests, approvals, demands and other communications required or permitted to be given under this Participation Agreement shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the party to be notified. All communications will be deemed given when received. The addresses of the parties shall be as follows; or as otherwise designated by any party through notice to the other party:

If to Participant:

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Address) \_\_\_\_\_

(Address) \_\_\_\_\_

(Email) \_\_\_\_\_

If to GHH:

Nick Bonvino

CEO

1213 Hermann Drive, Suite 135

Houston, Texas 77004

nick.bonvino@ghhconnect.org

Written notice shall be deemed to have been received the sooner of when actually received or within three (3) days of deposit in the U.S. mail.

**Exhibit A**—Business Associate and Qualified Service Organization Agreement

**Exhibit B**—Subscription Fees and Value Added Services Fees

SAMPLE



## EXHIBIT A

### **BUSINESS ASSOCIATE AND QUALIFIED SERVICE ORGANIZATION AGREEMENT**

THIS BUSINESS ASSOCIATE AND QUALIFIED SERVICE ORGANIZATION AGREEMENT (“Agreement”) by and between \_\_\_\_\_ (“Participant”) and Greater Houston Healthconnect (“GHH”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”), for the purposes of complying with the Privacy and Security Rules issued by the United States Department of Health and Human Services (“HHS”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, the Alcohol and Substance Abuse regulations in 45 C.F.R. Part 2, and Texas laws related to privacy and security of health information. Participant, Covered Entity and GHH are collectively referred to as the “Parties.”

#### RECITALS

WHEREAS, Participant is required to comply with HIPAA and HITECH regarding the privacy and security of PHI; and

WHEREAS, GHH is a Business Associate to Participant and is required as a Business Associate to comply with HIPAA and HITECH as a Business Associate; and

WHEREAS, Participant and GHH are required and/or have chosen to comply with 42 C.F.R. Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment; and

WHEREAS, the Texas Legislature has adopted additional privacy and security requirements, some of which are more restrictive than those required by HIPAA and HITECH, and such requirements are applicable to Participant and GHH; and

WHEREAS, GHH agrees to enter into this Business Associate and Qualified Service Organization Agreement pursuant to which GHH will render services, or contract to a third party to render services, to, for or on behalf of Participant; and

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Parties hereto agree as follows:

#### **DEFINITIONS**

*For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below:*

“Capitalized Terms” shall mean any capitalized term not otherwise defined in this Section of this Agreement and shall have the meanings set forth in the Privacy and Security Rules or the HITECH Act, as applicable.

“Designated Record Set” or “DRS” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.B.

“Electronic Protected Health Information” or “EPHI” shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, and 164, and under HITECH.

“HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996.

“HITECH” shall mean the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), 42 U.S.C. 83000 *et. seq.*, and implementation, regulations and guidance.

“Individual” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 164.501 and 160.103, a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g), and any individual who has applied for or been given a diagnosis or treatment for alcohol or drug abuse.

“Information” shall mean any “health information” as defined in 45 C.F.R. Section 160.103 and “Patient Identifying Information” as defined in 42 C.F.R. Part 2, Section 2.11.

“Participants” shall mean physicians, hospitals, health care providers and health care plans entering into Participation Agreements with GHH.

“Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

“PHI” shall have the meaning ascribed to this term in 45 C.F.R. Sections 164.501 and 160.103, and is the information created or received by GHH from or on behalf of GHH and GHH Participants.

“Required by Law” shall have the meaning ascribed to this term in 45 C.F.R. Sections 164.501 and 160.103.

“Secretary” shall have the meaning ascribed to this term in 45 C.F.R. Section 160.103.

“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.

“Security Rule” shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164, as amended by HITECH.

“Texas Medical Records Privacy Act” shall mean the Texas Health and Safety Code, Chapter 181, as amended by HB 300 (82<sup>nd</sup> Legislature), effective September 1, 2012.

