



Health Information Exchange
Participation Agreement

This Participation Agreement (“Participation Agreement”) is made and entered into as of the Effective Date set forth on the signature page hereof (“Effective Date”), by and between RioONE Health Network, a 501(c)(4) nonprofit social welfare organization (“RioONE”) and **Hidalgo County Health Department** (“Participant”), with reference to the following facts:

WITNESSETH

WHEREAS, RioONE is organized and operated for the purpose of facilitating an electronic community health record exchange system dedicated to bridging the gaps in health care and expanding the use of a community-wide, multi-system electronic health record system among health care providers and other Participants in Hidalgo and Starr Counties in a manner that complies with all applicable state and federal laws and regulations. RioONE may in the future participate in other regional and national electronic health information exchanges.

WHEREAS, RioONE provides or arranges for the provision of data transmission and related services to Participants via a secure e-mail System. RioONE also allows Participants to conduct searches for Participant’s Shared Information, and to exchange Participant’s Shared Information identified in those searches, from a federated computer model system that facilitates the sharing of Participant’s Shared Information among Participants.

WHEREAS, RioONE’s services include establishing and applying standards for the exchange of a Participant’s Shared Information through RioONE’s System.

WHEREAS, RioONE will be initially responsible for creating and maintaining a community directory to hold the addresses of each Participant. RioONE does not respond to Participants with Participant’s Shared Information, and shall not maintain any Participants Shared Information. RioONE’s primary function is to link Participants to Shared Information.

WHEREAS, the Participant wishes to participate in the electronic health information exchange facilitated by RioONE in accordance with the terms and conditions set forth in this Participation Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, conditions and promises herein contained, and for other valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, RioONE and the Participant hereby agree as follows:

Section 1: Description of Service Methods

A. Participant may elect One or Both Service Methods by Initialing below:



Initials

_____ **Direct Connect Method:** The Direct Connect Method is a member only exchange, where only Participants registered for this Service Method will be capable of exchanging Participant's Shared Information via the Direct Connect Method. Whereby, Participants will only be required to have access to the Internet to participate in the Direct Connect Method. To access the Direct Connect Method, Participants will be required to log into the RioONE System and e-mail a request for a Participant's Shared Information to an Other Participant. Upon receipt of a request for a Participant's Shared Information, the Other Participant completes the Participant's Shared Information request and e-mails the Participant's Shared Information to the requesting Participant.

_____ **HIE Method:** The HIE Method allows Participants to conduct searches for a Participant's Shared Information, and to exchange Participant's Shared Information identified in those searches, from a federated computer model system that facilitates the sharing of Participant's Shared Information among Participants. The HIE method will require that Participants have a supported electronic medical record ("EMR") system and an internet connection. The HIE Method has the capability to work with all electronic medical record vendors and systems. Further, the HIE Methods will require use of Associated Software and Associated Hardware as described in Section 9 Computer Systems.

Section 2: Definitions

For purposes of this Participation Agreement, the terms set forth in this Section shall have the meanings assigned to them below. Terms not defined below (whether or not capitalized) shall have the definitions given them under HIPAA and/or HITECH, unless the context requires otherwise.

"**Authorized User**" means an individual who is authorized by a Participant to use the Services on behalf of that Participant, including without limitation, an employee of the Participant and/or a credentialed member of the Participant's medical staff. If the Participant is an individual physician, then that individual is both a Participant and an Authorized User.

"**Authorized User Data**" means Participant's Shared Information, Participant's Confidential Information, and any other data and information provided to RioONE by Authorized Users through the System, Services or otherwise.

"**Confidential Information**" means any information provided hereunder or in connection herewith regardless of the format or manner in which it is transmitted concerning either party's business, financial affairs, current or future products or technology, trade secrets, workforce, customers, identity of patients, the content of any medical records, information regarding Medicare, Medicaid or any other third party payor claims submission and reimbursements or any other information that is treated or designated by such Party as confidential or proprietary, or would reasonably be viewed as confidential or as having value to a competitor of such Party. Confidential Information shall not include information that becomes publicly available or that becomes known to the general public other than as a result of a breach of an agreement of confidentiality.

"**Effective Date**" means the start date of the Participation Agreement as defined on the signature page.



“HIPAA” means the Health Information Portability and Accountability Act of 1996 and the regulations promulgated there under at 45 CFR Parts 160 and 164, including the Privacy and Security Rule, as amended by the HITECH Act.

“HIPAA Business Associate Agreement” means the agreement set forth in Exhibit D, which may be amended by RioONE at any time pending written notice to the Participant.

“HITECH” means the Health Information Technology for Electronic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act, Public Law 111-5.

“Other Participant(s)” means other entities or individuals who have access to the System and have signed Participation Agreement containing an obligation, on terms substantially similar to those contained in this Participation Agreement, to comply with the Policies and Procedures and be responsible for any business associate, contractor or workforce member who has accesses to and uses the System or Services as Authorized Users on its behalf.

“Participant” means a party that has entered into a Participation Agreement with RioONE to act as a Data Provider and/or as a Data Recipient.

“Participant ID” means a unique user identification assigned to an individual.

“Participant’s Shared Information” means electronic health, demographic and related information provided, or made available for exchange, by a Participant through RioONE’s Systems and Services. Participant’s Shared Information will specifically include protected health information of Participants’ patients.

“Policies and Procedures” means those policies and procedures adopted by RioONE to describe in detail the Services and the System, including without limitation any operations manual, privacy and/or security policies, and technical specifications for the Systems and/or the Services and the terms and conditions pursuant to which they shall be operated.

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

“Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

“Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and 164, subparts A and C.

“Services” means the services and access as set forth in Exhibit B to this Agreement.

“System” means the electronic communication network operated by RioONE, including all hardware provided by RioONE, all software used or provided by RioONE, and all documentation provided by RioONE in connection with the System, paper or electronic.



“Technical Requirements” means the hardware, software, and communications systems necessary to use the System. The Technical Requirements may be changed from time to time by RioONE in accordance with this Agreement.

“Term” means the initial term and all renewal terms of this Agreement”.

“Third Party Software and Services” means the software and services that are part of the System and provided by third parties.

Section 3: Term, Modification, Suspension, and Termination

3.1 Initial and Renewal Terms. This Agreement shall become effective on the date set forth on the signature page, and shall automatically renew for one year terms on each anniversary date thereafter unless terminated as providing herein.

3.2 Termination. The Agreement may be sooner terminated on the first to occur of the following:

- A. Termination. Either party may terminate this Agreement without cause at the sole discretion of the terminating party by giving ninety (90) days written notice to the other stating the intended date of termination.
- B. Immediate Termination. Notwithstanding any current or future RioONE bylaw, rule, or regulation to the contrary, RioONE shall have the right to immediately terminate this Agreement or terminate Authorized User privileges of a Participant under this Agreement upon written notice to the Participant upon the occurrence of any of the following situations: (i) patient’s safety or health information is in imminent and serious danger from Participant’s actions; (ii) Participant fails to maintain professional liability insurance as required by this Agreement; (iii) prominent and significant disability which precludes the Participant from performing his obligations under this Agreement; (iv) Participant’s conviction of any felony; (v) loss or restriction of Participant’s medical licensure; (vi) Participant’s exclusion from participation in the Medicare and/or Medicaid Program.
- C. Termination for Cause. Either party may terminate this Participation Agreement in the event of a material breach of this Participation Agreement which is not cured to the reasonable satisfaction of the other party within thirty (30) days, this Participation Agreement shall not be terminated as long as the party in breach commences to cure the breach within thirty (30) days, and diligently pursues the cure to completion.

3.4 Modification. RioONE may change the terms under which the Services and System are provided to Participant (including terms set forth in this Participation Agreement) by providing Participant not less than thirty (30) days notice. Upon receipt of such a notice, Participant may terminate this Participation Agreement by giving written notice to RioONE on or before the effective date of the change. Participant agrees that Participant’s failure to give notice of termination prior to the effective date of the change constitutes acceptance of the change, which shall thereupon become part of this Participation Agreement.

