

## NC HealthConnex Emergency Data Access and Use Agreement

The NC HealthConnex Emergency Data Access and Use Agreement ("Participation Agreement" or "Agreement") is made and entered into by and between the North Carolina Health Information Exchange Authority ("NC HIEA"), an agency of the State of North Carolina and \_\_\_\_\_ ("Participant") by the Effective Date defined herein. (NC HIEA and Participant may be referred to individually as "Party" and collectively as "Parties.").

WHEREAS, NC HIEA was created and enabled by the NC General Assembly by S.L. 2015-241 for purposes enumerated therein which the Parties acknowledge as public purposes of the State,

WHEREAS, NC HIEA is engaged in the oversight, administration and operation of a statewide electronic health information exchange network ("NC HealthConnex"), and in connection therewith makes available certain HIE Features (as defined herein) for use by Participants of NC HealthConnex. The Participants enter into this Agreement to enable their participation in health information exchange activities, as set forth below;

WHEREAS, in the event of emergencies or natural disasters, patients may or may not evacuate from affected areas to avoid harm, and these patients may require ongoing care by health care providers located near the patients' homes or near the areas where evacuated patients travel to; and

WHEREAS, providers of short-term or long-term care would benefit from having access to patient data solely for treatment purposes before, during, and after emergencies or natural disasters;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Participants hereto mutually agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meaning ascribed to them below. All defined terms are capitalized throughout this Agreement. Certain terms are defined by, or defined by reference, N.C.G.S. §90-414.3 and shall have the meaning and intent herein as set forth therein. Such terms include: Business Associate, Business Associate Agreement, Covered Entity, Disclose or Disclosure, HIPAA, Individual, NC Health Information Exchange Authority, NC HIEA Advisory Board, and Protected Health Information or PHI.
  - 1.01. **Applicable Law** shall mean all applicable statutes and regulations of North Carolina and of the state(s) or jurisdiction(s) in which the Participant operates, as well as all applicable United States federal statutes, regulations, standards and policy requirements.
  - 1.02. **Authorized User** shall mean any person who has been authorized to access the NC HealthConnex Clinical Portal through the respective Participant's System in a manner defined by the respective Participant. "Authorized Users" may include, but are not limited to, Health Care Providers; employees, contractors, or agents of a Participant.
  - 1.03. **Clinical Portal** shall mean the NC HealthConnex portal system made available to Participant, Participating Entities, and Authorized Users to use for Permitted Purposes.
  - 1.04. **Digital Credentials** shall mean a mechanism that enables Participants to electronically prove their identity in order to connect to NC HealthConnex.
  - 1.05. **Data Use and Reciprocal Support Agreement or DURSA** means the legally enforceable multi-party trust agreement that the NC HIEA has entered into with the eHealth Exchange Coordinating Committee that provides for the secure exchange of electronic health information with other health information exchange networks or entities using an agreed upon set of national standards, services, and policies. The current version of the agreement is called the Restatement I of the Data Use and Reciprocal Support Agreement and was last updated on September 30, 2014.
  - 1.06. **eHealth Exchange** shall mean the nationwide health information network that allows participants to exchange data using an agreed upon set of national standards, services and policies developed by the Sequoia Project in coordination with the Office of National Coordinator within the U.S. Department of Health and Human Services.
  - 1.07. **HIE Data** shall mean the clinical and demographic data submitted to, exchanged, and stored by NC HIEA as required by N.C.G.S. §90-414.4 together with such other PHI or individually identifiable information as may be necessary or proper to achieve the purposes of the NC HIEA in N.C.S.L. 2015-241, N.C.S.L. 2015-264, and other Applicable Law.
  - 1.08. **HIPAA Breach** shall mean the unauthorized acquisition, access, disclosure, or use of HIE Data while utilizing the NC HealthConnex Resources pursuant to this Agreement. The term "HIPAA Breach" does not include the following:
    - a. any unintentional acquisition, access, disclosure, or use of HIE Data or PHI by an employee or individual acting under the authority of a Participant or Authorized User if:
    - b. such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the Participant or Authorized User; and
    - c. such information is not further acquired, accessed, disclosed or used by such employee or individual; or
    - d. any acquisition, access, disclosure or use of information contained in or available through the Participant's System where such acquisition, access, disclosure or use was not directly related to accessing HIE Data.

