



SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE GENERAL PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT (this “**Participation Agreement**” or “**Agreement**”) is made and entered into as of the Effective Date set forth in Exhibit B (the “**Effective Date**”) by and between SacValley MedShare, a California nonprofit public benefit corporation that will operate the SacValley MedShare Healthcare Information Exchange (“**SACVALLEY MEDSHARE**”), and the party identified in Exhibit B (“**Participant**”), collectively, the “**Parties**,” with reference to the following Recitals and upon the terms and conditions set forth below:

RECITALS

- A. **Whereas**, SACVALLEY MEDSHARE operates an electronic health information exchange (the “**Exchange**”) organized and operated for the purpose of facilitating the aggregation and sharing of electronic protected health information (“**PHI**”) and clinical data and making the same available for Permitted Uses such as for treatment, payment operations, public health reporting and other lawful purposes, in a manner that complies with all Applicable Laws (defined below); and
- B. **Whereas**, SACVALLEY MEDSHARE does not operate the Exchange directly, but contracts for it through a hosted service provided by Informatics Corporation of America (“**ICA**”) under a Software License and Services Agreement (as amended from time to time, the “**ICA Agreement**”); and
- C. **Whereas**, Participant desires to participate in the Exchange, in accordance with the terms and conditions of this Agreement; **NOW THEREFORE**, in consideration of the Recitals stated above and the following terms and conditions, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS OF PARTICIPATION

1.0 GENERAL TERMS.

- 1.1 Defined Terms.** Capitalized terms in this Agreement, including Exhibits and Attachments hereto shall have the definitions stated in Section 12 or elsewhere in this Participation Agreement or the Business Associate Agreement (Exhibit A), or as defined in the HIPAA Regulations.
- 1.2 Related Parties.** As used herein, “**Related Parties**” means, with respect to a Party, such Party’s Affiliates, and such Party’s and its Affiliates’ Authorized User(s), directors, officers, employees, agents, and independent contractors.
- 1.3 Incorporation of Exhibits, Policies and Procedures; System Requirements and Security Requirements.** The Policies and Procedures, the System Requirements, and the Security Requirements (collectively, the “**Participation Requirements**”) are incorporated in this Agreement as if fully set forth. Participant shall comply with the Participation Requirements. Exhibits A through H are attached and incorporated herein by reference. SACVALLEY MEDSHARE will provide Participant with a hard copy of the Participation Requirements within five (5) business days of a written request therefor. SACVALLEY MEDSHARE may change the Participation Requirements, in its reasonable discretion, at any time, and the change or modification shall be deemed effective and binding upon Participant upon not less than thirty (30) days’ Notice, which Notice will include a hard copy of such changes or modifications. In the event SACVALLEY MEDSHARE adopts a new, or modifies an existing, Participation Requirement (including as necessary to comply with Applicable Law) in a way that materially changes Participant’s obligations, Participant’s rights, Participant’s potential exposure to liability or damage, or Participant’s ability to participate in the Exchange (each of which will be deemed to constitute a material change) then Participant may terminate this Agreement under Section 2.3. It is the Participant’s responsibility to keep informed of and compliant with new laws and amendments to Applicable Law, and to the Participation Requirements.
- 1.4 NP Participants.** SACVALLEY MEDSHARE shall ensure that each NP Participant enters into a Participation Agreement that contains substantially the same terms as the Participation Agreements of similarly situated NP Participants (as well as Participant, if similarly situated), and requires the NP Participant to adhere to uniform standards for Data privacy, security and use; it being acknowledged, however, that NP Participants will have varying ability to contribute Data.

2.0 TERM AND TERMINATION.

- 2.1 Initial Term.** The initial term of this Agreement (the “**Initial Term**”) shall commence on the Effective Date and terminate on the following December 31 (the “**Termination Date**”) unless terminated early or renewed as provided herein.
- 2.2 Renewal Term.** Unless SACVALLEY MEDSHARE has ceased to make the Exchange available and no longer makes it available to any party, upon Participant’s request, this Agreement shall be renewed for successive additional one-year renewal terms (“**Renewal Terms**”). Sixty (60) days prior to the end of the Initial Term and each Renewal Term of the Participation Agreement, SACVALLEY MEDSHARE shall send a new Exhibit B to the Participant. Any changes to fees in such Exhibit B are subject to Section 3.2. If Participant does not provide a notice of non-renewal to SACVALLEY MEDSHARE on or before the date thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, this Agreement will automatically renew for a Renewal Term.

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2.3 Termination for Cause. Except as otherwise set forth in Exhibit A (Business Associate Agreement), Either Party may terminate this Agreement early, upon not less than sixty (60) days' Notice, as follows:

- (i) Participant may terminate if Participant objects (A) to a material change to the Participation Requirements, which are adopted by SACVALLEY MEDSHARE following the Effective Date, (B) to any change in fees pursuant to Section 3.1 and 3.2, (C) to any change to the System Requirements, and/or (D) to the terms of any third-party license agreement with which Participant is required to comply under Section 5.1.
- (ii) either Party may terminate if the other Party fails to cure a material breach of this Participation Agreement within thirty (30) days of receipt of notice specifically describing the breach, or
- (iii) either Party may terminate if the other Party commits a Serious Breach of Privacy or Security, or
- (iv) either Party may terminate if the other Party fails to cure a material breach of the Business Associate Agreement within thirty (30) days after notice thereof, or
- (v) either Party may terminate if such Party determines that its continued participation in this Agreement would cause it to violate any Applicable Law, or would place it at material risk of suffering any sanction, penalty, or liability.

2.4 Termination without Cause. Notwithstanding anything to the contrary contained elsewhere in this Agreement and Exhibits, Participant has the right to terminate the Agreement without cause at any time, upon not less than thirty (30) days' Notice.

2.5 Effect of Termination. Access to the Exchange shall cease immediately upon termination of this Agreement. Notwithstanding termination, neither Participant nor SACVALLEY MEDSHARE shall be relieved of their duties and obligations to protect the privacy of, and secure, store and maintain records of (as applicable), the transmission of Data occurring prior to termination.

3.0 FEES AND PAYMENT.

3.1 Participation Fees. As consideration for the right to access the Exchange through the Hosted System, Participant shall pay "Participation Fees" in the total amount indicated in Exhibit B. The initial Participation Fee (as specified in Exhibit B) shall be due upon execution of this Agreement. Unless otherwise provided herein or in Exhibit B, annual Participation Fees for the Initial Term shall be due quarterly in advance, commencing upon the Effective Date, and annually starting on January 1 of the next calendar year and each January 1 thereafter. Participant may withhold payment of amounts subject to good faith dispute. Participant shall bear all costs and expenses incurred by it in connection with its Participation and performance under this Agreement.

3.2 Changes to Fees. Subject to the terms of this Section 3.2 and subject to Participant's right of termination under Section 2.3, SACVALLEY MEDSHARE reserves the right to determine in its reasonable discretion the appropriate fee structure and to change the formula for calculating Participation Fees i.e. the amount of the annual fee, by giving Participant notice of the change and the new annual Participation Fee in accordance with Section 2.2, not less than sixty (60) days prior to the termination of the then current Initial Term or Renewal Term. If SACVALLEY MEDSHARE desires to increase any fees payable by Participant, SACVALLEY MEDSHARE must ensure that the increase applies equally to Participant and all similarly-situated NP Participants (both current and future).

4.0 CONDITIONS AND LIMITATIONS ON PARTICIPATION IN THE EXCHANGE.

4.1 Right to Access the Exchange. Participant is hereby granted access to and the right to use the Exchange for Permitted Uses (described below). Participant will perform its obligations under the terms and conditions of this Participation Agreement, the Business Associate Agreement (Exhibit A), and the Participation Requirements and will register its Authorized User(s) with the Exchange.

4.2 Scope of Participation / Use of Data by Participant.

4.2.1 Minimum Necessary Use of Data. The scope of Participant's participation in the Exchange shall correspond:
(i) subject to Section 4.2.3, to a level that ensures that Participant is able to transmit Data to, and/or retrieve Data from the Exchange, and use, view or disclose such Data for a Permitted Use, and
(ii) to the minimum extent necessary to limit unnecessary or inappropriate access to and disclosure of PHI in accordance with the Policies and Procedures and Applicable Law.

4.2.2 Participant Use. Except as otherwise provided herein, Participant shall only use the Exchange and Data within the Exchange for a Permitted Use. A "Permitted Use" means, and is limited to:
(i) patient treatment and/or obtaining payment for treatment, and

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(ii) once Data has been obtained from the Exchange for a purpose described in clause “(i)” above, any other lawful purpose.

The foregoing does not preclude a Participant from using Data pertaining to an individual with whom Participant has a patient relationship for any lawful purpose. The Parties acknowledge that once a Participant has obtained Data through the Exchange for a purpose described in clause “(i)” above, the Data is not subject to the restrictions of this Agreement, and may be used by the Participant for any lawful purpose.

4.2.3 Contribution of Data by Participant. Participant shall provide data to the Exchange as specified in Exhibit C.

4.3 Permitted Use of Data by SacValley MedShare.

4.3.1 The Parties acknowledge and agree that SACVALLEY MEDSHARE is a Business Associate; it is not a Health Care Provider. SACVALLEY MEDSHARE has no ownership interest in Data or derivatives thereof. Except as specified herein, SACVALLEY MEDSHARE does not make any warranties or representations whatsoever about the Data, and hereby expressly disclaims any and all warranties or representations of any kind including, but not limited to warranties and representations relating to the quality, accuracy, completeness or relevancy of the Data. The Data from NP Participants will be made available to Participant only if, when, and to the extent it is provided by such NP Participant to the Exchange.