“Workforce” means employees, volunteers, and any other individual performing work for GHH or a Participant who is under the direct control of GHH or Participant (as applicable), regardless of whether paid or not.

## **CONFIDENTIALITY UNDER HIPAA AND 42 CFR PART 2**

*The Parties shall comply with all federal and state laws governing the privacy and security of Protected Health Information and Patient Identifying Information including electronic PHI (ePHI) collectively referred to in this Agreement as “PHI” unless otherwise noted including, without limitation, the Privacy and Security Rules promulgated pursuant to HIPAA, as amended by the HITECH Act, Texas privacy laws, including the Texas Medical Records Act and the Texas identify Theft Enforcement and Protection Act, and the provisions of 42 CFR Part 2, as application, in each case including the implementing regulations.*

### **I. OBLIGATIONS OF GHH**

1.1 Use and Disclosure of PHI. GHH, its directors, officers, subcontractors, employees, affiliates, agents, and representatives shall: (a) use or disclose PHI only in connection with fulfilling its duties and obligations under this Agreement and the Participation Agreement; (b) not use or disclose PHI other than as permitted or required by this Agreement or required by law; and (c) not use or disclose PHI in any manner that violates applicable federal and Texas laws or would violate such laws if used or disclosed in such manner by Participants.

1.2 Training. GHH shall provide adequate training to its employees and contractors to ensure compliance with this Agreement, the Privacy and Security Rules, HITECH, 42 C.F.R and Texas privacy and security laws.

1.3 Management and Administration. Subject to the restrictions set forth in the previous paragraph and throughout this Agreement, GHH may use the information received from Participant for (a) the proper management and administration of GHH; or (b) to carry out the legal responsibilities of GHH.

1.4 Ownership of PHI. GHH acknowledges that, as between Participant and GHH, all PHI shall be and remain the sole property of Participant. However, any and all forms developed by GHH in the course of fulfillment of its obligations pursuant to this Business Associate and Qualified Service Organization Agreement and shall be the sole property of GHH.

1.5 Minimum Necessary Requirement. GHH agrees, when requesting PHI from Participant, or when using or disclosing PHI, such request, use or disclosure is only for the minimum necessary PHI, where applicable under HIPAA, for the accomplishment of GHH’s purpose.

1.6 Administrative, Physical and Technical Safeguards. GHH 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 Participant. Such safeguards shall include, without limitation, implementing written policies and procedures in compliance with HIPAA and HITECH, conducting a security risk assessment, and

training GHH's employees who will have access to PHI with respect to the policies and procedures required by HIPAA and HITECH and implementing regulations.

1.7 Availability of Books and Records. GHH shall permit the Secretary and other regulatory and accreditation authorities to audit GHH's internal practices, books and records at reasonable times as they pertain to use and disclosure of PHI received from, or created or received by, GHH on behalf of Participant in order to comply with the requirements of the Privacy and Security Rules and 42 C.F.R. Part 2.

1.8 Access of Individuals to Information. In order for Participant to respond to an Individual's request for access pursuant to 45 C.F.R. Section 164.524, within three (3) business days of a written request by a Participant, GHH shall make available to Participant PHI in GHH's possession or control.

1.8.1 In the event any Individual requests access to PHI directly from GHH, GHH shall forward such request to Participant within two (2) business days and Participant shall respond directly to the Individual.

1.8.2 Any denial of access to PHI determined by Participant pursuant to 45 C.F.R. Section 164.524, and conveyed to GHH by Participant, shall be the sole responsibility of Participant, including resolution or reporting of all appeals and/or complaints arising from denials.

1.8.3 GHH shall support Participant in a manner that enables Participant to meet its obligations under 45 C.F.R. Section 164.524.

1.8.4 GHH must process PHI subject to access in the electronic form or format requested by Participant, unless Participant requests a readable hard copy form or in such other format requested by Participant.