- 1.09. **Participant** shall mean any organization that (i) meets the requirements for participation as contained in N.C.G.S. 90-414.7 et seq.; (ii) is provided with Digital Credentials; and (iii) is a signatory to this Agreement.
- 1.10. **Participant Account Administrator** means the staff member(s) employed by Participant or Participating Entities who will be authorized to assign user credentials to Authorized Users within the Participant's or Participating Entity's Workforce. The Participant Account Administrator will also be the main contact person who will receive communication from NC HIEA and who will coordinate the collaboration between NC HIEA's technology vendor and the Participant's technical services staff.
- 1.11. **Participating Entities** shall include (i) entities that a Participant has control over, (ii) entities that are under common control with Participant, and/or (iii) entities that share information systems with Participant. Participating Entities shall be listed in Attachment 2.
- 1.12. **Permitted Purpose** shall mean the Treatment of Individuals who are affected by the emergency or natural disaster that is or has occurred and for whom Participant has or will have a Treatment relationship with. Participant may not access HIE Data for any other purpose.
- 1.13. **Security Breach** shall have the meaning set forth at N.C.G.S. §75-61. For the purposes of this Agreement, only Security Breaches that involve personal information accessed, used, or disclosed through the NC HealthConnex System will require compliance with the relevant provisions in this Agreement, in addition to Applicable Law.
- 1.14. **State** shall mean the State of North Carolina.
- 1.15. **Treatment** shall have the meaning set forth at 45 C.F.R. §164.501 of the HIPAA Regulations.
- 1.16. **Workforce** shall have the meaning set forth at 45 C.F.R. §160.103 of the HIPAA Regulations.

## 2. Participant Access to HIE Data

- 2.01. Participant, its Participating Entities as provided in Attachment 2, and its Authorized Users are granted a nonexclusive, nontransferable, revocable and limited license to access and view HIE Data in the NC HealthConnex Clinical Portal solely for the Permitted Purpose defined above for the term of this Agreement. Participant shall not utilize the Clinical Portal for any other uses.
- 2.02. Participant shall ensure only members of its Workforce receive credentials for the NC HealthConnex Clinical Portal, making them Authorized Users, during the term of this Agreement.
- 2.03. Participant shall ensure Authorized Users will not share usernames, passwords, or other Digital Credentials with any third parties unless permitted by this Agreement.
- 2.04. Participant and its Authorized Users shall comply with the eHealth Exchange terms in Attachment 3 when accessing external health information exchange networks through the NC HealthConnex Clinical Portal, and access shall be limited to the Permitted Purpose.
- 2.05. Participant and its Authorized Users are required to comply with all NC HIEA Policies, which are available at: <https://hiea.nc.gov/providers/nc-hiea-policies>.

## 3. Term & Termination

- 3.01. The term of this agreement shall begin on the date this Agreement is executed and shall be effective until the Parties Terminate the Agreement.
- 3.02. Either Party has the right to terminate this agreement at any time, which will have the effect of terminating Participant's access to the NC HealthConnex Clinical Portal.

## 4. Security and Breaches

- 4.01. **General.** The Parties shall generally be responsible for maintaining secure environments for their operations. The Parties shall use appropriate safeguards to prevent use or disclosure of HIE Data other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of HIE Data. Appropriate safeguards for Participants shall be those identified in the HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- 4.02. **Applicability of HIPAA Regulations.** HIE Data contains PHI. Furthermore, some, but not all, Participants are Covered Entities. Because the Participants are limited to viewing HIE Data for only a Permitted Purpose, the Parties do not intend to become each other's Business Associate by signing this Agreement. As a result, this Agreement is not intended to serve as a Business Associate Agreement among the Parties. To support the privacy, confidentiality, and security of the HIE Data, each Participant agrees as follows:
  - a. If the Participant is a Covered Entity, the Participant does, and at all times shall, comply with the HIPAA Regulations to the extent applicable.
  - b. If Participant is a governmental entity, the Participant shall comply with the applicable privacy and security laws.