4.3.2 Notwithstanding the foregoing, SACVALLEY MEDSHARE shall make reasonable and appropriate efforts to:

- (i) accurately represent and communicate Data it receives from the Exchange Community; and,
- (ii) perform SACVALLEY MEDSHARE’s functions with respect to aggregation of Data pertaining to a Patient in the LPR with a reasonable degree of accuracy for the benefit of Participant and NP Participants. SACVALLEY MEDSHARE shall promptly notify the Exchange Community of any inaccuracies in Data provided through the Exchange. SACVALLEY MEDSHARE shall not directly access or use the Data, and instead all access to Data is limited to access by ICA, subject to Section 7.4. SACVALLEY MEDSHARE shall permit ICA to use the Data only to provide the Hosted Services and support the Exchange as set forth in this Agreement.

4.3.3 SACVALLEY MEDSHARE may disclose Patient Data placed in or made available through the Exchange by Participant to any health plan (as defined in the HIPAA Regulations) for purposes of payment (as defined in the HIPAA Regulations). As permitted by the HIPAA Regulations at 45 CFR § 164.514(d)(3)(iii)(B), in making such disclosures SACVALLEY MEDSHARE may rely on the disclosure requested by the health plan as the minimum necessary information for the purpose for which it is requested.

4.3.4 Any provision of the Participation Agreement (including the Business Associate Agreement attached thereto as Exhibit A) to the contrary notwithstanding, SACVALLEY MEDSHARE may:

- (i) use Patient Data placed in or made available through the Exchange by Participant to provide data aggregation services (as defined in the HIPAA Regulations) to Participant and other participants in the Exchange; and
- (ii) de-identify Patient Data placed in or made available through the Exchange by Participant, by aggregation or otherwise in accordance with the HIPAA Regulations, and use or disclose such de-identified data without restriction; provided that, except with the prior written approval of the Participant or as otherwise permitted by this Agreement, SACVALLEY MEDSHARE shall not disclose to anyone other than the Participant aggregate data that is identifiable with or attributable to the Participant or, if the Participant is a member of a health system, to the Participant’s health system.

4.4 Participation with Other Health Information Exchanges

4.4.1 Sequoia Project. SACVALLEY MEDSHARE will use reasonable efforts, in consultation and cooperation with Participant, to become a participant in The Sequoia Project (at www.sequoiaproject.org), eHealth eXchange, and to permit the exchange of Data in accordance with the standards of the Sequoia Project as soon as possible following the Effective Date. Based on the foregoing, when SACVALLEY MEDSHARE becomes a participant in The Sequoia Project, unless the Participant is itself a direct participant in The Sequoia Project, the Participant agrees to comply with the following provisions of the Sequoia Project Data Use and Reciprocal Support Agreement (DURSA), as amended from time to time: Participant shall (i) comply with all applicable law; (ii) reasonably cooperate with SACVALLEY MEDSHARE on issues related to the DURSA; (iii) Transact message content only for a permitted purpose; (iv) use message content received from another Participant in accordance with the terms and conditions of the DURSA; (v) within three (3) days after determining that a breach occurred, report the breach to SACVALLEY MEDSHARE; and (vi) refrain from disclosing to any other person any passwords or other security measures issued to the Participant by SACVALLEY MEDSHARE.

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4.4.2. Reciprocal Agreements. SACVALLEY MEDSHARE may enter into agreements for the reciprocal exchange of Participant's health information with other Health Information Exchanges (each such agreement, a "DURSA"), provided that each DURSA complies in substance with the following provisions, at a minimum:

(a) Limitation on Use. The DURSA restricts the uses for which the other Health Information Exchange may request health information from SACVALLEY MEDSHARE to Permitted Purposes, as defined in the SACVALLEY MEDSHARE Participation Agreement.

(b) Authority to Request and Disclose Data. The other Health Information Exchange represents (i) that its participants are health care providers or are otherwise eligible to receive and disclose health information for Permitted Purposes, and (ii) that the other Health Information Exchange has valid agreements with its participants under which it is authorized by them to request, receive and disclose health information on their behalf.

(c) Privacy and Security. The other Health Information Exchange agrees:

(i) that it will not use or disclose health information received from SACVALLEY MEDSHARE for any purpose not permitted by the DURSA (i.e., for any purpose that is not a Permitted Purpose under the SACVALLEY MEDSHARE Participation Agreement);

(ii) that it will maintain a secure environment in compliance with the requirements of the HIPAA Security Rule (45 CFR Parts 160 and 164, Subpart C), including effective processes to authenticate its participants and their authorized users;

(iii) that it will promptly report to SACVALLEY MEDSHARE any breach of unsecured protected health information in accordance with the requirements of the Data Breach Notification Rule (45 CFR Parts 160 and 164, Subpart C); and

(iv) that it will otherwise comply with all applicable laws and regulations relating to the privacy, security, use and disclosure of health information received from SACVALLEY MEDSHARE.

4.5 Disclosure to Coroners and Medical Examiners. In addition to the purposes set forth in Section 4.2 and Section 4.3 of the Participation Agreement, SACVALLEY MEDSHARE may disclose health information contributed to the Exchange by Participant covered entity to coroners and medical examiners for the purpose of identifying a deceased person, determining a cause of death, or other duties of the coroner or medical examiner as authorized by law, as permitted by 45 CFR § 164.512(g)(1).

4.6 Disclosure to Public Health Authorities. In addition to the purposes set forth in Section 4.2 and Section 4.3 of the Participation Agreement, SACVALLEY MEDSHARE may disclose health information contributed to the Exchange by Participant covered entity to public health authorities that are authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as permitted by 45 CFR § 164.512(b)(1)(i).

4.7 Disclosure Pursuant to Authorization.

4.7.1 Disclosure. In addition to the purposes set forth in Section 4.2 and Section 4.3 of the Participation Agreement, SACVALLEY MEDSHARE may disclose health information contributed to the Exchange by Participant pursuant to and as permitted by an individual authorization that complies with the requirements of applicable law and regulation, including the HIPAA Regulations and the California Confidentiality of Medical Information Act.

4.7.2 Verification of Authorization. SACVALLEY MEDSHARE and the Participant will review the form or forms of authorization to be used by the requesting party, and will agree upon (i) an acceptable form of authorization, and (ii) a dataset that may be released pursuant to the approved form of authorization. SACVALLEY MEDSHARE may rely upon a representation of the requester that it has obtained an authorization from the individual in the approved form, that the authorization has not expired, and that it has the authorization on file and will make it available to SACVALLEY MEDSHARE and the Participant upon request. SACVALLEY MEDSHARE will conduct a periodic, retroactive review of a sample of the authorizations obtained by the requester, and shall notify the Participant if it appears that any release was not authorized. SACVALLEY MEDSHARE shall have no liability whatever to Participant for any release made in accordance with this section, even if it is determined that the release was not in fact authorized.

4.7.3 Maintenance of Authorizations. SACVALLEY MEDSHARE will obtain copies of all authorizations pursuant to which it releases Participant's health information, and will maintain them and make them available to Participant for six (6) years following the release.

4.7.4 Fee. SACVALLEY MEDSHARE may receive a reasonable cost-based fee from the requesting party to cover the cost of preparing and transmitting the information provided pursuant to section 4.7 of this agreement, or such other fee as may be permitted by applicable law and regulation

5.0 SOFTWARE LICENSE/ACCESS TO HOSTED SYSTEM.

5.1 License to Use Software and Hosted System. SACVALLEY MEDSHARE grants to Participant for the Term, a royalty-free, non-exclusive, nontransferable, non-assignable, non-sub-licensable, and limited right for Participant and its Authorized Users to use the Software and access the Hosted System for the sole purpose of participating in the Exchange pursuant to this Participation Agreement. Participant acknowledges that the Software may have been licensed to SACVALLEY MEDSHARE by third parties. This license includes any additional software developed by or for SACVALLEY MEDSHARE for the security, privacy and exchange of Data through the Hosted System. Such new or revised Software shall automatically become subject to this Agreement and available to Participant upon its installation or incorporation into the Hosted System. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE SOFTWARE IS LICENSED "AS IS" AND SACVALLEY MEDSHARE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

5.2 Software/Hardware System. SACVALLEY MEDSHARE will provide, and Will Cause (as defined in Section 12.1) ICA to provide, a secure viewer web-based application to Participant to securely retrieve and view the Data provided, Participant has access to an Internet connection and an Internet browser with computer equipment and software (other than the SACVALLEY MEDSHARE HIE Software) that meets or exceeds the minimum configuration requirements ("System Requirements") set forth on Exhibit D, which may be amended or supplemented from time to time, subject to Participant's right of termination under Section 2.3.

5.3 Participant's Computer System Security Requirements. At all times, Participant, at its sole cost and expense, shall establish, implement and update its internal security system, specifications and procedures for its computer servers, software and internet connections so that they meet or exceed the "Security Requirements" set forth on Exhibit E, which may be amended or supplemented as provided in Section 1.3.