1.9 Amendment of Information. In order for Participant to respond to a request by an Individual for an amendment of PHI pursuant to 45 C.F.R. Section 164.526, GHH shall, within five (5) business days of a written request by Participant, make available to Participant such PHI in GHH's control and possession.

1.10 Handling Requests for Amendment. In the event any Individual requests amendment of PHI directly from GHH, GHH shall forward such request to Participant within two (2) business days and Participant shall respond to the Individual's request.

1.11 Support. GHH shall support Participant in a manner that enables Participant to meet its obligations under 45 C.F.R. Section 164.524.

1.12 Accounting of Disclosures. In order to allow Participant to respond to a request by an Individual for an accounting pursuant to 45 C.F.R. Section 164.528, GHH shall, within five (5) business days of a written request by Participant for an accounting of disclosures of PHI about an Individual, make available to Participant such PHI in such format as requested by Participant.

1.12.1 At a minimum, GHH shall provide Participant with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure.

1.12.2 In the event any Individual requests an accounting of disclosure of PHI directly from GHH, GHH shall forward such request to Participant within two (2) business days.

1.12.3 GHH shall implement an appropriate auditing process to enable it to comply with the requirements of this subsection (c).

1.12.4 GHH shall support Participant in a manner that enables Participant to meet its obligations under 45 C.F.R. Section 164.528.

1.13 Programs Providing Alcohol and Substance Abuse Treatment. GHH agrees that in receiving and transmitting or otherwise dealing with any components of patient records from Participant, GHH is fully bound by the 42 C.F.R. Part 2 regulations. If necessary, GHH agrees to resist in judicial proceedings any efforts to obtain access to components of patient records containing PHI, except as permitted by the regulations.

1.14 Prohibitions on Selling, Marketing or Reidentification of PHI. For avoidance of doubt under no circumstances may GHH sell PHI, use PHI for marketing purposes, or attempt to re-identify any information in violation of the Texas Medical Records Privacy Act, regardless of whether such action is on behalf of or permitted by Participant.

1.15 Marketing. At no time shall GHH sell, use, or disclose PHI for a marketing purpose without first obtaining Participant's prior written consent.

1.16 Survival. The provisions of subsections 13, 14 and 15 above shall survive termination of the Participation Agreement.

## **II. DISCLOSURE TO THIRD PARTIES.**

*Subject to any limitations in this Agreement, GHH may disclose PHI received from Participant to any third party persons or entities as necessary to perform its obligations under the Participation Agreement and as permitted or required by applicable federal or Texas law.*

2.1 GHH shall not [and shall provide that its directors, officers, employees, subcontractors, and agents, do not] disclose PHI to any other person (other than members of their respective Workforce as specified in Section 4) unless disclosure is required by law or authorized by the person whose PHI is to be disclosed. Such disclosures shall be made only if such disclosee has previously signed a written agreement that:

2.1.1 Binds the disclosee to the provisions, restrictions, and conditions of this Agreement pertaining to PHI for the express benefit of GHH and Participant and, if disclosee is other than Participant, the disclosee.

2.1.2 Contains reasonable assurances from disclosee that the PHI will be held confidential as provided in this Agreement, and only disclosed as required by law for the purposes for which it was disclosed to disclosee.

2.1.3 Obligates disclosee to immediately notify GHH of any breaches of the confidentiality of the PHI as more fully described in Section 5 of this Agreement.

2.1.4 Obligates GHH and disclosee to comply with the principle of "minimum necessary use and disclosure," if applicable, i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed.

2.2 Redislosures of PHI provided to GHH from a Participant who provides alcohol and substance abuse treatment are prohibited except as authorized under 42 C.F.R. §2.22, unless the Participant has obtained consent on a consent form that meets the requirements of 42 C.F.R. §2.31 and notifies GHH of same.

2.3 GHH may use PHI to provide Data Aggregation services to Participant as permitted by 45 C.F.R. 164.504(e)(2)(i)(B) to the extent required under the Participation Agreement between GHH and Participant.