3.5 Termination, Suspension or Amendment as a Result of Government Regulation. Notwithstanding anything to the contrary in this Participation Agreement, either party may, on notice to the other, immediately terminate or suspend this Participation Agreement without liability: (a) to comply with any order issued or proposed to be issued by any governmental agency; (b) to comply with any provision of law, any standard of participation in any reimbursement



program, or any accreditation standard; or (c) if performance of any term of this Participation Agreement by either party would cause it to be in violation of law, or would jeopardize its tax-exempt status. In the event that the above listed reasons require the parties to amend this Participation Agreement, the parties shall work in good faith to mutually agree to an amendment.

3.6 Judicial or Administrative Procedures. Either party may terminate this Participation Agreement immediately upon notice to the other if: (a) the other party is named as a defendant in a criminal proceeding for a violation of federal or state law; (b) a finding or stipulation that the other party has violated any standard or requirement of federal or state law relating to the privacy or security of health information is made in any administrative or civil proceeding; or (c) the other party is excluded from participation in a federal or state health care program.

3.7 Obligations After Termination.

- A. Upon termination of this Participation Agreement, Participant shall cease to use the System and RioONE may terminate Participant's access to the System. Participant shall pay to RioONE the fees for the balance of the Term upon termination. Upon termination for any reason, Participant shall remove all software provided under this Participation Agreement from its computer systems, shall cease to have access to the System, and shall return to RioONE all hardware, software and documentation provided by or on behalf of RioONE.
- B. All the provisions of Section 12, Confidential Information; Section 13, Warranty, Disclaimer and Limitation of Liability; and Section 14.7, Obligations after Termination and any other term that by its nature provides for survival shall survive after termination. In addition, where the terms of this Participation Agreement specify that certain provisions will survive termination under certain conditions, those provisions shall survive under the applicable conditions.

Section 4: Grant of Right to Use Services

4.1 Access. During the Term, RioONE grants to Participant and Participant accepts:

- A. A non-exclusive, nontransferable (except as provided herein) right to have access to and to use the System, and
- B. A non-exclusive, nontransferable (except as provided herein) license to use any computer software furnished by RioONE.

Such access and use is subject to Participant's compliance with the terms and conditions set forth in this Participation Agreement and with the Policies and Procedures.

4.2 Restrictions. Participant shall not: (a) make the System or Services, in whole or in part, available to any other person, entity or business other than as set forth in this Participation Agreement; (b) copy, reverse engineer, decompile or disassemble the System, in whole or in part, or otherwise attempt to discover the source code to the software used in the System; or (c) modify the System or combine the System with any other software or services not provided or approved by RioONE. Participant shall obtain no rights to the System except for the limited rights to use the System expressly granted by this Participation Agreement.

4.3 Change and Termination. RioONE reserves the right to change the Services or the System, or to cease operating the System or any or all of the Services, at any time. Unless circumstances beyond RioONE's control require it, changes to the System or the Services that reduce or limit the functionality or levels of Service provided shall not be



made without the prior approval of RioONE's Board of Directors and not on less than thirty (30) days prior notice to Participant.

4.4 Third-Party Software. The System includes certain Third-Party Software and Services, which may require that Participant enter into separate subscription or licensing agreements with third-party vendors, or which may be open-source, as a condition of Participant's use of the System. See Exhibit E. If Participant elects not to execute agreements with such third-party vendors or determines it is unable to comply with the terms of any license or other agreement held by RioONE Participant may elect to terminate this Participation Agreement.

4.5 Support. RioONE shall provide reasonable support and assistance to Participant in using the System and the Services, in accordance with the Policies and Procedures and the Services outlined in Exhibit B.

Section 5: Making Information Available through the System

5.1 Purpose of System. The purpose of the System is to facilitate the sharing of patient health information among all Participants.

5.2 Sharing of Data. RioONE shall periodically issue Policies and Procedures related to the sharing of Participant's Shared Information through the System, including standards for:

- A. The types of data to be shared and the required format for such data;
- B. Ensuring that data made available through the System is complete, or for indicating if data is incomplete;
- C. Ensuring that data is made available through the System in a timely manner;
- D. Ensuring that, if the availability of data shared through the System is controlled by the Participant, it is available to other users at all times.

5.3 Accuracy and Format of Data. Participant shall use reasonable efforts to ensure that Participant's Shared Information:

- A. Shared Information is subject to restrictions imposed by law and/or this Agreement, therefore, Participant shall ensure that patient medical records are current, accurate and complete. If the Shared Information is incomplete, the Participant shall verify that the record contains an appropriate indication to that effect;
- B. Complies with any requirements of the Policies and Procedures as to format or content.

5.4. Sharing of Participant's Shared Information. Participant authorizes RioONE to use and disclose Participant's Shared Information to Other Participants as follows:

- A. RioONE may permit secure access to Participant's Shared Information by Other Participants that are health care providers through an electronic system that supports the exchange of patient medical records among Participants to this agreement.
- B. RioONE may permit access to Participant's Shared Information by Other Participants that are public health authorities for public health activities, as permitted by applicable law.



- C. RioONE may permit access to Participant's Shared Information by the business associates of Other Participants that are health care providers for the purposes set forth in sections (a) and (b) respectively.
- D. RioONE may use and disclose Participant's Shared Information for the proper management and administration of RioONE and the System, and to carry out RioONE's legal responsibilities. RioONE may also disclose Participant's Shared Information for such purposes if the disclosure is required by law. Without limiting the foregoing, RioONE may permit access to the System by RioONE's Authorized Personnel.

5.5 Disclosures.

- A. Participant agrees that any disclosure through the System pursuant to Sections 5.4(A)-5.4(C) is a disclosure made by a Participant and not RioONE.
- B. RioONE agrees that any disclosure through the System pursuant to Section 5.4(D) is a disclosure made by RioONE and not the Participant.

5.6 Reliance on Representations. Participant acknowledges that in granting access to the System for the purposes as set forth in this Participation Agreement, RioONE will rely on the assurances of the Other Participants as to (i) their identity and credentials, (ii) the purposes for which they are accessing the system, and (iii) the nature and extent of the information to which they will have access. Participant acknowledges that, while the System will contain certain technical safeguards against misuse of the System, it will rely to a substantial extent on the representations and undertakings of Other Participants and their Authorized Users. Participant agrees that RioONE shall not be responsible for any unlawful access to or use of Participant's Shared Information by any Other Participants resulting from misrepresentation to RioONE, breach of agreement, or violation of the Policies and Procedures

5.7 Rights in Data. As between RioONE and Participant, all Authorized User Data shall be deemed to be the exclusive property of Participant. In no event shall RioONE claim any rights with respect to the Authorized User Data, use or authorize any third-party to use such data, or take any action with respect to such data that is inconsistent with this Participation Agreement.

Section 6: Access to System

6.1 Permitted Uses. Subject to the terms of this Participation Agreement, RioONE authorizes Participant to access the System and to use the Services only as expressly authorized in this Participation Agreement and the Policies and Procedures.