5.4 Participant's Limited Use of the Software, Hosted System; Documentation. Participant shall not (and it shall not permit its Authorized Users to):

- (i) attempt to interfere with or disrupt the Hosted System;
- (ii) sell, assign, rent, lease, resell, license, sub-license or otherwise provide access to or distribute the Software or the Hosted System or documentation to anyone other than its Authorized Users;
- (iii) use the Software, Hosted System or Documentation for the purposes of providing commercial data processing services, such as commercial use in a service bureau, timesharing, remote batch, or similar commercial operation, to third parties;
- (iv) by reverse engineering or other process(es) create or attempt to create, or permit others to create or attempt to recreate the Software or the Hosted System;
- (v) copy, modify, or distribute any portion of the Software, the Hosted System or any Documentation (except for internal use) related to the Software or the Hosted System;
- (vi) transfer or assign any of its rights hereunder;
- (vii) create any derivative works based on the Software, Hosted System or documentation (except for internal use);
- (viii) export, re-export, divert or transfer the Software, Hosted System or documentation outside the United States; or
- (ix) remove the trademark, copyright, trade secret or other proprietary legends or notices which appear on or in the Software.

Notwithstanding anything to the contrary, none of the restrictions set forth above are applicable to a Health Care Provider Participant's own Data or Data to which such Health Care Provider Participant has rightful access, including Data pertaining to an individual with whom Participant has a patient relationship.

5.5 Consents and Notices. Participant will modify or update its notice of privacy practices as may be necessary to reflect Participant's participation in the Exchange.

5.6 Use in Compliance with Applicable Laws. Each Party agrees to use the Software only in compliance with all Applicable Laws and shall take no actions with the Software that would cause the other Party to be in violation of any Applicable Laws.

5.7 Ownership. Participant acknowledges that title to all copies of the Software and Software related Documentation provided by SACVALLEY MEDSHARE and all modifications thereto and derivative works thereof, including all intellectual property rights therein, shall remain exclusively with SACVALLEY MEDSHARE and its licensors, and Participant, NP Participants and Authorized Users are entitled solely to a nonexclusive license to use the Software. Participant acknowledges that the Software and Documentation are the confidential and proprietary property of SACVALLEY MEDSHARE or its licensors.

6.0 EXCHANGE SERVICES AND OPERATIONS

6.1 Exchange Operations. SACVALLEY MEDSHARE will maintain and operate the Hosted System and limit access to Participant and NP Participants. SACVALLEY MEDSHARE may contract with subcontractors to maintain and upgrade the Software or the Hosted System from time to time, operate the Exchange, and provide support services, among other things. In each such case, SACVALLEY MEDSHARE will require its subcontractors to:

- (i) maintain the confidentiality of all Data and other proprietary information relating to Participant,
- (ii) execute a Business Associate Agreement whenever such person or entity may have access to, view, receive, transmit or disclose PHI, and
- (iii) comply with Applicable Laws.

6.2 Exchange Availability. SACVALLEY MEDSHARE will, and Will Cause ICA to, provide Participant with access to the Exchange 24 hours per day, 7 days a week, in accordance with Exhibit H. SACVALLEY MEDSHARE will, to the extent reasonably possible, (except in the event of an emergency), provide advance written notice of downtime(s) by sending Participant a downtime alert by email.

6.3 Support Services. SACVALLEY MEDSHARE will provide first level support services ("Support Services") to assist Participant with registering and training Authorized Users to use the Exchange (the "Exchange Helpdesk") as set forth in Exhibit F. For all other technical support, SACVALLEY MEDSHARE Will Cause ICA to respond and act in accordance with Exhibit F.

6.4 Data Exchange Records. SACVALLEY MEDSHARE will maintain records of the dates, times and the specific patient health records accessed by Authorized Users in each Data exchange as set forth in its Policies and Procedures. SACVALLEY MEDSHARE shall not maintain patient health records or review or inspect the content of PHI or the content of Data exchanged through the Exchange for accuracy, completeness or for any purpose, other than as provided in this Agreement or for a Permitted Use as provided above or in the Business Associate Agreement.

6.5 Disaster Recovery. SACVALLEY MEDSHARE will cooperate with the Exchange Community in restoring the Hosted System, and retrieving lost, or corrupted Data in the event of Force Majeure, Breach or Security Incident in accordance with ICA's established recovery plan and policies and procedures.

6.6 Other Services. SACVALLEY MEDSHARE's services include each of the following:

- (a) establishing Policies and Procedures and applying standards for use and exchange of Data;
- (b) maintaining Data (and SACVALLEY MEDSHARE Will Cause ICA to maintain Data) in the performance of SACVALLEY MEDSHARE's services;
- (c) conducting accurate record matching for Data contributed by Participant and/or NP Participants and creating and maintaining a single LPRs for each Patient for whom Data has been contributed by one or more Participant and/or NP Participant; and
- (d) performing other services, tasks, and responsibilities as reasonably requested by Participant and accepted by SACVALLEY MEDSHARE relating to SACVALLEY MEDSHARE's performance under this Agreement.

7.0 WARRANTIES AND REPRESENTATIONS

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- 7.1 Registration and Compliance with Policies and Procedures, and Applicable Laws.** Participant warrants and represents that it will not access the Exchange unless and until it has registered its Authorized User(s), and complied with SACVALLEY MEDSHARE Participation Requirements, the Business Associate Agreement, and all Applicable Laws, as amended from time to time.
- 7.2 Patient Notice and Consent for Data Access.** Participant agrees to include in its notice of privacy practices under HIPAA that Patient Data will be provided to an HIO. Patient Data will be made available by the HIO to others involved in the patient's treatment, unless the Patient that is the subject to the Data chooses to opt-out of allowing access. Opt-out forms can be found on the SACVALLEY MEDSHARE website (<http://sacvalleyms.org/>).
- 7.3 Authorized Users.** Participant will use reasonable efforts to cause its Authorized Users to have the appropriate qualifications and training necessary as set out in the Policies and Procedures to access and use the Hosted System and to use the Hosted System in accordance with the System Requirements. Notwithstanding the foregoing, if any changes are made to the Hosted System or the System Requirements, Participant will have a reasonable period of time (not less than thirty (30) days) after Participant receives Notice of such change to comply with the foregoing requirements.
- 7.4 Privacy and Security of Data.**
- 7.4.1. Generally.** At all times, Participant and SACVALLEY MEDSHARE shall implement and maintain internet and operational safeguards and procedures to ensure the privacy, security, and accuracy of Data, in compliance with this Participation Agreement, the Business Associate Agreement, Participation Requirements, and all Applicable Laws. SACVALLEY MEDSHARE shall access, communicate, and make use of Data or any derivatives thereof only as set forth in Section 4.3.2. Participant shall authenticate and protect the login information of its Authorized Users.
- 7.4.2 Reporting Breaches; Reports.** Without limiting any Business Associate Agreement entered into in connection with this Agreement, SACVALLEY MEDSHARE and Participant shall report to the other any of the following, of which Participant or SACVALLEY MEDSHARE (as applicable) becomes aware, in each case if related to or affecting Patient Data submitted by Participant to the Exchange or the manner in which Participant issues and manages login credentials for the Hosted System: (a) use or disclosure of Patient Data not provided for by this Agreement, (b) any Security Incident concerning electronic Patient Data, and (c) any Serious Breach of Privacy or Security. This report shall be made without unreasonable delay and in no case later than twenty-four (24) hours after the Party becomes aware of the use, disclosure, incident, or breach.
- 7.4.3. Safeguarding Patient Data.** SACVALLEY MEDSHARE shall, Will Cause (as defined in Section 12.1) ICA to, and shall cause its other Related Parties to, comply with the requirements set forth in the attached Exhibit G.
- 7.4.4 Access to Data.** Each of Participant and SACVALLEY MEDSHARE represents and warrants that it is authorized to access, and to provide access, to Patient Data that such party accesses, or to which such party provides access, under this Agreement. Notwithstanding anything to the contrary, SACVALLEY MEDSHARE represents, warrants, and covenants that neither SACVALLEY MEDSHARE nor any of SACVALLEY MEDSHARE's personnel or contractors, other than ICA, will directly access any Patient Data in the Exchange or Hosted System, except with the written consent of the Participant that provided that Patient Data.
- 7.5 System Operations, Systems Necessary to Participate in Exchange.** Participant, at its own expense, will obtain, install, and maintain the computer equipment, software, services and testing necessary to effectively and reliably provide Data to and access Data in the Exchange, as specified in the System Requirements.
- 7.6 Documentation of Information for Patient Health Care; Record Retention; Storage and Backup.** Participant, at its own expense, shall arrange for and maintain secure storage and backup of all Data it transmits to, or that it accesses through the Exchange if and as required by Applicable Law.

8.0 WARRANTY DISCLAIMER; RELEASE OF LIABILITY.

- 8.1 Exercise of Independent Professional Judgment.** Participant acknowledges that the Exchange is not a substitute for the exercise of Participant's or its Authorized Users' own professional medical judgment. Subject to SACVALLEY MEDSHARE's obligations under this Agreement to communicate Data as set forth herein, Participant and its Authorized

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Users are responsible for confirming the integrity of all Data and for the use or omission of such Data in connection with a patient's Health Care. Notwithstanding the foregoing, SACVALLEY MEDSHARE will, and Will Cause ICA to, at all times use industry-standard measures to ensure data integrity and conduct industry-standard record matching.