2.4 GHH shall not disclose PHI to any member of its Workforce and shall provide that its contractors and agents do not disclose PHI to any members of its Workforce, unless GHH or such contractor or agent has advised such person of GHH's obligations under this Agreement, and of the consequences for such person and for GHH or such contractor or agent of violating them. GHH shall take, and shall provide that each of its contractors and agents take, appropriate disciplinary action against any member of its Workforce who uses or discloses PHI in contravention of this Agreement or state or federal law.

2.5 GHH agrees to mitigate, to the extent practicable and as otherwise requested by Participant and/or GHH, in writing, any harmful effect known to GHH that is the result of a use or disclosure of PHI by GHH or recipients in violation of this Agreement.

### **III. SAFEGUARDS**

3.1 GHH shall employ appropriate administrative, technical and physical safeguards, consistent with the size and complexity of GHH's business operations, to protect the confidentiality of PHI and to prevent the use or disclosure of PHI in any manner inconsistent with the terms of this Agreement, HIPAA, HITECH, 42 C.F.R. Part 2, and Texas law.

3.2 GHH shall provide Participant with access to its written Privacy and Security Policies and to those of its IT vendor if available to GHH, upon request.

3.3 Upon reasonable notice and during normal business hours, Participant shall have the right to audit GHH's compliance with its Privacy and Security Policies and the terms of this Agreement. GHH shall cooperate in such audits and shall provide copies of any documents reasonably requested by Participants at no charge.

### **IV. REPORTING OF BREACHES AND IMPROPER DISCLOSURES**

4.1 Breaches. A breach is the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information.

4.2 Notice of Breach. In the event of a Breach of any "Unsecured PHI" (i.e., PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary) that GHH accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Participant, GHH shall provide notice of the Breach to Participant immediately, but in no event more than two (2) days after Discovering the Breach.

4.2.1 Notice of breach shall include, at a minimum: (i) the identification of each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach; (ii) the date of the Breach, if known; (iii) the scope of the Breach;

(iv) a description of GHH's response to the Breach; and (v) any other reasonable information requested by Participant.

4.3 Mitigation. In the event of a Breach, GHH shall, in consultation with Participant and at their direction, assist the Participant in conducting a risk assessment of the Breach, and mitigate, to the extent practicable, any harmful effect of such Breach known to GHH. For purposes of this Agreement, a Breach of Unsecured PHI shall be treated as Discovered by GHH as of the first day on which such breach is known to GHH (including any person, other than the individual committing the breach, who is an employee, officer, or other agent of GHH, as determined in accordance with the federal common law of agency) or should reasonably have been known to GHH following the exercise of reasonable diligence.

4.4 Improper Disclosures. GHH shall track all disclosures of PHI to third parties, including those made to GHH's directors, officers, subcontractors, employees, affiliates, agents, and representatives, other than those disclosures that meet the exception criteria of 45 C.F.R. Section 164.528.

4.5 GHH shall report to Participant any Security Incident, unauthorized or improper use or disclosure of PHI under the terms and conditions of this Agreement or applicable federal and Texas laws as soon as practicable, but in no event later than two (2) days of the date on which GHH becomes aware of such use or disclosure.

## **V. TERM AND TERMINATION**

5.1 General Term and Termination. This Agreement shall become effective on the Effective Date set forth above and shall terminate upon the termination or expiration of the Participation Agreement and the return of all PHI received:

- (a) from, or created or received by Participant, on behalf of GHH to Participant; or
- (b) from, or created by GHH, on behalf of the Participant to GHH,

is, in accordance with Section 8 below, destroyed or returned or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the terms of this Agreement.

5.2 Material Breach.

5.2.1 Where Participant has knowledge of a material breach by GHH of this Agreement, Participant may terminate this Agreement.