6.2 Prohibited Uses. Participant agrees not to access the System or use the Services for any other purpose other than as set forth in Section 6.1 Permitted Uses above. In particular:

- A. Participant shall not knowingly reproduce, publish or distribute content in connection with the System that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy or other personal or proprietary right;
- B. Participant shall be responsible for its own compliance with all applicable laws, including laws relating to maintenance of privacy, security and confidentiality of patient and other health information and the prohibition on the use of telecommunications facilities to transmit illegal, obscene, threatening, libelous, harassing or offensive messages, or otherwise unlawful material;



- C. Participant shall not knowingly: (i) abuse or misuse the System or the Services, including gaining or attempting to gain unauthorized access to the System or altering or destroying information in the System, except in accordance with accepted practices; (ii) use the System or Services in such a manner that interferes with other users' use of the System; (iii) permit the introduction into the System of any program, routine or data (such as viruses or worms) that does or may disrupt or in any way impede the operation of the System, or alter or destroy any data within it.
- D. Participant shall not use the System or Services for the purpose of exploiting the data of other participants for Participant's own commercial purposes, including aggregating data from other participants for commercial use or exploitation by third parties.
- E. Participant shall not use the System or the Services in violation of the Policies and Procedures or any applicable federal or state laws.

6.3 Participant's Own Systems.

- A. Participant shall be solely responsible for own compliance with any applicable regulatory requirements related to the preservation, privacy and security of its own records, including (without limitation) data backup, disaster recovery, and emergency mode operation and acknowledges that RioONE does not undertake to provide such services.
- B. Participant may access and use the electronic health information as permitted in this Participation Agreement.
- C. Subpoenas and Aggregation:
 - i. Participant shall not use the System to create, produce or compile records or data of another participant for the purpose of furnishing copies of aggregated records to third parties, except as may be medically useful to healthcare providers in the provision of medical care or treatment to an individual patient of the provider or as is otherwise permissible under this Participation Agreement or as required by law.
 - ii. If Participant is subpoenaed or otherwise ordered to use the System for the purpose of compiling the data of other participants that are not already contained in Participant's records, Participant's shall immediately notify RioONE so that RioONE and such other interested parties as it may determine might have an opportunity to appear or intervene and protect their respective interests
 - iii. Participant shall not be required to contest any such subpoena or order nor incur any expense in connection with legal proceedings or processes, whether initiated by RioONE or any other interested party, with respect thereto

6.4 Other Participants.

- A. RioONE shall initially limit participation to the following types of health care providers:
 - i. Physician or medical group;
 - ii. Hospitals;
 - iii. Independent laboratory;



- iv. Independent radiology supplier;
- v. Independent pharmacy; or
- vi. Public health department;

B. This list of eligible participant types may be modified by the Board of Directors of RioONE upon reasonable notice to Participant.

6.5 Safeguards.

- A. Participant and RioONE shall implement and maintain reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of electronic health information accessible through the System, to protect it against reasonably anticipated threats or hazards, and to prevent its use or disclosure otherwise than as permitted by this Participation Agreement or required by law.
- B. Such safeguards shall comply with HIPAA, regardless as to whether or not Participant is otherwise subject to HIPAA, and all applicable federal, state, and local requirements and RioONE Policies and Procedures.
- C. Participant and RioONE shall each maintain reasonable and appropriate security practices with regard to all personnel, systems, and administrative processes used by each party to transmit, store and process electronic health information through the use of the System. Participant and RioONE each shall be responsible for establishing and maintaining their respective security management procedures, security incident procedures, contingency plans, audit procedures, facility access controls, workstation use controls and security, device and media controls, authentication procedures, and security policies and procedures to protect electronic health information accessible through the System.
- D. Participant shall promptly notify RioONE of any Security Incident relating to the System of which Participant becomes aware, or any unauthorized use or disclosure of information within or obtained from the System, and shall cooperate with RioONE in investigating the incident and shall take such action to mitigate any breach or suspected breach. RioONE shall promptly notify Participant of any Security Incident relating to the Participant's Shared Information of which RioONE becomes aware, or any unauthorized use or disclosure of Participant's Shared Information within or obtained from the System, and shall cooperate with Participant in investigating the incident and shall take such action to mitigate any breach or suspected breach.

6.6 Compliance. Participant and RioONE, respectively, are responsible for their own compliance with the terms of this Participation Agreement, HIPAA, the Policies and Procedures, and any applicable laws and regulations. Participant shall be solely responsible for the use of the System by Participant and Participant's workforce, and shall indemnify RioONE and hold it harmless from any third party claim, cost or liability arising from use that is in violation of this Participation Agreement or applicable law, including reasonable attorneys' fees, in accordance with the indemnification procedures set forth in Section 13 Warranty, Disclaimer and Limitation on Liability and "to the extent permitted under the Constitution and Laws of the State of Texas."

6.7 Authorized Use.

- A. RioONE authorizes Participant and Participant's Authorized Users to use the Participant IDs assigned to them by RioONE or by a responsible agency or authority designated by RioONE, which may include Participant.



Participant acquires no ownership rights in any Participant ID and Participant IDs may be revoked or changed upon as much notice as possible only for security reasons in RioONE's sole discretion. Participant shall adopt and maintain reasonable security precautions for Participant IDs to prevent their disclosure to and use by unauthorized persons. Each Authorized User shall have and use a unique identifier. Participant shall use reasonable efforts to ensure that no member of its workforce uses a Participant ID assigned to another person.

- B. Participant may permit Participant's Authorized User to use the System and the Services on behalf of Participant, subject to the terms of this Participation Agreement. Participant shall:
- i. Obtain a unique Participant ID from RioONE for each Authorized User and take efforts to ensure such person has access to the System only under his or her assigned Participant ID;
 - ii. Train all Authorized Users regarding the confidentiality requirements of this Participation Agreement and the Policies and Procedures relating to their access to and use of the System and the Services, and be responsible for their compliance with such requirements;
 - iii. Take such disciplinary action as it may deem appropriate against any Authorized User who violates the confidentiality provisions of this Participation Agreement or the Policies and Procedures;
 - iv. Report to RioONE violations of the confidentiality requirements set forth in this Participation Agreement by Participant's Authorized Users;
 - v. Promptly notify RioONE of the termination of employment of any Authorized User (or if the individual is not an employee, of the termination of the relationship with Participant which granted the individual access to the System);
 - i. Promptly notify RioONE of the termination, revocation or restriction of any right of an Authorized User to access the System; and
 - ii. Take prompt steps to assure that any Authorized User whose access has been revoked or restricted by RioONE or the Participant shall have no further access to protected health information through the System consistent with the revocation or restriction

6.8 Identification of Authorized Users. The Participant shall provide RioONE with a list identifying all that Participant's Authorized Users, in accordance with the requirements described in the Policies and Procedures. The Participant shall restrict access to the System and, if applicable, use of the Services, only to the Authorized Users that the Participant has so identified to RioONE. The Participant shall inform RioONE in writing within two (2) business days whenever an Authorized User is added or removed.

6.9 Rights of Authorized Users. An Authorized User shall have no rights to access the System, or to use the Services or any electronic health information or other information made available therefrom, other than those granted to the Authorized User by RioONE or by the Participant. Any such rights of an Authorized User shall cease and terminate upon the removal of that Authorized User's access privileges for any reason.

6.10 Responsibility for Conduct of Participant and Authorized Users. The Participant shall be solely responsible for all acts and omissions of the Participant and/or the Participant's Authorized Users, and all other individuals who access the System and/or use the Services either through that Participant or by use of any password, identifier or log-on



received or obtained, directly or indirectly, lawfully or unlawfully, from that Participant or any of that Participant's Authorized Users, with respect to that System, the Services and/or any confidential and/or other information accessed in connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of that Participant.

6.11 Discipline and Termination of Authorized Users.

- A. RioONE and Participant shall require that all of their respective Authorized Users, including RioONE employees and independent contractors, who use or have access to the System and the Services to do so only in accordance with applicable use restrictions and confidentiality obligations and the Policies and Procedures, including without limitation the provisions thereof governing the confidentiality, privacy and security of protected health information.
- B. Participant and RioONE shall take appropriate disciplinary action, up to and including termination, against their respective Authorized Users, who violate their use restrictions, confidentiality obligations or the Policies and Procedures.
- C. RioONE does not, by virtue of the Participation Agreement or otherwise, obtain authority to discipline the Participant's Authorized Users. RioONE may, however, terminate System access of any Authorized User temporarily or on a permanent basis if such access needs to be terminated for security reasons. When terminating access of a Participant's Authorized User, RioONE shall notify Participant and explain the basis and support for its action.