8.2 NP Participants' Use of Participant's Data. Participant acknowledges that NP Participants will participate in the Exchange, and Participant hereby consents to the access, use, and retrieval of Data by NP Participants in the Exchange in accordance with Applicable Law and this Agreement. SACVALLEY MEDSHARE will require such NP Participants to comply with the Policies and Procedures and the same Security Requirements and System Requirements as Participant. Notwithstanding the foregoing, Participant acknowledges that SACVALLEY MEDSHARE does not warrant the accuracy, completeness or security of Data (in the form provided to SACVALLEY MEDSHARE) exchanged by NP Participants.

8.3 Release of Liability.

8.3.1. EXCEPT AS EXPRESSLY STATED HEREIN, THE EXCHANGE, THE HOSTED SYSTEM, THE SACVALLEY MEDSHARE SOFTWARE AND THE DATA ARE PROVIDED TO PARTICIPANT BY SACVALLEY MEDSHARE, "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND WHETHER EXPRESS, IMPLIED OR STATUTORY. SUBJECT TO THE TERMS OF THIS AGREEMENT, USE OF THE INTERNET, CARRIER LINES, SACVALLEY MEDSHARE SOFTWARE, THE HOSTED SYSTEM, THE EXCHANGE AND THE DATA DISCLOSED TO PARTICIPANT THROUGH THE EXCHANGE IS AT THE PARTICIPANT'S SOLE RISK AND EXPENSE.

PARTICIPANT HEREBY EXPRESSLY RELEASES SACVALLEY MEDSHARE OF AND FROM ALL LIABILITY OF ANY KIND, UNDER ANY THEORY, FOR OR RELATING TO ANY CLAIM WHETHER BROUGHT BY PARTICIPANT OR A THIRD PARTY, ARISING OUT OF OR RELATING TO:

- (1) THE USE AND DISCLOSURE OF DATA BY PARTICIPANT AND/OR NP PARTICIPANTS;
- (2) THE SECURITY OR RELIABILITY OF PARTICIPANT'S AND/OR NP PARTICIPANTS' INTERNET CONNECTIONS TO THE HOSTED SYSTEM, OR

(3) THE ACCURACY, COMPLETENESS, RELEVANCE, OR DISCLOSURE OF DATA MADE AVAILABLE TO PARTICIPANT AND OTHERS VIA THE EXCHANGE.

EXCEPT AS PROVIDED IN SECTION 8.3.2, IN NO EVENT SHALL SACVALLEY MEDSHARE OR PARTICIPANT BE LIABLE, REGARDLESS OF THEORY, FOR ANY INDIRECT, NON-COMPENSATORY, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS OR REVENUE, LOST SAVINGS, LOSS OF DATA OR BUSINESS OPPORTUNITY, ANY GOVERNMENTAL, AGENCY, AND/OR REGULATORY FINES OR COSTS, OR OTHER INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WHETHER OR NOT THE OTHER PARTY OR PARTICIPANT (AS APPLICABLE) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY SET FORTH IN THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. FOR THE AVOIDANCE OF DOUBT, ANY DAMAGES AWARDED TO A THIRD PARTY FOR WHICH PARTICIPANT OR SACVALLEY MEDSHARE IS OBLIGATED TO PAY UNDER SECTION 9.0, SHALL BE DEEMED TO BE DIRECT DAMAGES REGARDLESS OF HOW SUCH DAMAGES ARE CHARACTERIZED BY THE COURT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, EXCEPT AS SPECIFIED IN SECTION 8.3.2, THE AGGREGATE LIABILITY OF SACVALLEY MEDSHARE AND ITS RELATED PARTIES AND PARTICIPANT AND ITS RELATED PARTIES, IF ANY, REGARDLESS OF THEORY OF LIABILITY, OR CHARACTERIZATION OF DAMAGES, SHALL BE LIMITED TO THE AGGREGATE FEES ACTUALLY PAID BY PARTICIPANT FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM.

8.3.2. EXCEPTIONS. THE LIMITATIONS AND EXCLUSIONS SET FORTH IN SECTION 8.3.1 SHALL NOT APPLY WITH RESPECT TO: (A) DAMAGES ATTRIBUTABLE TO INTENTIONAL TORTS, UNLAWFUL CONDUCT OR GROSS NEGLIGENCE; (B) AMOUNTS FOR WHICH A PARTY IS RESPONSIBLE UNDER SECTION 9.1; (C) THIRD PARTY CLAIMS THAT ARE THE SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 9.2; (D) BREACHES OF SECTION 10; OR (E) INTENTIONAL MISAPPROPRIATION OR INTENTIONAL INFRINGEMENT OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9.0 INDEMNIFICATION.

9.1 Indemnification for Data Breaches.

9.1.1. If, as the result of any act or omission of SACVALLEY MEDSHARE or any Related Party of SACVALLEY MEDSHARE, a person is required to be notified of unauthorized access, disclosure, or use of the person's personal information, SACVALLEY MEDSHARE shall bear and pay, and compensate and reimburse Participant for, all costs associated with such notification and related communication and for the costs of providing any legally required credit monitoring and identity theft protection service to the affected person.

9.1.2. If, as the result of any act or omission of the Participant or any Authorized User of the Participant, a person is required to be notified of unauthorized access, disclosure, or use of the person's personal information, the Participant shall bear and pay, and compensate and reimburse the person required to make the notification for, all costs associated with such notification and related communication and for the costs of providing any legally required credit monitoring and identity theft protection service to the affected person. This Section 9.1.2 shall be for the benefit of SACVALLEY MEDSHARE and any NP Participant legally required to make such notification.

9.2 Indemnification for Third-Party Claims. SACVALLEY MEDSHARE and Participant (each, the "Indemnitor") shall indemnify, defend and hold SACVALLEY MEDSHARE, SACVALLEY MEDSHARE's Related Parties, Participant, Participant's Related Parties, Participant's Authorized User(s) and/or NP Participants together with their Related Parties (as applicable, the "Indemnitee") harmless from and against any and all:

(i) costs of defense as they are incurred, in any action or proceeding, including the fees of professionals and attorneys,

(ii) damages (including punitive damages) awarded in a final judgment in any litigation, arbitration or administrative proceeding, or

(iii) any other expense reasonably incurred by the Indemnitee,

in the case of each of "(i)" through "(iii)" arising out of or resulting from a claim against the Indemnitee by a third party (a "Claim") based on:

(a) the Indemnitor's breach of this Agreement, the Business Associate Agreement, or the Participation Requirements, or

(b) the Indemnitor's negligent or willful acts or omissions resulting in damages for personal injury (including death), or

(c) in the case of SACVALLEY MEDSHARE as Indemnitor, a Breach or Security Incident involving such third party's ePHI while being transmitted through or stored in the Hosted System.

(d) in the case of Participant as Indemnitor, (i) a Breach or Security Incident caused by Participant's failure to secure its login credentials for the Hosted System in accordance with this Agreement or (ii) unauthorized access to ePHI by employees of Participant while such ePHI is being transmitted through or stored in the Hosted System.

9.3 ICA Indemnification. Participant agrees that, to the extent any indemnification obligation of SACVALLEY MEDSHARE is attributable to the acts or omissions of ICA, SACVALLEY MEDSHARE shall be liable to Participant only to the extent of the combined contributions of (a) any indemnification available from ICA for SACVALLEY MEDSHARE or the Participant under the ICA Agreement, and (b) the proceeds of any insurance available to SACVALLEY MEDSHARE in connection with the indemnification obligation.

9.4 Additional Requirements. Indemnification of the costs and expenses of defense shall include payment of all costs as they are incurred that are associated with defending the Claim or cause of action involved, whether or not such Claims or causes of action are meritorious, including reasonable professionals' and attorneys' fees and any settlement by or judgment against the Indemnitee. The Indemnitee shall give Indemnitor prompt written notice of any Claim asserted against the Indemnitee, however, the failure to provide such Notice shall not relieve the Indemnitor of its obligations hereunder, except to the extent a Court of competent jurisdiction determines such failure materially and adversely prejudiced the Indemnitor. Upon receipt of such notice, the Indemnitee shall tender defense to the Indemnitor, who shall, at its sole cost

and expense, retain legal counsel and defend the Indemnitee with counsel reasonably satisfactory to Indemnitee. The Indemnitor may not settle such litigation or proceeding without the express consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed. The provisions set forth herein for indemnity, as to third parties, shall not serve as a waiver of any defense or immunity otherwise available and shall not preclude the Indemnitor from asserting every defense or immunity that the Indemnitor could assert on its own behalf. All remedies provided by law, or in equity shall be cumulative and not in the alternative.