4.03. **Breach Notification.** The following provisions apply to both a HIPAA Breach and a Security Breach as defined in Section 2 (Definitions). For this Section only, the term “Breach” refers to either a HIPAA Breach or a Security Breach.

- a. The Parties agree that within one (1) hour of discovering information that leads the Party to reasonably believe that a Breach may have occurred, it shall alert the other Party and other Participants whose data may have been Breached. Participant must also alert the SAS Help Desk at [HIEmail@sas.com](mailto:HIEmail@sas.com) within one (1) hour of discovery and describe the incident. As soon as reasonably practicable, but no later than twenty-four (24) hours after determining that a Breach has occurred, the Parties shall provide a Notification to the other Party and to all Participants likely impacted by the Breach. The Notification should include sufficient information for the other Party or other Participants to understand the nature of the Breach.
- b. The Parties shall supplement the information contained in the Notification as it becomes available and cooperate with other Participants if necessary. The Notification required by this Section shall not include any PHI. If, on the basis of the Notification, NC HIEA determines that (i) the other Participants that have not been notified of the Breach would benefit from a summary of the Notification or (ii) a summary of the Notification to the other Participants would enhance the security of NC HealthConnex, it may provide, in a timely manner, a summary to such Participants that does not identify any of the Participants or individuals involved in the Breach.
- c. Compliance with this Section shall not relieve Participants of any other security incident or Breach reporting requirements under Applicable Law including, but not limited to, those related to consumers.

## 5. Disclaimers.

5.01. **Reliance on a System.** Each Participant acknowledges and agrees that the HIE Data is drawn from numerous sources. Nothing in this Agreement shall be deemed to impose responsibility or liability on a Participant related to the clinical accuracy, content or completeness of any HIE Data provided pursuant to this Agreement. The Participants acknowledge that other Participants' Digital Credentials may be activated, suspended or revoked at any time or the Participant may suspend its participation; therefore, Participants may not rely upon the availability of HIE Data.

5.02. **Incomplete Medical Record.** Each Participant acknowledges that HIE may not include the Individual's full and complete medical record or history.

5.03. **Patient Care.** HIE Data obtained through NC HealthConnex is not a substitute for any Participant obtaining whatever information he/she/it deems necessary, in his/her professional judgment, for the proper treatment of a patient. The Participant shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for his/her/its respective patients and clients resulting from, or in any way related to, the use of the NC HealthConnex. By executing this Agreement, neither Participant, Participating Entity, or an Authorized User assumes any responsibility or liability for the health care services provided by any other Participant, Participating Entity, or Authorized User to a patient.

5.04. **No Warranties.** HIE DATA IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE PARTIES BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTIES HAVE BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE PARTIES DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR OTHER THIRD PARTIES. THE NC HEALTHCONNEX CLINICAL PORTAL IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

## 6. Liability.

6.01. **Participant Liability.** Participant shall be responsible for its acts and omissions and not for the acts or omissions of NC HIEA or any other Participant. In circumstances involving harm to other Participants caused by the acts or omissions of individuals who access HIE Data through the Participant or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from the Participant or any of the Participating Entities or Authorized Users, each Participant shall be responsible for such harm to the extent that the individual's access was caused by the Participant's breach of the Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. Notwithstanding any provision in this Agreement to the contrary, Participant shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This Section shall not be construed as a hold harmless or indemnification provision.

6.02. **NC HIEA Liability.** Participant shall not hold NC HIEA, the NC HIEA Advisory Board, or any of their members liable for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on

any system resulting from any Participant's actions or failures to act, except to the extent such action or failure to act was directed by NC HIEA. NC HIEA disclaims all liability connected to disclosures made to NC HIEA by Participant in contravention of Applicable Law. NC HIEA does not waive any defenses or rights based upon sovereign immunity of the State.

- 6.03. **Effect of Agreement.** Except as provided in Section 5 (Disclaimers), nothing in this Agreement shall be construed to restrict a Participant's right to pursue all remedies available under law for damages or other relief arising from acts or omissions of other Participants related to this Agreement, or to limit any rights, immunities or defenses to which a Participant or Authorized User may be entitled under Applicable Law.