6.12 Termination of a Participant. Following discussion with a Participant and a reasonable opportunity to cure, if such cure is possible, RioONE may terminate that Participant's access to the System on a temporary or permanent basis for privacy and security breaches or for failure to take reasonable remedial action when a breach is discovered, including, without limitation: (i) failure to cooperate in mitigating damages, (ii) failure to appropriately discipline an Authorized User or other person under the Participant's control for security or privacy violations, or (iii) other actions that undermine the confidence of other participants in the effectiveness of System safeguards. When terminating access, RioONE shall explain to Participant the basis and support for its action. A permanent termination of access shall be followed by termination of Participant's Participation Agreement.

6.13 Professional Responsibility. Participant shall be solely responsible for the medical, professional and technical services it provides. RioONE makes no representations concerning the completeness, accuracy or utility of any information in the System, or concerning the qualifications or competence of individuals who placed it there. RioONE has no liability for the consequences to Participant or Participant's patients of Participant's use of the System or the Services.

6.14 Cooperation. Participant shall reasonably cooperate with RioONE in the administration of the System, including providing reasonable assistance in evaluating the System and collecting and reporting data reasonably requested by RioONE for purposes of administering the System.

Section 7: RioONE's Operations and Responsibilities

7.1 Performance of Obligations, Generally. RioONE shall diligently perform all of its obligations arising under this Participation Agreement and the Policies and Procedures.



7.2 Participation Agreements. RioONE shall require that all Participants enter into a Participation Agreement, legally binding them to comply with the terms and conditions of System use and the Policies and Procedures.

7.3 Monitoring of Participants. RioONE shall regularly monitor Participant's compliance with the requirements for participation set forth in this Participation Agreement and the Policies and Procedures.

7.4 Maintenance of System. RioONE shall maintain the functionality of the System and the Services in accordance with the Policies and Procedures, and shall provide such service, security and other updates as RioONE determines are appropriate from time to time.

7.5 Training. RioONE shall provide training to each Participant (and/or Authorized Users) regarding the Participant's (and/or Authorized Users) rights and obligations under its Participation Agreement and the Policies and Procedures, and the access and use of the System and Services, including such user manuals and other resources RioONE determines appropriate to support the System and Services, including without limitation training for new or additional Authorized Users when added by the Participant.

7.6 Telephone and/or E-mail Support. To the extent reasonably necessary, RioONE shall provide, by telephone and/or e-mail, during normal business hours, support and assistance in resolving difficulties in accessing and using the System and the Services. In the event that RioONE is unable to resolve such difficulties in accessing and using the System and Services via telephone and/or e-mail, RioONE may provide on-site support at Participant's location based on the severity of the issue and RioONE availability.

Section 8: HIPAA Privacy and Security of Patient Data

8.1 Compliance with Policies and Procedures. RioONE and each Participant shall comply with the standards for the privacy and security of patient health information, including without limitation protected health information described by HIPAA and HITECH, as provided in the Policies and Procedures and other applicable federal and state laws, which are incorporated herein by reference.

RioONE applies the standards of the HIPAA Privacy Rule in permitting access to the System. Participant acknowledges that other federal and state laws impose additional restrictions on the use and disclosure of certain types of health information, or health information pertaining to certain classes of individuals. Participant is solely responsible for ensuring that Participant's Shared Information may properly be disclosed for the purposes set forth in this Participation Agreement. In particular, Participant shall:

- A. Not make available through the System any information subject to any restriction on use or disclosure (whether arising from Participant's agreement with the individual or under law), other than the general restrictions contained in the HIPAA Privacy Rule;
- B. If any relevant information is not made available through the System, place a notation in the System, in the manner provided by the Policies and Procedures, to the effect that additional information which is not available through the System may be available from Participant;



- C. Participant shall be responsible for notifying the patient regarding the HIE System, and shall obtain any necessary consents, authorizations or releases from individuals required for making the patients' health information available through the System; and
- D. If available, include such statements in Participant's notice of privacy practices as may be required in connection with Participant's use of the System.

8.2 Business Associate Agreement. RioONE acknowledges that RioONE's performance of its responsibilities described in this Participation Agreement causes RioONE to act as the "Business Associate" of the Participant (as defined by HIPAA). RioONE and Participant therefore agree to the terms and conditions of the HIPAA Business Associate Agreement as provided in Exhibit D and incorporated by reference herein.

Section 9: Computer Systems

9.1 Participant's Equipment. In order to use the System, Participant acknowledges that it may be necessary to install, configure and maintain the hardware, software and communications systems necessary to access the System (the "Equipment") listed or described in the Technical Requirements outlined in Exhibit A. Additionally, depending on the Service Method elected by Participant in Section 1 Description of Service Methods above, RioONE may provide Participant with certain software and/or hardware required to access the System and use the Services Participant has elected ("Associated Software" and "Associated Hardware" respectively). The Associated Software and Associated Hardware shall be provided in compliance with the specifications and/or services standards as provided in Exhibit A. If RioONE notifies Participant that it's Equipment for the implementation and use of the System is incompatible with the System, and not in accordance with the Technical Requirements, Participant shall either eliminate the incompatibility or terminate this Participation Agreement and RioONE may suspend Services to Participant until Participant does so.

9.2 RioONE Assistance. From time-to-time, RioONE may separately contract with Participant for the provision of goods or services in connection with Participant's implementation or use of the System; provided, however, such goods or services contracts shall not be deemed or construed to alter or amend any provisions of this Participation Agreement.

Section 10: Policies and Procedures

10.1 RioONE is solely responsible for the development of the Policies and Procedures. RioONE shall notify Participant of any changes in the Policies and Procedures at least ninety (60) days prior to the implementation of the change. However, if the change is required in order for RioONE or Participant to comply with applicable laws or regulations or if the Board of Directors directs, RioONE may implement the change and provide notice to Participant within a shorter period of time that RioONE determines is reasonably appropriate under the circumstances. If Participant is unable or unwilling to comply with or implement such Policies and Procedures, Participant may elect to suspend its use of the System or terminate this Participation Agreement and be released from all further obligations and liabilities pertaining to this Participation Agreement

10.2 The Policies and Procedures, as amended from time to time, are incorporated herein by reference and made a part of this Participation Agreement



Section 11: Fees and Charges

11.1 Service Fees. If applicable, Participant shall pay to RioONE the Service Fee set forth in Exhibit C during the Term and continuation of this Participation Agreement.

11.2 Payment. The Service Fee shall be due and payable to RioONE within forty-five (45) days following Participant's receipt of invoice at the address specified below for billing purposes.

11.3 Taxes. All charges and fees shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and Participant agrees to pay any tax (excluding taxes on RioONE's net income) that RioONE may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services purchased under this Participation Agreement.

11.4 Other Charges. Participant is responsible for any charges Participant incurs to use the System, such as telephone and equipment charges, and fees charged by third-party vendors of products and services. RioONE shall be solely responsible for all costs and expenses related to its hardware, software, telecommunications connections, data storage, data security and any third-party licenses required to provide the System and Services and fulfill RioONE's obligations under this Participation Agreement.

11.5 No Payment for Protected Health Information. All fees charged, paid or collected by or on behalf of RioONE related to the System and the data contained therein shall be for the rights of Participants to access and use of the System and Services as described in this Participation Agreement. RioONE, including its Subcontractors if any, shall not make Participant's Shared Information or any individual's protected health information provided to RioONE by Participant available to any third party for any purpose not expressly authorized by this Participation Agreement. Neither RioONE nor its Subcontractors, if any, shall offer or pay or solicit or receive any remuneration, directly or indirectly, in return for protected health information obtained through the System.