10.0 PROPRIETARY AND CONFIDENTIAL INFORMATION.

10.1 Definition. It is anticipated that, in the performance of their respective roles in the Exchange, SACVALLEY MEDSHARE and Participant will exchange Confidential Information. “**Confidential Information**” means any non-public, proprietary or sensitive information (or materials) belonging to or in the possession or control of a Party that is disclosed or made available to the other Party in connection with this Agreement and that is either marked or identified in writing as confidential, proprietary, secret or with another designation sufficient to give notice of its sensitive nature, or is of a type that a reasonable person would recognize it to be commercially sensitive. Confidential Information includes, but is not limited to, each Party’s trade secrets, business plans, marketing plans, know how, data, contracts, documents, scientific and medical concepts, costs, financial information, profits and billings, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements of a Party and any of its departments or agencies, whether written or verbal. Confidential Information does not, however, include any information that a Party demonstrates: (a) is in the public domain; (b) is already known or obtained by that Party other than in the course of the Exchange; (c) is independently developed by that Party; and/or (d) becomes known to that Party from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of this Agreement by that Party. Confidential Information also shall not include any PHI.

10.2 Nondisclosure. SACVALLEY MEDSHARE and Participant each shall keep and maintain in strict confidence all Confidential Information received from each other and/or from NP Participants (as applicable, the “**Disclosing Party**”), or any of the Disclosing Party’s officers, employees, attorneys, accountants or other agents or representatives, or of any of the Disclosing Party’s departments or agencies, in connection with participation in the Exchange, and shall not use, reproduce, distribute or disclose any such Confidential Information, and shall prevent its agents, representatives and employees from making any such use, reproduction, distribution or disclosure, except to those employees, attorneys, accountants or other agents or representatives directly involved in the conduct of the Exchange, unless specifically authorized in writing by the Disclosing Party. Notwithstanding the foregoing, Participant and NP Participants may share SACVALLEY MEDSHARE’s Confidential Information with one another to the extent reasonably required for collaboration between or among them. On request, either Party shall restore to the Disclosing Party all copies of the Disclosing Party’s Confidential Information in its possession or under its control and in whatever form and all materials developed based on the Disclosing Party’s Confidential Information. Neither Party shall have any proprietary interest in any materials derivative of the other Party’s Confidential Information.

10.3 Equitable Remedies. All Confidential Information represents a unique intellectual product of its owner. The unauthorized disclosure of said Confidential Information would have a detrimental impact upon its owner, and the damages resulting from said detrimental impact would be difficult to ascertain but would result in irreparable loss, and it would require a multiplicity of actions at law and in equity in order to seek redress against the receiving party in the event of an unauthorized disclosure. The owner of Confidential Information shall be entitled to equitable relief in preventing a breach of this Agreement and that such equitable relief is in addition to any other rights or remedies available to such owner.

10.4 Notice of Disclosure. Notwithstanding any other provision hereof, nothing in this Agreement shall prohibit or be deemed to prohibit a Party from disclosing any Confidential Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that such Party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction, and such disclosures are expressly permitted hereunder, provided, however, that a Party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder by reason of a subpoena or order of a court,

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administrative agency or other governmental body of competent jurisdiction shall provide the other Party with notice thereof within five (5) calendar days, or, if sooner, at least three (3) business days before such disclosure will be made so that the other Party may seek a protective order or other appropriate remedy. In no event shall a Party be deemed to be liable hereunder for compliance with any such subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction.

10.5 Patient Data. As between the Parties, Participant is the sole and exclusive owner of any and all updates or modifications to or derivatives of any of the Patient Data provided by Participant (“**Participant Patient Data**”), which updates, modifications, or derivatives are made by or for SACVALLEY MEDSHARE, and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement. All such updates, modifications, and derivatives constitute Participant Patient Data hereunder. To the extent SACVALLEY MEDSHARE at any time has any rights in or to any Participant Patient Data (including intellectual property rights), SACVALLEY MEDSHARE hereby assigns to Participant all such rights. Upon Participant’s request any time (including in connection with investigations, audits, and compliance with Applicable Laws) and at the end of the Term to which such Participant Patient Data pertains, SACVALLEY MEDSHARE shall promptly provide to Participant, at no additional charge, an electronic copy of all Participant Patient Data, and all other Patient Data pertaining to Patients attributable to Participant, in the format and with the file layouts reasonably requested by Participant, provided that SACVALLEY MEDSHARE is reasonably capable of producing the data in that format and layout. If Participant requests at any time, SACVALLEY MEDSHARE shall destroy all copies of Participant Patient Data in SACVALLEY MEDSHARE’s possession or control. SACVALLEY MEDSHARE shall not use Patient Data for any purpose other than that of rendering services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit Patient Data. SACVALLEY MEDSHARE shall not possess or assert any lien or other right against or to Patient Data. SACVALLEY MEDSHARE Will Cause ICA to comply with and perform SACVALLEY MEDSHARE’s obligations under this Section 10.5.

11.0 INSURANCE.

11.1 SACVALLEY MEDSHARE Insurance. SACVALLEY MEDSHARE, at its sole cost and expense, shall (and shall cause ICA to) obtain and keep in force, an insurance policy or policies, or self-insure in an amount sufficient to cover any liability it incurs for breach of this Agreement, the Business Associate Agreement, Applicable Law, or other act or omission giving rise to a claim for indemnity. Such policies shall provide, at a minimum, coverage of the following types and amounts, insuring SACVALLEY MEDSHARE and Participant as an additional insured, and in each case waiving the right of the insurer to subrogation, as follows:

11.1.1. Comprehensive or Commercial Form General Liability Insurance (Blanket Contractual Liability, Broad Form Property Damage, Personal Injury included) with limits as follows:

| | |
|--|-------------|
| Each Occurrence | \$1,000,000 |
| Products/Completed Operations Aggregate | \$2,000,000 |
| Personal and Advertising Injury | \$1,000,000 |
| General Aggregate (Not applicable to the Comprehensive Form) | \$4,000,000 |

11.1.2. Excess Liability at limits of \$2,000,000 per occurrence/aggregate.

11.1.3. Professional Liability (Errors and Omissions and Cyber Risk) for Information Technology including Cyber Risk. Technology, professional liability, data protection, privacy, and cyber liability insurance policy(ies) shall provide coverage for the following risks, among others: financial loss, as well as all SACVALLEY MEDSHARE (and ICA) costs, including damages it is obligated to pay Participant or any third party, which are associated with any breach of security or loss of Data, regardless of cause (including, without limitation, SACVALLEY MEDSHARE’s (and ICA’s) negligence or gross negligence and unlawful third party acts), and resulting or arising from acts, errors, or omissions in connection with the performance of this Agreement or the Business Associate Agreement, or under Applicable Law. Such insurance shall provide coverage for a commercially reasonable amount.

11.2 Participant Insurance. Participant shall obtain and keep in force, at all times during the term of this Agreement, the following insurance (or a comparable program of self-insurance):

**SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
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11.2.1. Comprehensive or Commercial Form General Liability Insurance (Blanket Contractual Liability, Broad Form Property Damage, Personal Injury included) with limits as follows:

| | |
|--|-------------|
| Each Occurrence | \$1,000,000 |
| Products/Completed Operations Aggregate | \$2,000,000 |
| Personal and Advertising Injury | \$1,000,000 |
| General Aggregate (Not applicable to the Comprehensive Form) | \$4,000,000 |

11.2.2. Excess Liability at limits of \$2,000,000 per occurrence/aggregate,

11.2.3. Professional Liability (Errors and Omissions and Cyber Risk) for Information Technology including Cyber Risk, inclusive of professional liability, technology risks, and data safety, in commercially reasonable amounts.

11.3 Other Insurance Requirements. Each Party shall furnish the other Party upon request with certificates of insurance and additional insured endorsements evidencing compliance with all requirements. If the above insurance is written on a claims-made form, it shall have a retroactive date of placement prior to or coinciding with the Effective Date of this Agreement. The coverages specified above shall be primary, non-contributory with, nor be excess over any valid and collectible insurance or program of self-insurance carried or maintained by the applicable Party. Such insurance shall be with insurers with at least an A.M. Best’s Insurance Guide rating of “A VII.” or maintained through adequate programs of self-insurance. The insurance policies shall provide that a Party (or such Party’s insurance company) shall notify the other Party in writing at least thirty (30) days in advance if that such Party’s insurance coverage is to be canceled, modified or changed so as not to comply with the requirements of this Agreement. Under no circumstance shall the insurance requirements specified in this Article reduce the liability of either Party.

12.0 DEFINITIONS.

12.1 Rules of Interpretation. If, and to the extent there is a conflict between the definition given a term by this Participation Agreement and the Business Associate Agreement, the definition stated in the Business Associate Agreement shall govern. To the extent the definitions stated in the Participation Agreement or in the BA Agreement conflict with the Privacy Laws, the Privacy Laws shall govern. The following terms are defined in the attached Business Associate Agreement: “Applicable Law,” “Business Associate,” “Business Associate Subcontractor,” “Breach,” “Covered Entity,” “Electronic PHI” or “ePHI,” “Encryption,” “Privacy Laws,” “Protected Health Information” or “PHI,” “Security Incident” and “Unsecured PHI.” As used in this Agreement, “including” means “including but not limited to”, and (unless the context otherwise requires) “shall” and “will” are equivalent words that express an obligation of a party.

“**Affiliates**” means directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the other.

“**Applicable Law(s)**” means any applicable laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders.

“**Authorized User**” means an individual Participant or an individual or entity (including Participant’s Affiliates) designated by a Participant, to access and use the Exchange and/or the Hosted System in accordance with the terms of this Participation Agreement. For purposes of this Agreement, an individual or an entity is only an Authorized User of Participant when such individual or entity is accessing the Exchange and/or Hosted System using login credentials issued by Participant.