## 7. Miscellaneous

- 7.01. **Application of the North Carolina Public Records Act.** NC HIEA may receive from Participant certain confidential types of information described in N.C.G.S. §132-1 *et seq.*, which NC HIEA shall protect in accordance with Applicable Law. Participant may designate data and information as confidential, consistent with and to the extent permitted under Applicable Law, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL" or by identifying electronically supplied information as "CONFIDENTIAL." NC HIEA shall promptly notify Participant of a public record request involving information that Participant has deemed confidential pursuant to this Agreement. Participant must then notify NC HIEA in writing whether to disclose the information or to restrict disclosure. The Parties shall cooperate and assist each other in preparing an appropriate response to the request or action if the records responsive to the request include Confidential Information. If an action is brought pursuant to N.C.G.S. §132-9 to compel NC HIEA to disclose information marked confidential, NC HIEA shall provide Participant prompt written notice of such action. If the Participant has requested in writing that NC HIEA not disclose the Confidential Participant Information, Participant shall promptly intervene in the action through its counsel and participate in defending NC HIEA, including any public official(s) or public employee(s). The Participant agrees that it shall hold NC HIEA and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against NC HIEA in the action. NC HIEA shall have the right, at its option and expense, to participate in the defense of the action through its counsel. NC HIEA shall have no liability to Participant with respect to the disclosure of Confidential Participant Information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.
- 7.02. **Governing Law.** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Participant agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina and stipulates that Wake County shall be the proper venue for all matters.
- 7.03. **Authority; No Conflict.** NC HIEA and Participant each represent and warrant to the other as follows: (i) that it is authorized to enter into this Agreement and to perform its obligations hereunder, and that the individual signatory executing this Agreement on its behalf is authorized, and has the capacity, to so execute this Agreement on its behalf, and (ii) that the execution of this Agreement by it and the performance of its obligations hereunder shall not conflict with or result in, with or without the passage of time or the giving of notice thereof, any breach, default or violation of any third party agreement to which it is bound, or any judgment, order or ruling of any court, administrative or regulatory agency or body, or arbitration award, to which it is bound or subject.
- 7.04. **Amendment.** This Agreement may be amended by agreement between the Parties. However, if the change is required for NC HIEA or Participants to comply with Applicable Law, NC HIEA may implement the change within a time period NC HIEA determines is appropriate under the circumstances. All Participants shall be required to sign an amendment adopted in accordance with the provisions of this Section or terminate participation in accordance with Section 3.
- 7.05. **Governmental Restrictions.** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the performance of this Agreement, each Party shall provide written notification of the necessary alteration(s) to the other Party's Contract Administrator. NC HIEA reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. NC HIEA may advise Participant of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Participant shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by NC HIEA, the Parties may terminate this Agreement.
- 7.06. **Inspection at Participant's Site.** Pursuant to N.C.G.S. §147-64.7, the State reserves the right to inspect, during Participant's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective equipment, tangible goods, or physical facilities of a prospective Participant prior to and during the Agreement term as necessary or proper to ensure conformance with the specifications or requirements and their adequacy and suitability for the proper and effective performance of the Agreement.
- 7.07. **Audit, Access to Records.** Pursuant to N.C.G.S. §147-64.7, the NC HIEA, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Participant insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State pursuant to this Agreement. The Participant shall retain any such books, records, and accounts for a minimum of

three (3) years after the completion or termination of this Agreement. Additional audit or reporting requirements may be required by NC HIEA, if in the NC HIEA's opinion, such requirement is imposed by federal or state law or regulation.