Section 12: Confidential Information

12.1 Neither party shall disclose the Confidential Information of the Other Participants to any other person, and shall not use any Confidential Information of the Other Participant except for the purpose of this Participation Agreement, or as required by applicable statute, regulation or subpoena. Except as otherwise provided in this Participation Agreement, neither party shall, without the other party's prior written consent, at any time, during or after the Term of this Participation Agreement, directly or indirectly, divulge or disclose Confidential Information of the Other Participant for any purpose or use Confidential Information for its own benefit or for the purposes or benefit of any other person. Participant and RioONE agree to hold all Confidential Information of all Participants in strict confidence and shall take all measures necessary to prevent unauthorized copying, use, or disclosure of Confidential Information of the Other Participants, and to keep the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of Confidential Information. Participant and RioONE will disclose Confidential Information of the Other Participants only to individuals who have a need to use the Confidential Information for the purpose of this Participation Agreement. Participant and RioONE shall inform all such recipients of the confidential nature of Confidential Information. All such recipients shall either be subject to employment agreements or instructions, professional oaths or written agreements containing confidentiality restrictions no less restrictive than those set forth in this Participation Agreement. Participant and RioONE shall promptly advise the Other Participants in writing of any improper disclosure, misappropriation, or misuse by the Participants of the Shared Information.



12.2 Participant and RioONE agree that each party respectively will suffer irreparable harm if Other Participants fails to comply with its obligations set forth in this Section 12 Confidential Information, and further agrees that monetary damages will be inadequate to compensate Participant or RioONE for any such breach. Accordingly, Participant and RioONE agree that Participant and RioONE will, in addition to any other remedies available to it at law or in equity, be entitled to the issuance of injunctive relief to enforce the provisions hereof, immediately and without the necessity of posting a bond.

12.3 Section 12 Confidential Information will survive the termination or expiration of this Participation Agreement for any reason.

Section 13: Warranty, Disclaimer and Limitation on Liability

13.1 Warranty. RioONE presents and warrants the following:

- A. That the Services shall conform to this Participation Agreement;
- B. RioONE has the right to grant the licenses set forth in Section 4 Grant of Right to Use Services without violating or infringing upon any rights of any third party and without breach of any third-party license and to the best of RioONE's knowledge, there is currently no actual or threatened suit by any third party based on an alleged violation, infringement or breach by RioONE.
- C. Each of RioONE's employees, subcontractors or agents assigned to perform RioONE's obligations hereunder have the proper skill, training and background required to perform in a diligent, competent, workmanlike and professional manner and all work will be so performed.

13.2 Carrier Lines. Participant acknowledges that access to the System will be provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, "Carrier Lines") owned, maintained, and serviced by third-party carriers, utilities, internet service providers, all of which are beyond RioONE's control. RioONE assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the Carrier Lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the Carrier Lines. Use of the Carrier Lines is solely at Participant's risk and is subject to all applicable local, state, national, and international laws.

13.3 No Warranties. OTHER THAN AS SET FORTH IN THIS SECTION OR THE PARTICIPATION AGREEMENT, THE SYSTEM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. RIOONE DISCLAIMS ANY AND ALL RESPONSIBILITIES FOR ANY ACT OR OMISSION TAKEN OR MADE BY PARTICIPANT IN RELIANCE ON THE SYSTEM OR THE INFORMATION IN THE SYSTEM, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. EXCEPT FOR RIOONE'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY OBLIGATIONS HEREUNDER, EITHER PARTY'S BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR VIOLATION OF APPLICABLE LAW, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER 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



SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. RIOONE DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE SYSTEM.

13.4 Other Participants. PARTICIPANT ACKNOWLEDGES THAT OTHER PARTICIPANTS HAVE ACCESS TO THE SYSTEM AND ARE RECEIVING RIOONE'S SERVICES. SUCH OTHER PARTICIPANTS HAVE COMMITTED TO COMPLY WITH THE POLICIES AND PROCEDURES CONCERNING USE OF THE SYSTEM; HOWEVER, THE ACTIONS OF SUCH OTHER PARTICIPANTS ARE BEYOND RIOONE'S CONTROL. ACCORDINGLY, RIOONE DOES NOT ASSUME ANY LIABILITY FOR OR RELATING TO ANY IMPAIRMENT OF THE PRIVACY, SECURITY, CONFIDENTIALITY, INTEGRITY, AVAILABILITY, OR RESTRICTED USE OF ANY INFORMATION ON THE SYSTEM RESULTING FROM ANY PARTICIPANT'S ACTIONS OR FAILURES TO ACT.

13.5 Participant's Actions. PARTICIPANT WILL BE RESPONSIBLE FOR ANY DAMAGE TO RIOONE'S COMPUTER SYSTEM, LOSS OF DATA, AND ANY DAMAGE TO THE SYSTEM CAUSED SOLELY BY THE NEGLIGENCE OF A MEMBER OF PARTICIPANT'S WORKFORCE.

13.6 Unauthorized Access; Lost or Corrupt Data. EXCEPT AS CAUSED BY OR RESULTING FROM RIOONE'S NEGLIGENCE OR MISCONDUCT, RIOONE IS NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO PARTICIPANT'S TRANSMISSION FACILITIES OR EQUIPMENT BY INDIVIDUALS OR ENTITIES USING THE SYSTEM OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT, OR DESTRUCTION OF PARTICIPANT'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SYSTEM. PARTICIPANT IS SOLELY RESPONSIBLE FOR VALIDATING THE ACCURACY OF ALL OUTPUT AND REPORTS OBTAINED THROUGH USE OF THE SYSTEM AND IS RESPONSIBLE FOR MAKING REASONABLE EFFORTS TO PROTECT PARTICIPANT'S OWN DATA AND PROGRAMS FROM LOSS BY IMPLEMENTING APPROPRIATE SECURITY MEASURES, INCLUDING ROUTINE BACKUP PROCEDURES. EXCEPT AS CAUSED BY THE SYSTEM OR SERVICES NOT OPERATING IN ACCORDANCE WITH ITS DOCUMENTATION OR RIOONE'S NEGLIGENCE OR MISCONDUCT, PARTICIPANT HEREBY WAIVES ANY DAMAGES OCCASIONED BY LOST OR CORRUPT DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM PROGRAMMING ERROR, OPERATOR ERROR, EQUIPMENT OR SOFTWARE MALFUNCTION. RIOONE IS NOT RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH RIOONE'S PROVISION OF THE SERVICES.

13.7 Limitation of Liability. EXCEPT FOR RIOONE'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY OBLIGATIONS HEREUNDER, EITHER PARTY'S BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR VIOLATIONS OF APPLICABLE LAW, NOTWITHSTANDING ANYTHING IN THIS PARTICIPATION AGREEMENT TO THE CONTRARY, RIOONE'S AND PARTICIPANT'S AGGREGATE LIABILITY UNDER THIS PARTICIPATION AGREEMENT, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO THE AGGREGATE FEES ACTUALLY PAID BY PARTICIPANT UNDER THIS PARTICIPATION AGREEMENT FOR THE SIX (6) MONTH PERIOD PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM.

13.8 Patient Care. Participant shall be solely responsible for all patient care decisions resulting from or involving the use of the System or the Services. Neither Participant nor any other person shall have any claim or cause of action against RioONE as a result of patient care rendered or withheld in connection with the use of the System or the



Services. Notwithstanding the foregoing, this provision shall not exculpate RioONE from liability for breach of its warranties or representations made under this Participation Agreement.