“**CMIA**” means the California Medical Information Act.

“**Data**” means any confidential or proprietary data concerning a Participant or SACVALLEY MEDSHARE, and/or third party data, including, without limitation, an individual’s confidential and/or protected health information if and to the extent the same is (a) transmitted and uploaded to the Hosted System; or (b) stored in, transmitted, viewed, accessed, received, or processed through the Exchange by Participant, Participant’s Authorized Users, NP Participants, and/or NP Participant’s Authorized Users. For purposes of this Agreement, Data broadly includes PHI (as that term is defined in HIPAA) sent by Direct Messaging using the facilities of the Exchange, and Medical Information (as that term is defined in the CMIA). As used herein, “**Patient Data**” means any Data pertaining to a Patient.

“Data Exchange” means all activities related to accessing, viewing, entering, retrieving and exchanging Data through the Exchange via the Hosted System.

“Direct Messaging” means the ability to send patient information through secure electronic mail separate from the standardly used electronic mail system. Direct Messaging uses HISP connections through DirectTrust®.

“Documentation” means all user manuals, reference guides, brochures, installation manuals, specifications, release notes, error message manuals or other written documentation pertaining to the installation, use, features or performance of the deliverables or services set forth in this Agreement and made available to Participant at the time of Execution of the Participation Agreement and as modified, amended from time to time.

“Exchange” means the health information exchange hosted by SACVALLEY MEDSHARE, including the Hosted System.

“Exchange Community” means all participants (including Participant and NP Participants) registered to use the Exchange, collectively.

“Health Care” means care, services or supplies related to the health of an individual and is more particularly defined within the Code of Federal Regulations 45 C.F.R. Section 160.13.

“Health Care Provider” means a physician, group practice, hospital, health system, public health entity, professional, or other health care organization that provides health care services to Patients, in conformity with the HIPAA definition given within the Code of Federal Regulations 45 C.F.R. § 160.103.

“Health Information Exchange” means an organization that conducts electronic exchanges of health information among health care providers and other persons or organizations entitled under law to disclose or receive health information.

“HIPAA Regulations” means the regulations within the Code of Federal Regulations 45 C.F.R. Parts 160 and 164, as the same may be amended from time to time.

“Hosted System” means, collectively, the software applications, ongoing hosting and management services provided by SACVALLEY MEDSHARE as part of the Exchange functionality.

“LPR” means a longitudinal patient record maintained with respect to Patient by SACVALLEY MEDSHARE.

“NP Participant” means a person or entity that has entered into a “participation agreement” with SACVALLEY MEDSHARE to access, use, or exchange Data through the Exchange, but is not a Party to this Agreement.

“Patient” means an individual receiving Health Care from a Health Care Provider or Covered Entity.

“Participation Requirements” has the meaning given in in Section 1.3 of this agreement.

“Participant” means generally a Covered Entity, Health Care Provider and/or recipient of Data that has entered into, and is in full compliance with, a participation agreement with SACVALLEY MEDSHARE HIE, and is authorized to use the Hosted System. **“Participant”** means the individual if the Participant is a person (or the person authorized by a Participant if that Participant is an entity) to execute this Agreement on its behalf. In connection with this Agreement, Participant means the person or entity executing it as Participant.

“Permitted Use” means a use permitted pursuant to Section 4.2.2 of this agreement.

“Policies and Procedures” means, collectively, the policies and procedures adopted by SACVALLEY MEDSHARE and notwithstanding anything to the contrary contained elsewhere made available to Participant at the time of Execution of the Participation Agreement (and as modified, amended from time to time), which govern SACVALLEY MEDSHARE operation of the Hosted System and Participant’s access to the Hosted System and use of the Exchange and the use, submission, transfer, access, privacy and security of Data.

“Sensitive Health Information” means and refers to the types of health information classified by Applicable Laws as being particularly sensitive to a Patient, and that may require a Covered Entity to provide notice to or obtain consent from the Patient before such information is shared or disclosed and to use heightened security measures when storing, transferring, accessing or using such information. Recognized categories for Sensitive Health Information under Applicable Law and the Policies and Procedures include, but shall not be limited to: drug or alcohol abuse treatment information, psychotherapy notes, HIV-related tests, mental health treatment, and services for which a patient has paid out-of-pocket and requested that information about the service not be disclosed.

“Serious Breach of Privacy or Security” is a use or disclosure of Data in a manner that

SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE GENERAL PARTICIPATION AGREEMENT

- (i) constitutes a violation of Applicable Laws,
- (ii) violates this Participation Agreement,
- (iii) that would be required to be reported to affected individuals and/or government officials, or
- (iv) that adversely affects the viability of SACVALLEY MEDSHARE, or the legal liability of SACVALLEY MEDSHARE or any Participant or both.

“**Software**” means the computer software that comprises the Hosted System that allows Participant and NP Participants to securely exchange Data for a Permitted Use.

“**Term**” means the Initial Term and any Renewal Term.

“**Will Cause**” means, when used as an obligation of SACVALLEY MEDSHARE under this Agreement, that (a) SACVALLEY MEDSHARE represents and warrants that SACVALLEY MEDSHARE is party to a binding agreement with the person or entity that is the subject of such obligation that requires such person or entity to take (or refrain from taking) the applicable action, grant the applicable rights, and/or comply with the applicable obligation and (b) SACVALLEY MEDSHARE shall use reasonable efforts to require performance of, and enforce, such agreement with such person or entity.

13.0 GENERAL PROVISIONS.

13.1 No Exclusion. The Parties each warrant and represent that neither they nor any of their Related Parties have been placed on the sanctions list issued by the office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. 1320a(7), or have been excluded from government contracts by the General Services Administration. A Party will provide the other immediate notice in the event either is placed on the sanctions list.

13.2 Severability. If any provision of this Agreement is determined to be invalid or unenforceable such provision shall be changed so as to best accomplish the objectives of the Parties within the limits of Applicable law, provided, however, if that is not possible or feasible, such provision will be severed from this Agreement to the extent of such determination without affecting the validity or enforceability of such remaining provisions.

13.3 Governing Laws. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California without regard to its conflict of law provisions. The parties waive any objections and agree to the venue and personal jurisdiction of the courts of the State of California and the federal courts situated in Butte County over any action arising out of or relating to this Agreement.

13.4 Force Majeure. No Party shall be liable to the other for any failure to perform its obligations under this Agreement, where such failure results from any act of God or other cause beyond such party’s reasonable control (including, without limitation, any mechanical, electronic, or internet communications failure).

13.5 Notices. Except as otherwise provided herein, all notices, requests, demands, and other communications required or permitted by this Agreement or the Business Associate Agreement will be in writing and shall be deemed to have been duly given, made and received on the date when delivered to the other Party at the address stated below the signature line:

- (i) when delivered personally, or by a nationally recognized courier service, or
- (ii) on the third business days following the day when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested (the notices described in this section, “**Notices**”).

Nothing in this Section 13.5 of this agreement will prevent the Parties from communicating via electronic mail, telephone, facsimile, or other forms of communication for the routine participation in the Exchange. A Party may change its address for Notice, at any time, by giving Notice of such change as provided herein.

13.6 No Agency. SACVALLEY MEDSHARE provides the Exchange services to Participant but does not act as the Participant’s agent. Participant will not be deemed an agent of an NP Participant as a result of participation in this Agreement.

13.7 Modifications. Except as specifically provided herein, no modification to the terms of this Agreement or the Business Associate Agreement shall be valid, unless agreed in writing and signed by the Parties hereto.

13.8 Registered User Signatures and Signed Documents. Upon registering with the Exchange, Participant acknowledges and agrees that its Authorized User is authorized to adopt as its signature an electronic identification consisting of symbols or codes that are to be affixed to or contained in a Data Exchange made by the Participant (“**Signatures**”). Participant agrees that any Signature affixed to or contained in any Data Exchange will be sufficient to verify that the Participant originated such Data Exchange. Any transmission or exchange of Data made pursuant to this Agreement shall be considered a “writing” or “in writing” and any such exchange when containing, or to which there is affixed, a Signature shall be deemed for all purposes:

- (a) to have been “signed” (a “**Signed Document**”) and
- (b) to constitute an original when printed from electronic files or records established and maintained in the normal course of business.

Participant will not contest the validity or enforceability of Signed Documents under the provisions of any Applicable Law as they may relate to the requirement that certain agreements be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings will be admissible as between the parties to the same extent and under the same condition as other business records originated and maintained in paper form.

13.9 Complete Agreement. The terms of this Agreement and its Attachments and Exhibits represent the entire understanding between the Parties and supersede all previous agreements, whether oral or in writing. The Attachments and/or Exhibits attached to this Agreement are fully incorporated and made a part of this Agreement by this reference as if fully stated herein.

13.10 Survival. Notwithstanding any expiration or earlier termination of this Agreement, the following provisions of this Agreement relating to the following matters shall survive in accordance with their terms: Sections 7.0 (Warranties and Representations), 8.0 (Warranty Disclaimer; Release of Liability), 9.0 (Indemnification), 10.0 (Proprietary and Confidential Information), 12.0 (Definitions), 13.0 (General Provisions), Exhibit A (Business Associate Agreement), and Exhibit G (Safeguarding Patient Data). Termination of this Agreement by a party shall not relieve the other party hereto from any liability which at the time of termination already accrued to the other party or which thereafter may accrue in respect of any act or omission of such party prior to termination.