- 7.08. **Assignment.** No Party shall assign or transfer this Agreement, or any part thereof, without the express written consent of the other Party. Any assignment that does not comply with the requirements of this Section shall be void and have no binding effect.
- 7.09. **Conflicts of Interest.** Participant acknowledges and represents that it has adopted policies governing conflicts of interest and ethics in the exercise of its authority, and its actions under this Agreement. Participant will review, disclose and employ its best efforts to resolve any anticipated or reported conflict of interest or issue involving its ethics policies during the performance of this Agreement.
- 7.10. **Waiver.** No failure or delay by any Participant in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.
- 7.11. **Entire Agreement.** This Agreement, together with all Attachments, sets forth the entire and only Agreement among the Parties relative to the subject matter hereof. This Participation Agreement replaces and supersedes all prior participation or subscription agreements between NC HIEA and Participant, and expresses the entire understanding of the Parties with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to Section 7.04. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon any Party.
- 7.12. **Validity of Provisions.** In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of this Agreement, invalid, void or otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect.
- 7.13. **Relationship of the Participants.** The Parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the Parties. Neither NC HIEA nor any Participant shall have any authority to bind or make commitments on behalf of another Participant for any purpose, nor shall any such Party hold itself out as having such authority. No Participant shall be held liable for the acts or omissions of another Participant.
- 7.14. **Third-Party Beneficiaries.** With the exception of the Parties to this Agreement, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.
- 7.15. **Force Majeure.** A Participant shall not 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 disruptive natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) terrorist attacks; (g) acts of legislative, judicial, executive, or administrative authorities; or (h) any other circumstances that are not within its reasonable control. This Section shall not apply to obligations imposed under Applicable Law.
- 7.16. **Time Periods.** Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of NC HIEA and the affected Participant(s).
- 7.17. **Notices.** All Notices to be made under this Agreement shall be given in writing to the appropriate Participant's representative at the address listed in Attachment 1, and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by the United States Postal Service Certified Mail, return receipt requested; and (iii) if by a form of electronic transmission, upon receipt when the Notice is directed to an electronic mail address listed on Attachment 1 and the sending electronic mail address receives confirmation of receipt by the electronic mail address.

This Agreement has been entered into and executed by officials duly authorized to bind their respective Parties as of the dates set forth underneath their signatures below.

**Participant:**

Participant Organization Name:

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

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

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

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

**North Carolina Health Information Exchange  
Authority**

By: \_\_\_\_\_  
Authorized Signature

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

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

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

**Attachment 1**

**Participant & NC HIEA Contact Information**

Participant is required to provide information in the contact fields below unless otherwise noted. Notifications will **not** be sent via facsimile; however, please feel free to provide this information.

Participant Background Information				
<b>1. Type of facility or system:</b> <i>Please select all that apply below.</i>				
<input type="checkbox"/> Hospital or Health System	<input type="checkbox"/> Ambulatory/ Outpatient Clinic	<input type="checkbox"/> Laboratory	<input type="checkbox"/> Pharmacy	<input type="checkbox"/> Other <i>Please specify:</i> _____
<b>2. Provider type:</b> <i>This field is not required if your organization is a Hospital, Health System, Laboratory, or Pharmacy</i>				
<input type="checkbox"/> Primary Care	<input type="checkbox"/> Dental or Orthodontic	<input type="checkbox"/> Respiratory, Developmental, Rehabilitative or Restorative		
<input type="checkbox"/> Pediatrics	<input type="checkbox"/> Residential Facility	<input type="checkbox"/> Speech, Language and Hearing		
<input type="checkbox"/> OB/GYN	<input type="checkbox"/> In Home Care, e.g. PCS, CAP-C/DA, etc.	<input type="checkbox"/> Other <i>Please specify:</i> _____		
<input type="checkbox"/> Behavioral Health	<input type="checkbox"/> Eye & Vision	_____		
3. Participant Organization National Provider Identifier (NPI):		_____		
4. How many Participating Entities (PEs) or facility locations does your organization have?		_____ <i>If you have any PEs or more than one facility location, please complete Attachment 3</i>		
5. Is your organization part of one or more the following? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please select all that apply and list the name of the organization(s).</i>				
<input type="checkbox"/> Health system	_____			
<input type="checkbox"/> Regional HIE	_____			

Participant Contacts		
	Primary Contact for Notice	Participation Account Administrator
Name		
Title		
Street Address		
City, State, Zip		
Phone		
Fax (not required)		
E-mail		

NC HIEA Contact for Notice		
	Legal Contact for Notice	SAS Technical Contact for Notice of Breaches
Mailing Address	NC HIEA, Attn: Legal Team 4101 Mail Service Center Raleigh, NC 27699-4101	Not Applicable
Phone	Phone: 919-754-6928	(919) 531-2700
Email	<a href="mailto:HIEALegal@NC.Gov">HIEALegal@NC.Gov</a>	<a href="mailto:HIESupport@SAS.com">HIESupport@SAS.com</a>

**Attachment 2**

**Participating Entities**

Please complete this Attachment if your organization has control over Participating Entities as defined in Section 2 (Definitions) that your organization is signing the agreement on behalf of. Please also include information for all facility locations that are a part of your organization that provide patient treatment services, i.e. not a solely administrative location. NC HIEA needs this information to confirm who will be receiving access to the NC HealthConnex Clinical Portal.