13.9 Indemnification.

- A. **Intellectual Property Indemnity.** RioONE shall indemnify, defend and hold harmless Participant, its affiliates, and their respective directors, officers, employees and agents (each, an "IP Indemnitee") from and against any and all claims, losses, liabilities, judgments, awards and costs (including costs of investigation and legal fees and expenses) arising out of or related to any claim that the Services infringe, misappropriate or allegedly infringe or misappropriate any patent, trademark, copyright, trade secret right, or other intellectual property right of any third party, including any damages finally awarded attributable to such claim and any reasonable expense incurred by IP Indemnitee in assisting RioONE in defending against such claim. IP Indemnitee shall give RioONE: (x) written notice within a reasonable time after IP Indemnitee is served with legal process in an action asserting such claims, provided that the failure or delay to notify RioONE shall not relieve RioONE from any liability that it may have to IP Indemnitee hereunder so long as the failure or delay shall not prejudice the defense of such claim; (y) reasonable assistance in defending the claim; and (z) sole authority to settle such claim. RioONE will cooperate with IP Indemnitee to pass through to IP Indemnitee any applicable indemnity received from a vendor of third party software included in the System or Services. The foregoing indemnification rights in this Section shall be the exclusive remedy of such IP Indemnitee with respect to the claims to which such indemnification relates if RioONE fully complies with the obligations set forth in this Section; provided, that such IP Indemnitee shall in any event retain the right to seek injunctive or other non-monetary equitable remedies with respect to such claims.
- B. **Additional Remedies.** In the event that the Service, or any portion thereof, is held by a court of competent jurisdiction to infringe or constitute the wrongful use of any third party's proprietary rights and Authorized Users' right to use the Services is enjoined, or if RioONE in the reasonable exercise of its discretion instructs an Authorized User to cease using the Service in order to mitigate potential damages arising from a third party's claim of infringement or misappropriation, the Authorized User shall cease using the Services. In addition to RioONE's obligations under Section 13.9(A), upon Participant's request, RioONE shall immediately perform one of the following as selected by RioONE: (i) replace the Services, with equally suitable and functionally equivalent non-infringing Services; (ii) modify the Services so that they are equally suitable and functionally equivalent to the alleged infringing Service and its use by Authorized Users ceases to be infringing or wrongful; or (iii) procure for Authorized Users the right to continue using the Services. In the event the foregoing remedies are not commercially feasible, promptly following written notice thereof given by Participant, RioONE shall refund to Participant all fees pre-paid by Participant related to the infringing Services.
- C. **Limitation.** Notwithstanding the terms of Section 13.9(A) and Section 13.9(B), RioONE will have no liability for an infringement or misappropriation claim to the extent that it is proximately caused by: (i) modifications to the Services or System made by a party other than RioONE, if a claim would not have occurred but for such modifications and such modifications were not authorized by this Participation Agreement; (ii) the combination, operation or use of the Services or System with equipment, devices, software or data not supplied or recommended by RioONE, if a claim would not have occurred but for such combination, operation or use; or (iii) Authorized Users' use of the Services or System other than in accordance with this Participation Agreement and the Policies and Procedures.
- D. **Exclusive Remedy.** SECTION 13.9 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF RIOONE, AND PARTICIPANT'S EXCLUSIVE REMEDY AGAINST RIOONE, WITH RESPECT TO



ANY INTELLECTUAL PROPERTY INFRINGEMENT.

Section 14: Dispute Resolution

14.1 RioONE and Participant understand and agree that the implementation of this Participation Agreement will be enhanced by the timely and open resolution of any disputes or disagreements between such Parties.

14.2 Each party hereto agrees to use its best efforts to cause any disputes or disagreements between such Parties to be considered, negotiated in good faith, and resolved as soon as possible.

14.3 In the event that any dispute or disagreement between the Parties cannot be resolved to the satisfaction of RioONE's project manager and Participant's project manager within ten (10) days after either such project manager has notified the other in writing of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred in writing to the President of Participant and the President of RioONE (or their respective agents) for consideration. In the event that such officers of Participant and RioONE cannot resolve such dispute or disagreement to their mutual satisfaction within thirty (30) days after the latter person has received written notice of the need to resolve the specific dispute or disagreement within such thirty (30) day period, then the dispute or disagreement shall be then be submitted to mediation by an organization or company specializing in providing neutral, third-party mediations.

14.4 No resolution or attempted resolution of any dispute or disagreement pursuant to this Article shall be deemed to be a waiver of any term or provision of this Participation Agreement or consent to any breach or default unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Further, nothing in this Section 14 Dispute Resolution shall be deemed to limit a party's access to the court system to pursue a remedy that is limited to injunctive relief

Section 15: Applicable Law

The interpretation of this Participation Agreement and the resolution of any disputes arising under this Participation Agreement shall be governed by the laws of the State of Texas. If any action or other proceeding is brought on or in connection with this Participation Agreement, the venue of such action shall be exclusively in Hidalgo County, Texas.

Section 16: Insurance

16.1 Participant Insurance. The Participant shall obtain and maintain insurance coverage for general and professional liability with coverage limits that are reasonable and customary for a party engaged in the activities of the Participant in Texas, and as may be described more specifically in the Policies and Procedures.

16.2 RioONE Insurance. RioONE shall maintain insurance coverage for general, professional and cyber liability with coverage limits that are reasonable and customary for a party engaged in the activities of RioONE in Texas.

Section 17: No Assignment

This Participation Agreement may not be assigned or transferred by the Participant without the prior written consent of RioONE. This Participation Agreement shall inure to the benefit of and bind successors and permitted assigns of Participant and RioONE.



Section 18: Supervening Circumstances

No party to this Participation Agreement shall be deemed in violation of this Participation Agreement if it is prevented from performing any of the obligations under this Participation Agreement by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. The occurrence of a force majeure event does not limit or otherwise affect RioONE’s obligation to implement its disaster recovery and business continuation plans.

Section 19: Severability

Any provision of this Participation Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Participation Agreement, and such other provisions shall remain in full force and effect.

Section 20: Notices

All notices required or permitted under this Participation Agreement shall be in writing and sent to the other party at the address specified below or to such other address as either party may substitute from time to time by written notice to the other and shall be deemed given upon receipt of such notice whether by certified mail, postage prepaid, or personal or courier delivery as follows:

(i) If to RioONE: 5501 S. McColl
Edinburg, Texas 78539
Attn: General Counsel/Legal Department

(ii) If to Participant: **Hidalgo County Health Department**
1304 S. 25th Avenue
Edinburg, TX 78539

Attn: _____

with a copy to: 5501 S. McColl Rd
Edinburg, TX 78539
Attn: RioOne IT-Director

Attn: RioOne Privacy Officer

Section 21: Waiver

No term of this Participation Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.



Section 22: Complete Understanding and Amendments

This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement, and there are no other written or oral understandings or promises between the Parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement. All modifications or amendments to this Agreement shall be in writing, contained in a document whose sole purpose is to amend or modify this Agreement, and signed by authorized representatives of the respective Parties.

Section 23: No Medicare Exclusion

Participant hereby represents and warrants that it is not and at no time has been excluded from participation in any federally-funded health care program, including Medicare and Medicaid. Participant hereby agrees to immediately notify RioONE of any threatened, proposed, or actual exclusion from any federally-funded program, including Medicare or Medicaid. In the event that Participant is excluded from any federally-funded health care program during the term of this Agreement, or if at any time after the Effective Date of this Agreement, it is determined that Participant is in breach of this section, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate. RioONE shall screen all of its current and prospective owners, legal entities, officers, directors, employees, contractors, and agents ("Screened Persons") against (a) the United States Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and (b) the General Services Administration's List of Parties Excluded from Federal Programs (collectively, the "Exclusion Lists") to ensure that none of the Screened Persons (y) are currently excluded, debarred, suspended, or otherwise ineligible to participate in Federal healthcare programs or in Federal procurement or nonprocurement programs, or (z) have been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but have not yet been excluded, debarred, suspended, or otherwise declared ineligible (each, an "Ineligible Person"). If, at any time during the term of this Agreement any Screened Person becomes an Ineligible Person or proposed to be an Ineligible Person, RioONE shall immediately notify Participant of the same. Screened Persons shall not include any employee, contractor or agent who is not providing Services under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate original as of the date(s) indicated below:

RioONE Health Network, Inc.