13.11 Authorized Agent Signature. By signing this Agreement, the undersigned represents and warrants that he or she has received and read a copy of this Agreement, inclusive of Attachments and Exhibits, and that he or she is either

- (a) the Participant or,
- (b) if the Participant is an organization, an individual acting on the Participant’s behalf who is authorized to sign and enter into this Agreement. Proper execution of the Agreement by Participant must include the execution of Exhibit A.

13.12 Assignment. Neither Party may assign or transfer this Agreement, either voluntarily or by operation of law, without the prior written consent of the other Party.

13.12 Counterpart Signatures and Facsimile Signatures. This Agreement may be executed and delivered in counterparts all of which taken together shall constitute one single agreement between the parties. A facsimile transmission of the executed signature page of this Agreement shall constitute due and proper execution and delivery of this Agreement.

[SIGNATURE PAGE FOLLOWS]



SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date:

SACVALLEY MEDSHARE

Participant: **Tehama County Health Services Agency**

Name: John Helvey

Name: Jayme Bottke

By:

By:

Title: CEO

Title: Executive Director

Address for Notice:

Address for Notice:

SacValley MedShare

Tehama County Health Services Agency

2485 Notre Dame Blvd, Suite 370 #20

PO BOX 400

Chico, CA 95928-7163

Red Bluff, CA 96080

eMail: john.helvey@sacvalleyms.org

eMail: Jayme.bottke@tchsa.net



SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT A: HIPAA BUSINESS ASSOCIATE AGREEMENT

Exhibit A

SacValley MedShare Health Information Exchange

HIPAA: Business Associate Agreement

The parties agree that, under this Exhibit, SACVALLEY MEDSHARE (“**Business Associate**”) shall have all the rights and obligations of a “**Business Associate**,” as defined below, and Participant and its Affiliates using the Exchange (“**Covered Entity**”), shall have all the rights and obligations of a “**Covered Entity**,” as defined below.

1. **Definitions.** All capitalized terms not defined herein shall have the meaning ascribed to them by HIPAA (defined below), including Business Associate, Covered Entity, Limited Data Set, Data Aggregation and Designated Record Set.

(a) “**Agreement**” means the Participation Agreement to which this Business Associate Agreement is an exhibit.

(b) “**Breach**” shall mean the unlawful or unauthorized access to, viewing, acquisition, use or disclosure of PHI.

(c) “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-005) and the rules, guidance and regulations promulgated thereunder, as amended from time to time, including 45 Code of Federal Regulations, Parts 160 and 164.

(d) “**Patient**” shall have the same meaning as the term “individual” under HIPAA and shall include a person who qualifies as a personal representative.

(e) “**Protected Health Information**” (“**PHI**”) shall have the meaning given to such term under HIPAA and shall include any information, whether oral or recorded in any form or medium, limited to the information created or received by Business Associate from or on behalf of Covered Entity (i) that relates to the past, present or future physical or mental health condition of the patient, the provision of health care to patient, or the past, present or future payment for the provision of health care to patient; and (ii) that identifies the patient or with respect to which there is a reasonable basis to believe the information can be used to identify the patient.

(f) “**Secretary**” shall mean the Secretary of the U.S. Department of Health and Human Services or her/his designee.

(g) “**Security Incident**” shall mean any accidental, malicious or natural act that: (i) results in a Breach of any PHI; or (ii) materially and adversely impacts the functionality of Covered Entity’s network; or (iii) permits unauthorized access to Covered Entity’s network; or (iv) involves the loss or loss of control of a Covered Entity owned or managed information technology resource; or (v) involves the use of Covered Entity’s technology resources for illegal purposes or to launch attacks against other individuals or organizations; or (vi) materially impacts the integrity of the Covered Entity’s files or databases including, but not limited to: (1) interface failures; (2) inadequate testing or change control procedures; or (3) other failures which result in the deletion or unauthorized changes to an electronic database. A “**Security Incident**” shall not include any attempted access of system operations in an information system by a Packer Internet Groper (PING) program.

(h) “**State**” shall mean the state in which the Covered Entity is located.

(i) “**Subpart E**” shall mean 45 Code of Federal Regulations, Part 164, Subpart E, which consists of Sections 164.500 et seq., as amended from time to time.

2. **Permitted Uses and Disclosures by Business Associate.**

(a) **For Covered Entity.** Except as otherwise limited in the Agreement and this Exhibit, Business Associate (i) shall create, maintain, transmit, access, use or disclose PHI only for the benefit of Covered Entity and to perform functions, activities, or services as specified in the Agreement, and (ii) shall not use or disclose PHI in a manner that would violate HIPAA if done by Covered Entity. To the extent Business Associate is to carry out one or more of Covered Entity’s obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

(b) **Minimum Necessary.** Business Associate shall use only the minimum amount of PHI necessary to perform the specified functions, activities or services. In the event of inadvertent access by Business Associate to more than the minimum necessary amount of Covered Entity’s PHI, Business Associate will: (i) treat all such PHI in accordance with the Agreement and this Exhibit; (ii) promptly notify Covered Entity, in accordance with paragraph 3(d) below, of such access; (iii) erase, delete, and/or return such PHI in a form usable by the Covered Entity as quickly as possible; and (iv) take all necessary actions to prevent further unauthorized access to PHI beyond the minimum necessary amount.

(c) **Management of Business Associate.** Except as otherwise limited in the Agreement or this Exhibit, Business Associate may use or disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided that (i) the disclosure is required by law, or (ii) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information shall remain confidential and be used or further disclosed solely as required by law or for the purpose of assisting Business Associate to meet Business Associate’s obligations under the

**SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT A: HIPAA BUSINESS ASSOCIATE AGREEMENT**

Agreement. Business Associate shall require any person to whom PHI is disclosed under this subsection to notify Business Associate of any instance of which it is aware in which the confidentiality or security of the PHI has been breached.

(d) Data Aggregation. Except as otherwise permitted in the Agreement and this Exhibit, Business Associate may use PHI to provide Data Aggregation services only for Covered Entity.

(e) Compliance with State Laws. Business Associate may use, disclose and access PHI only as permitted by State law, unless such State law is contrary to HIPAA and is preempted by HIPAA in accordance with 45 Code of Federal Regulations Sections 160.201 et seq.

3. Obligations of Business Associate.

(a) Use. Business Associate shall not use or disclose PHI other than as permitted or required by the Agreement, this Exhibit or as required by law.

(b) Safeguards. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Agreement and this Exhibit. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, security, integrity and availability of PHI that it receives, maintains, transmits or creates on behalf of Covered Entity and that comply with the requirements of HIPAA.

(c) Mitigation. Business Associate shall promptly mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the Agreement and this Exhibit.

(d) Notify Covered Entity. Business Associate shall promptly notify Covered Entity of any Security Incident or Breach in writing in the most expedient time possible, and not to exceed twenty-four (24) hours in the event of a Breach, following Business Associate's initial awareness of such Security Incident or Breach. Notwithstanding any notice provisions in the Agreement, such notice shall be made to the privacy officer and/or designee. Business Associate shall cooperate in good faith with Covered Entity in the investigation of any Breach or Security Incident.

(e) Breach Notification. Following notification to Covered Entity and to all participants using the Exchange of a Breach by the Business Associate, Business Associate shall promptly cooperate with Covered Entity in determining which entity shall provide any required Breach notification. If the parties agree that Business Associate shall provide any required Breach notification, Business Associate shall provide such notification timely and provide Covered Entity with documentation of Business Associate's actions, including documentation of the names and addresses of those to whom the notifications were provided.

(f) Access. If Business Associate holds PHI in Designated Record Sets as determined by Covered Entity, Business Associate shall provide prompt access to the PHI to Covered Entity whenever so requested by Covered Entity, or, if directed by Covered Entity, to a Patient in order to meet the requirements of HIPAA and State Law, as applicable. If requested, such access shall be in electronic format. If a Patient requests directly from Business Associate (i) to inspect or copy his or her PHI, or (ii) requests its disclosure to a third party, the Business Associate shall promptly notify Covered Entity's facility privacy official of such request.

(g) Amendments. Business Associate shall promptly make amendment(s) to PHI requested by Covered Entity and shall do so in the time and manner requested by Covered Entity to enable it to comply with HIPAA and State Law, as applicable. If a Patient requests an amendment to his or her PHI, directly from Business Associate, the Business Associate shall promptly notify Covered Entity's facility privacy official of such request and await such official's denial or approval of the request.

(h) Internal Records. Business Associate shall promptly make its internal practices, books, records, including its policies and procedures, relating to the use, disclosure, or security of PHI that the Business Associate received from, maintained or created for or on behalf of Covered Entity, available to Covered Entity or the Secretary, in a time and manner designated by Covered Entity or the Secretary, to enable the Secretary to determine compliance with HIPAA.

(i) Accountings. Business Associate shall document all disclosures of PHI and information related to such disclosures as required under HIPAA in order that it may provide an accounting of such disclosures as Covered Entity directs. Business Associate shall: (i) Provide an accounting as required under HIPAA to those Patients who direct their requests to Business Associate; or (ii) Provide the accounting information required under HIPAA to Covered Entity, if so requested by Covered Entity, in the time and manner specified by Covered Entity.