5.2.2 At the expense of GHH, GHH shall have the right to cure any breach of GHH's obligations under this Agreement. GHH shall give Participant notice of its election to cure any such breach, and Participant shall cooperate fully in the efforts by GHH to cure GHH's breach.

## **VI. EQUITABLE REMEDIES**

6.1 GHH acknowledges and agrees that Participant will suffer irreparable damage upon GHH's breach of this Agreement, and that such damages shall be difficult to quantify.

6.2 GHH acknowledges and agrees that Participant may file an action for an injunction to enforce the terms of this Agreement against GHH, in addition to any other remedy Participant may have. Where Participant has knowledge of any material breach by GHH, and GHH has failed to cure such breach, Participant may take proceedings against GHH before any Court having jurisdiction in Harris County, Texas to obtain an injunction or any legal proceedings to cure or stop such material breach.

## **VII. RETURN/DESTRUCTION OF PHI UPON TERMINATION**

7.1 Upon termination of this Agreement or the Participation Agreement for any reasons, GHH shall:

- i. If feasible, return or destroy (and certify in writing the reason of destruction) all PHI received from, or created or received by GHH Associate on behalf of Participant that GHH or any of its directors, officers, subcontractors, employees, affiliates, agents, and representatives still maintain in any form, and GHH shall retain no copies of such information; or
- ii. If GHH determines that such return or destruction is not feasible, extend the protections of this Agreement to such information and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible, in which case GHH's obligations under this Section shall survive the termination of this Agreement.
- iii. In the event that GHH ceases to operate as a Health Information Exchange, GHH shall comply with the Texas Health and Human Services Commission Guidelines promulgated pursuant to Texas House Bill 300 regarding the disposition of GHH or Participant's PHI.
- iv. GHH agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and EPHI shall be purged or destroyed concurrent with NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>.

## **VIII. AMENDMENT**

8.1 If any of the regulations promulgated under HIPAA, HITECH, 42 C.F.R. or Texas laws, or the requirements of The Texas Health Services Administration ("THSA") related to health information exchanges are amended or interpreted in a manner that renders this Agreement inconsistent therewith, GHH may, on thirty (30) days written notice to Participant, amend this Participation Agreement to the extent necessary to comply with such amendments or interpretations. GHH agrees that it will fully comply with all such regulations promulgated under HIPAA, HITECH, and Texas law, and changes in requirements by THSA, and that it will agree to amend this Participation Agreement to incorporate any material changes required therein.

## **IX. GOVERNING LAW**



9.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in Harris County, Texas.

## X. MISCELLANEOUS

10.1 Notices. All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the party to be notified. All communications will be deemed given when received. The addresses of the parties shall be as follows; or as otherwise designated by any party through notice to the other party:

If to GHH:  
Nick Bonvino  
1213 Hermann Drive, Suite 135  
Houston, Texas 77004  
Nick.bonvino@ghhconnect.org

If to Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10.2 Days. All references to the term “days” in this Agreement shall mean business days.

10.3 Independent Contractors. The Parties are and shall be independent contractors to one another, and nothing in this Agreement shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Except as expressly provided herein, neither party shall be liable for any debts, accounts, obligations, or other liabilities of the other Party.

10.4 Succession. This Agreement shall be binding on the Parties and their successors and assigns, provided that neither party shall assign any of its rights under this Agreement to any other Party without the prior written consent of the other Party.

10.5 Severability. In the event that any court or any governmental authority or agency declares all or part of any section of this Agreement to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate any other section of this Agreement, and in the event that only a portion of any section is so declared to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate the balance of such section.

10.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, each of the undersigned has duly executed this Agreement on behalf of the party and on the date set forth below.

**GREATER HOUSTON HEALTHCONNECT**

**PARTICIPANT**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

SAMPLE

**Exhibit B to Participation Agreement**  
**Subscription Fees and Value Added Services Fees**

SAMPLE