Participant: Hidalgo County Health Department

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

E-Mail: _____



Exhibit A

Technical Specifications and Description of System

See Attachment



Exhibit B

Services Provided by RioONE

RioOne provides or arranges for the provision of data transmission and related services to allow Participants to conduct searches for Patient Data, and to exchange Patient Data identified from those searches, from a federated computer system that facilitates the sharing of Patient Data among disparate Participants. RioOne's services include establishing and applying standards for such exchange of Patient Data. RioOne has access to and/or is responsible to maintain some or all of such Patient Data in the performance of RioOne's services. RioOne does not aggregate or maintain a repository of Patient Data.¹

RioOne owns and operates an Internet-based system that provides for secure electronic exchange of Protected Health Information ("PHI") among persons or entities subject to this Participation Agreement. The primary service offered by RioOne is the "HIE Service". The HIE Service consists of 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 PD and RLS to operate and process Queries and Responses and Direct messages through the HIE Service.

- i. The PD is a list of all RioOne Participants who may request that RioOne obtain and transfer to it PHI from another Participant ("Query") or send or make PHI available for RioOne 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 RioOne to push secure messages to other designated Participants.
- ii. RioOne agrees to make available to Participant its HIE Service consisting of its PD, RLS, Direct and Subscription through which Participant can send to, and receive from, other Participants PHI regarding Individuals who have executed RioOne and Health Information Portability and Accountability Act of 1996 ("HIPAA") compliant Authorizations to allow data exchange through RioOne.
- iii. RioOne will maintain and operate the HIE Service subject to the terms and conditions of this Participation Agreement, the RioOne Privacy and Security Manual, the applicable Texas Health Services Authority ("THSA") requirements, and the Business Associate Agreement, attached as **Exhibit D**.
- iv. RioOne may use agents and subcontractors to maintain and operate the HIE Service, each of whom will be required, through a written agreement, to comply with the applicable terms and conditions of this Participation Agreement.
- v. RioOne will make all reasonable efforts to make the HIE Service available to Participant 24 hours a day, 7 days a week; however, the HIE Service availability may be temporarily suspended for scheduled

¹ Under Model #4, the HIO operates a federated health information exchange, pursuant to Participants make information available to other Participants who may gain access to that information upon request, and does not aggregate or maintain a repository of Patient Data. This material is base on the Model Contract for Health Information Exchange published by Markle Foundation (www.connectingforhealth.org).



maintenance or unscheduled interruptions. RioOne will use its best efforts to provide reasonable advance notice of any such suspension or interruption and to restore service as quickly as practicable.



Exhibit C

Service Fees

RioONE will provide an electronic community health record exchange system and will provide user licenses to Participants across Hidalgo and Starr Counties to access clinical information at the point of care. The costs for these licenses are set out below.

Please Note. For Physicians that currently have Cerner PowerWorks implemented within their clinic, there will be no cost to participate within RioONE Health Information Exchange until June 12, 2014, upon which a participating provider will have the option to terminate his/her participation within RioONE and incur no costs, or continue to participate in the RioONE Health Information Exchange at the agreed upon rates presented at the time of renewal.

Additionally, there will be no costs to Hidalgo County Health Department to participate in the RioONE Health Information Network, when the participation trial period ends. Once the trial period has ended, the Hidalgo County Health Department will have the option to terminate his/her participation in RioONE and incur no costs, or continue to participate in the RioONE Health Information Exchange at no costs.

Physician or medical group:

<u>License</u>	<u>Cost per Physician</u>
No cost; Fully Funded by MHM (Methodist Healthcare Ministries) Grant	No cost; Fully Funded by MHM (Methodist Healthcare Ministries) Grant

Hospital:

<u>Hospital Size (# of beds)</u>	<u>Cost per month</u>
Not Applicable; Clinic – No Beds	Not Applicable

Independent laboratory/ Independent radiology supplier/ Independent pharmacy; or Public health department

<u>License</u>	<u>Cost per month</u>
No cost; Fully Funded by MHM (Methodist Healthcare Ministries) Grant	No cost; Fully Funded by MHM (Methodist Healthcare Ministries) Grant

Renewal Service Fees: Service Fee Rates will be presented to Provider at the time of renewal. By signing this Agreement, Providers are not obligated to accept the proposed Service Fee Rates.



Exhibit D
Business Associate Agreement

This Business Associate Agreement amends and is part of the RioONE Health Information Exchange Participation Agreement (“Participation Agreement”) between Participant **Hidalgo County Health Department** (“Covered Entity”) and RioONE Health Network, Inc. (“Business Associate”).

1. Purpose. Participant acknowledges that it is a “Covered Entity” and RioONE acknowledges that it is a “Business Associate” as those terms are defined under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”) and its implementing regulations, specifically 45 CFR § 160.103. HIPAA requires Covered Entity to obtain satisfactory written contractual assurances from its business associates before furnishing them with Protected Health Information (“PHI”) or permitted them to obtain or create PHI to perform business associate functions. This Business Associate Agreement is entered into to provide Covered Entity with the contractual assurances required under HIPAA.

2. Definitions. Terms used but not otherwise defined in this Business Associate Agreement shall have the meaning ascribed in 42 CFR Section 160.103, 164.501, or elsewhere, in the Regulations.

- A. “**ePHI**” means PHI that is maintained or transmitted in electronic media
- B. “**Breach**” means with respect to PHI, the impermissible acquisition, access, use or disclosure of Unsecured PHI which compromises the security or privacy of the PHI.
- C. “**Business Associate Functions**” means all functions performed by Business Associate under the Participation Agreement on behalf of Covered Entity which involve the creation of, access to, use or disclosure of PHI by Business Associate or its agents or subcontractors.
- D. “**HIPAA**” means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d to 1320d-7, and future amendment thereto and the Regulations issued thereunder.
- E. “**PHI**” means protected health information as defined in the Regulations, which is created, obtained or used by Business Associate in the performance of one or more Business Associate Functions for Covered Entity.
- F. “**Regulations**” means the final Regulations implementing the privacy and security provisions of HIPAA as amended from time to time. The Regulations are presently codified at 45 C.F.R. Parts 160, 162 and 164.
- G. “**Security Incident**” means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- H. “**Unsecured PHI**” means PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals by one or more of the methods outlined by the Department of Health and Human Services in 74 Fed. Reg. 70 (2009) (to be codified at 45 C.F.R. §160 and §164).

3. Permitted Uses and Disclosures of PHI. Business Associate shall only use and disclose PHI for the following purposes:



- A. To perform Business Associate Functions.
- B. As needed for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

4. Special Conditions on Disclosure for Business Associate’s Purposes. Before Business Associate may disclose PHI to another party for a reason described in subparagraph 2b, one of the following two conditions must be met; either –

- A. the disclosure must be *required by law*; or
- B. Business Associate must obtain *reasonable assurances* from the person to whom the PHI is disclosed that such person will safeguard the PHI and further use and disclose it only as required by law or for the purpose for which Business Associate disclosed it to such person; and such person must agree in writing to notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. Assurances of Business Associate. As an express condition of performing Business Associate Functions, Business Associate agrees to:

- A. Comply with the requirements of Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 17921-17954, which are applicable to Business Associate, and comply with all regulations issued by the Department of Health and Human Services (HHS) to implement HITECH, as of the date by which Business Associate is required to comply with HITECH and the related regulations. Such requirements are hereby incorporated by reference into this Business Associate Agreement.
- B. Use and disclose PHI only as permitted or required by this Business Associate Agreement, or as otherwise required by law. Business Associate shall not use or disclose information in a manner that would violate any applicable law if done by Covered Entity.
- C. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Business Associate Agreement.
- D. Report to Covered Entity’s designated privacy official, without unreasonable delay but in no event more than five (5) business days of discovery by Business Associate, any acquisition, access, use or disclosure of PHI not provided for in this Business Associate Agreement or not permitted under the Regulations, including any impermissible access, acquisition, use or disclosure that is a Breach of Unsecured PHI, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall conduct a risk assessment with respect to any impermissible access, acquisition, use or disclosure to determine if there is a significant risk of financial, reputational or other harm to the individual whose PHI was impermissibly acquired, accessed, used or disclosed. Business Associate shall notify Covered Entity of any such impermissible access, acquisition, use or disclosure, including the following information in such notice:
 - i. A brief description of how the impermissible access, acquisition, use or disclosure occurred and how and when it was discovered.