<b>Legal Entity Name</b>	<b>Physical Address</b>	<b>Mailing Address</b>	<b>Org. NPI</b>	<b>Participant Account Administrator</b>	<b>PAA Email</b>	<b>PAA Phone</b>	<b>EHR Product</b>	<b>Is this entity owned by Participant's organization? Y/N</b>	<b>Is this an independent contractor with practicing privileges? Y/N</b>

### Attachment 3

#### **eHealth Exchange Requirements**

Participation by the NC HIEA in the national eHealth Exchange, through execution of the DURSA, requires that the NC HIEA replicate terms and policies included in the DURSA in the NC HIEA Participation Agreements or governance policies. Participants shall comply with the following requirements, which shall apply solely when the parties, through NC HealthConnex, acquire, access, use, or Disclose Protected Health Information over the eHealth Exchange. For definitions of terms capitalized not otherwise defined herein, please refer to the DURSA.

1. Except to the extent prohibited by Applicable Law, Participants shall provide information that is reasonably requested of it by the NC HIEA or by the eHealth Exchange Coordinating Committee for the following purposes, as described in Section 4.03 of the Restatement I to the DURSA. Such purposes include for the Coordinating Committee: to determine whether Participant may exchange Protected Health Information over the eHealth Exchange; to receive and act upon reports of eHealth Exchange Breaches; to suspend or terminate the right of the NC HIEA or Participant to exchange Protected Health Information over the eHealth Exchange; to resolve disputes pertaining to the eHealth Exchange; or to fulfill other responsibilities delegated to the Coordinating Committee. Participant shall not be required to disclose PHI to the Coordinating Committee in violation of Applicable Law. Any information other than Protected Health Information provided to the Coordinating Committee shall be labeled as confidential business information.
2. To the extent that Participant uses technology partners other than the NC HIEA and its vendor in exchanging Protected Health Information over the eHealth Exchange, it shall maintain valid and enforceable agreements with such technology partners, including health information service providers, requiring them to (a) protect the privacy and security of Protected Health Information, and (b) as soon as reasonably possible after determining that a eHealth Exchange Breach has occurred, report such Breach to the Participant. Please refer to Section 8 for further requirements on reporting Breaches involving Message Content Transacted over the eHealth Exchange.
3. The NC HIEA may voluntarily suspend or terminate, or the Coordinating Committee may suspend or terminate, the NC HIEA's right to exchange Protected Health Information over the eHealth Exchange. If any such suspension or termination occurs, the NC HIEA will notify Participant of the action as soon as reasonably possible. If an act or omission of Participant is the reason such suspension or termination occurs, Participant shall cooperate with the NC HIEA to submit an appeal or a plan of correction to the Coordinating Committee, as applicable, as quickly as practicable.
4. Required Alternative Dispute Resolution. Participants shall submit any disputes related to their exchange of Protected Health Information over the eHealth Exchange to the non-binding Dispute Resolution Process as required by the DURSA and outlined below. If all the parties involved in the dispute accept a proposed resolution of the dispute, Participant shall implement the terms of the resolution in the agreed upon time frame. Following the Dispute Resolution Process, Participant may pursue alternative remedies if it believes that the Dispute Resolution Process failed to adequately resolve the dispute.
  - a. When a Dispute arises, a Participant shall send written Notice, in accordance with the Notice provision in the DURSA, to the other Participant(s) involved in the Dispute. The notice must contain a summary of the issue as well as a recommendation for resolution. The Participant must send a copy of the notice to the Dispute Resolution Subcommittee (see below) for informational purposes.
  - b. Within thirty (30) calendar days of receiving the notice, the Participants are obligated to meet and confer with each other, at least once in good faith and at a mutually agreeable location (or by telephone), to try to reach resolution (the "Informal Conference"). If the Participants reach a resolution at the Informal Conference, they shall provide Notification to that effect to the Dispute Resolution Committee.
  - c. If the Participants are unable to participate in an Informal Conference during the thirty (30) calendar day period or to reach resolution at the Informal Conference, they have ten (10) business days following the end of the thirty (30) calendar day period or the Informal Conference, respectively, in which to escalate the Dispute to the Dispute Resolution Subcommittee in writing.
    1. The Dispute Resolution Subcommittee (the "Subcommittee") will be a five (5) member standing subcommittee of the Coordinating Committee. The Coordinating Committee shall appoint each member of the Subcommittee for a definite term. The members must be representative of the Participants, have diverse skill sets, and be able to help facilitate and reach resolution on conflicts between the Participants. The Subcommittee must have access to legal counsel to advise it on the law relevant to matters before it.
    2. In addition to appointing the five (5) members of the Subcommittee, the Coordinating Committee must also appoint three (3) to five (5) alternates for the Subcommittee. Alternates will serve on the Subcommittee should any of the members have a conflict on a particular Dispute or in the event that a member(s) is unavailable. Subcommittee members are required to declare any conflicts in accordance with the Coordinating Committee's conflict of interest policy. Once a Subcommittee member declares a conflict, the remaining Subcommittee members shall decide amongst themselves whether such member must withdraw from the Subcommittee for the dispute in question.
    3. The Subcommittee must also have access to panels of subject matter experts, as identified by the Coordinating Committee, for a variety of topics that may be implicated by a Dispute. Each subject matter expert panel must have at least three (3) experts on it who will rotate as advisors to the Subcommittee.