- ii. A description of whether Unsecured PHI was involved in the impermissible access, acquisition, use or disclosure, and the results of Business Associate's risk assessment.
- iii. The steps Business Associate is taking to further investigate the impermissible access, acquisition, use or disclosure, to mitigate losses, and to protect against further impermissible access, acquisition, use or disclosure.

Business Associate shall cooperate with Covered Entity in mitigating any harmful effects of any such impermissible access, acquisition, use or disclosure, and in making any required notification to individuals in the case of a Breach as determined by Covered Entity.

- E. Provide individuals with access to and copies of PHI maintained by Business Associate in designated record sets, and limit fees for access and copying, all in accordance with Covered Entity's obligations to individuals under 45 C.F.R. § 164.524.
- F. Notify Covered Entity within three (3) business days of any request by individuals to amend PHI maintained by Business Associate in designated record sets, direct the requesting individual to Covered Entity for handling of such request, cooperate with Covered Entity in the handling of such request, and incorporate any amendment accepted by Covered Entity in accordance with §164.526 of the Regulations. Business Associate is not authorized to independently agree to any amendment of PHI.
- G. Maintain a record of those disclosures of PHI by Business Associate or its agents or subcontractors which are subject to the individual's right to an accounting under § 164.528 of the Regulations and report such disclosures to Covered Entity within five (5) business days of request by Covered Entity in a form permitting Covered Entity to respond to an individual's request for an accounting.
- H. Make its internal practices, books and records relating to the use and/or disclosure of PHI available to the Secretary of HHS or his or her designees for purposes of determining Covered Entity's compliance with the Regulations.
- I. Return to Covered Entity or destroy (and not retain a copy) all PHI in its possession, upon the termination of the Participation Agreement or as soon as such PHI is no longer needed by Business Associate to perform its responsibilities hereunder, whichever comes first, and require its agents and subcontractors to do likewise. To the extent that return or destruction is not feasible, the protections of this Business Associate Agreement shall remain in effect for so long as Business Associate or its agents or subcontractors have possession of or access to such PHI, and Business Associate agrees to limit further uses and disclosures of the PHI to those purposes which make return or destruction infeasible.
- J. Ensure that all agents and subcontractors who will create, receive, use or disclose PHI to perform a Business Associate Function under this Business Associate Agreement agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate.
- K. Ensure that all other agents and contractors of Business Associate who have access to PHI to perform other services (other than Business Associate Functions) to Business Associate agree in writing to take reasonable steps to safeguard the privacy of PHI.



- L. Comply with any voluntary restriction on use or disclosure of PHI accepted by Covered Entity under § 164.522(a) of the Regulations which is properly communicated to Business Associate.
- M. Comply with any reasonable requests by individuals under § 164.522(b) of the Regulations to receive communications of PHI by alternative means or at alternate locations when communicated to Business Associate by Covered Entity or directly by the individual.
- N. Limit the use and disclosure of PHI for purposes described in this Business Associate Agreement to the minimum necessary to perform the required function. Business Associate shall comply with any additional requirements for the determination of minimum necessary as are required from time to time by the Regulations, as amended

6. Security Assurances of Business Associate. If Business Associate will create, receive, maintain or transmit ePHI on behalf of Covered Entity, it further agrees to:

- A. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI.
- B. Ensure that any agent, including a subcontractor, to whom it provides ePHI, or with whom it contracts to create, receive, maintain or transmit ePHI, agrees to implement reasonable and appropriate safeguards to protect such ePHI.
- C. Report to Covered Entity any Security Incident of which Business Associate becomes aware.
- D. Comply with any other required provision of the Regulations, as amended by the HITECH Act.

7. Responsibility of Covered Entity. Covered Entity agrees to:

- A. Notify Business Associate promptly if Covered Entity agrees to any voluntary restrictions on the use or disclosure of PHI which will affect Business Associate's use or disclosure of PHI under the Participation Agreement.
- B. Notify Business Associate of any reasonable requests by individuals under §164 522(b) of the Regulations to receive communications of PHI by alternative means or at alternative locations, if such requests will affect Business Associate's services.
- C. Provide Business Associate with a copy of any amendment to PHI which is accepted by Covered Entity under §164.526 of the Regulations which Covered Entity believes will apply to PHI maintained by Business Associate in designated record sets.

8. Supervening Law. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Business Associate, amend this Business Associate Agreement in such manner as it determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty (30) days of Covered Entity's notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either party may terminate the



Participation Agreement on not less than thirty (30) days' written notice to the other. If not so terminated, the amendment or amendments proposed by Covered Entity shall become effective.

9. Term and Termination.

- A. **Term.** This Business Associate Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, including return or destruction of all PHI in Business Associate's possession (or in the possession of Business Associate's agents and subcontractors), unless sooner terminated as provided herein. It is expressly agreed that the terms and conditions of this Business Associate Agreement designed to safeguard PHI shall survive expiration or other termination of the Participation Agreement and shall continue in effect until Business Associate has performed all obligations under this Business Associate Agreement.
- B. **Termination by Covered Entity.** Covered Entity may immediately terminate the Participation Agreements, if Covered Entity makes the determination that Business Associate has breached a material term of this Business Associate Agreement. Alternatively, Covered Entity may choose to provide Business Associate with written notice of the existence of an alleged material breach, and afford Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure to take reasonable steps to cure the breach is grounds for the immediate termination of this Business Associate Agreement.
- C. **Termination by Business Associate.** If Business Associate determines that Covered Entity has breached a material term of this Business Associate Agreement, Business Associate shall notify Covered Entity and provide Covered Entity an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure of Covered Entity to take reasonable steps to cure the breach is grounds for the immediate termination of this Business Associate Agreement.
- D. **Return/Destruction infeasible.** In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

10. Miscellaneous.

- A. **Survival.** The respective rights and obligations of Business Associate and Covered Entity hereunder shall survive termination of this Business Associate Agreement according to the terms hereof and the obligations imposed on Covered Entity under HIPAA.
- B. **Interpretation; Amendment.** This Business Associate Agreement shall be interpreted and applied in a manner consistent with Covered Entity's obligations under HIPAA. Except as provided in Section 8 of this Business Associate Agreement, all amendments shall be in writing and signed by both parties, except that this Business Associate Agreement shall attach to additional Participation Agreements entered into between the parties in the future without the necessity of amending this Business Associate Agreement each time. This Business Associate Agreement is intended to cover the entire Business Associate *relationship* between the parties, as amended, from time to time, through Participation Agreements or other means.



C. **Waiver.** A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

D. **No Third-Party Beneficiaries.** Nothing express or implied in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies or obligations.

This Business Associate Agreement is effective _____, 2014.

IN WITNESS WHEREOF, each of the undersigned has caused this Business Associate Agreement to be duly executed in its name and on its behalf.

Business Associate: RioONE Health Network, Inc.

Participant Covered Entity: Hidalgo County Health Department

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____ Date: _____

Title: _____ Date: _____