- d. Once a Participant escalates a Dispute to the Subcommittee, the Subcommittee will have thirty (30) calendar days in which to convene a meeting of the involved Participants ("Committee Meeting"). During this meeting, each Participant shall be able to present its version of the Dispute and any information that it believes is pertinent to the Subcommittee's decision.
- e. The Subcommittee shall have the ability to request additional information from the Participants to help it make its determination. The Subcommittee, however, shall not have the authority to compel a response or the production of testimony or documents by the Participants. To the extent that the Participants do respond to requests of the Subcommittee by producing documents, Participants shall have the ability to mark the documents produced as "Confidential Participant Information" and the Subcommittee shall treat those documents in accordance with Section 16 of the DURSA.
- f. The Subcommittee is encouraged to develop an appropriate and equitable resolution of each submitted Dispute, considering all available evidence, the goals of the Agreement and other relevant considerations. The Subcommittee must also have the authority to recommend sanctions for the breaching Participant. These sanctions include developing corrective action plans, suspension of participation rights, and termination of participation rights. The type of sanction will depend on the nature and severity of the breach.
- g. Within fifteen (15) calendar days of the Subcommittee Meeting, the Subcommittee shall issue a written recommendation for resolution, including an explanation of the basis and rationale of its recommendation. If either Participant is dissatisfied with the Subcommittee's recommendation for resolution, it shall have five (5) business days in which to escalate the Dispute to the Coordinating Committee.
- h. Within twenty (20) calendar days of receiving notice of escalation from a Participant, the Coordinating Committee shall review the Subcommittee's recommendation along with the information on which such recommendation was based and issue a final resolution. The Coordinating Committee may seek additional information from the Participants to aid its resolution of the Dispute.
- i. Within seven (7) calendar days of receiving the final resolution from the Coordinating Committee, the Participants shall determine whether to accept or reject the resolution and so notify the Coordinating Committee.
- j. The Coordinating Committee shall send a written summary of the resolution of the Dispute to all Participants. The summary will not identify the Participants involved but will contain sufficient detail about the resolution to serve as an instructive resource for other Participants.
- k. In no case shall a Participant be required to disclose PHI in violation of Applicable Law as part of its participation in the Dispute Resolution Process. The decision to not disclose PHI shall not be held against a Participant in the Dispute Resolution Process.