(j) Preservation. Business Associate shall cooperate with Covered Entity to preserve and protect the confidentiality of PHI accessed or used pursuant to the Agreement and shall not disclose or testify about such information during or after the termination of the Agreement, except as required by law.

(k) Destruction. If, during the term of the Agreement, Business Associate wishes to destroy the PHI, it shall notify Covered Entity in writing about its intent to destroy data at least ten (10) days before such date of destruction, and shall comply with the requirements for destruction of PHI found in Section 5(a) of this Exhibit. Notwithstanding the above, if Covered Entity requests the return of any PHI, Business Associate shall comply promptly as requested.

**SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT A: HIPAA BUSINESS ASSOCIATE AGREEMENT**

(l) HIPAA Compliance. Business Associate shall comply with 45 Code of Federal Regulations Part 164, Subpart C with respect to electronic PHI. The written policies and procedures and documentation required to be maintained by Business Associate under the Agreement, this Exhibit and HIPAA shall be made available promptly to Covered Entity, upon Covered Entity's request.

(m) Subcontractors. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI agrees in a written contract with Business Associate to the same restrictions and conditions that apply to Business Associate with respect to such information and that such agent or subcontractor shall implement reasonable and appropriate safeguards for the protection of the PHI which shall be no less than those required of Business Associate under this Agreement and the provisions of HIPAA. In performing services under this Exhibit, Business Associate shall use agents, employees and/or subcontractors that are domiciled only within the United States of America and its territories.

4. Effect of Breach of Obligations. If Business Associate breaches any of its obligations, Covered Entity shall have the option to do the following:

(a) Cure. Provide Business Associate an opportunity to cure the breach, to the extent curable, and end the violation within a reasonable time specified by Covered Entity. If Business Associate does not cure the breach or end the violation as and within the time specified by Covered Entity, or if the breach is not curable, Covered Entity may terminate its obligations to Business Associate, including, but not limited to, its future payment obligations and obligations to provide information, materials, equipment or resources to Business Associate;

(b) Termination. Immediately terminate the Agreement, if Covered Entity reasonably determines that Business Associate (1) has acted with gross negligence in performing its obligations; (2) is in violation of the law; (3) willfully has violated or is violating the privacy and security provisions of this Exhibit or HIPAA; or (4) is unable to provide, if requested, written assurances to Covered Entity of its ability to protect the confidentiality and security of the PHI. Such termination of the Agreement shall be without prejudice to other legal remedies available to Covered Entity.

5. Effect of Termination.

(a) Disposition of PHI. Upon termination of the Agreement and subject to Section 5(b) below, Business Associate shall promptly return to Covered Entity a copy of all PHI in a form usable by the Covered Entity, including derivatives thereof, and shall take all reasonable steps to promptly destroy all other PHI held by Business Associate by: (i) shredding; (ii) securely erasing, or (iii) otherwise modifying the information in those records to make it unreadable or undecipherable through any means. This provision shall apply to PHI in the possession of subcontractors or agents of Business Associate. At Covered Entity's request, Business Associate shall certify in writing that it has complied with the requirements of this Section.

(b) Infeasible; Survival. If the return or destruction of PHI is infeasible, Business Associate shall promptly notify Covered Entity of the conditions that make such return or destruction infeasible. Upon mutual determination by the parties that return or destruction of PHI is infeasible, the obligations of the Business Associate under this Exhibit shall survive the termination of this Agreement. Business Associate shall limit the further use or disclosure of all PHI to the purposes that make its return or destruction infeasible. If Business Associate subsequently wishes to destroy PHI, Business Associate shall notify Covered Entity in writing about its intent to destroy data at least ten (10) days before such date of destruction, and shall comply with Section 5(a) above. Notwithstanding the above, if Covered Entity requests the return of any PHI, Business Associate shall comply as requested.

6. Credit Monitoring. In the event that either party is required by law to notify individuals whose PHI was inappropriately accessed, used, or disclosed by Business Associate, its employees, subcontractor(s) or its agents, and the PHI contains: (i) the individual's first initial or first name, last name, and social security number; (ii) the individual's first initial or first name, last name, and driver's license or state identification card; (iii) the individual's first initial or first name, last name, account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; and/or (iv) the individual's first initial or first name, last name, and PHI, then Business Associate and Covered Entity shall work together to structure a credit monitoring offering commensurate to the risk posed by the breach and Business Associate shall, in any event, pay the costs of credit monitoring for one (1) year for such individuals and the costs and fees related to timely notification in accordance with law.

7. Amendment. The parties agree to promptly modify or amend this Exhibit to permit parties to comply with any new laws, rules or regulations that might modify the terms and conditions herein.

8. General. The Agreement, including this Exhibit and attachments hereto are intended to be construed in harmony with each other, but in the event that any provision in this Exhibit conflicts with the provisions of the Agreement, or its other attachments, the provisions in this Exhibit shall be deemed to control and such conflicting provision or part thereof shall be deemed removed and replaced with the governing provision herein to the extent necessary to reconcile the conflict, except that the indemnity and insurance provisions of this Exhibit (if any) and the Agreement are to be read as separate, concurrent obligations such that Business Associate shall comply with each obligation and one shall not replace the other.



**SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT A: HIPAA BUSINESS ASSOCIATE AGREEMENT**

9. **Audits.** Upon reasonable notice to Business Associate, Covered Entity shall have the right to inspect and audit Business Associate’s privacy and security controls relating to Business Associate’s compliance with the terms of the Agreement, this Exhibit and HIPAA. Business Associate may impose reasonable restrictions upon Covered Entity’s access to Business Associate’s premises information systems, including but not limited to limiting access only to those information systems which contain Covered Entity’s PHI and limiting access to ensure Business Associate’s compliance with existing confidentiality obligations to its other customers. Such audits shall occur no more often than once per year or after any Breach or Security Incident and only upon a good faith belief by Covered Entity that Business Associate is not in compliance with its obligations under the Agreement, this Exhibit or HIPAA relating to Covered Entity’s PHI. All audits shall be conducted with the least interruption to Business Associate’s normal business operations as feasible. Covered Entity shall be responsible for all costs incurred in order to perform the audit.

10. **No Third-Party Beneficiary.** The provisions and covenants set forth in this Exhibit are expressly entered into only by and between Business Associate and Covered Entity, and are only for their benefit. Neither Business Associate nor Covered Entity intends to create or establish any third-party beneficiary status or right (or the equivalent thereof) in any other third party and no such third party shall have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Exhibit.

IN WITNESS WHEREOF, the Parties identified below have executed this Business Associate Agreement.

BUSINESS ASSOCIATE:

SACVALLEY MEDSHARE

Name: John Helvey

By:

Title: CEO

COVERED ENTITY:

Tehama County Health Services Agency

Name: Jayme Bottke

By:

Title: Executive Director



**SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT B: PARTICIPANT AGREEMENT/PRICING**

| Exhibit B: Participant Agreement/Pricing | | | |
|--|---|---|-----------------|
| Participant Name: | <u>Tehama County Health Services Agency</u> | | |
| Effective Date: | <u>12/20/2024</u> | | |
| Initial Term Participation Fee | | | <u>\$ 7,500</u> |
| HIE Services with Data Exchange: | | | |
| - One-Time Setup Initiation Fee (Due upon acceptance) | | | \$ 10,000 |
| - One-Time Avatar XDS.b Feed, HL7 - ADT | | | \$ 10,000 |
| - One-Time eCW XDS.b Feed, HL7 – ADT, VXU/IMM, MEDS | | | \$ 20,000 |
| - One-Time patagonia two interfaces | | | \$ 10,000 |
| - SacValley MedShare Incentive for executing before 12/31/2024 | | | \$ - 5,000 |
| Due upon Execution | \$52,500 | Annual Renewal Fee | \$7,500 |
| <p>Note: If a full participation Agreement is required to be executed every renewal period, an Admin Fee of \$1,000 will be added to the Annual Renewal. Updated Exhibit B can be sent annually without additional Admin Fee.</p> <p>Termination – Initial Term of through December 31st, 2026, with renewal in accordance with Section 2.2 of the body of the Agreement.</p> <p align="center">Required Exhibits attached to this Agreement:</p> | | | |
| <input checked="" type="checkbox"/> | Exhibit A | HIPAA Business Associate Agreement | |
| <input checked="" type="checkbox"/> | Exhibit B | Participant Agreement/Pricing | |
| <input checked="" type="checkbox"/> | Exhibit C | Data Contributed to SacValley MedShare by Participant/ Data Provided to Participant | |
| <input checked="" type="checkbox"/> | Exhibit D | System Requirements | |
| <input checked="" type="checkbox"/> | Exhibit E | Security Requirements | |
| <input checked="" type="checkbox"/> | Exhibit F | Support Services | |
| <input checked="" type="checkbox"/> | Exhibit G | Safeguarding Patient Data | |
| <input type="checkbox"/> | Exhibit H | Vendor Schedule C | |

SACVALLEY MEDSHARE

Participant: Tehama County Health Services Agency

Name: John Helvey

Name: Jayne Bottke

By: _____

By: 

Title: CEO

Title: Executive Director



SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT

EXHIBIT C: DATA CONTRIBUTED TO SACVALLEY MEDSHARE BY PARTICIPANT/ DATA PROVIDED
FROM THE EXCHANGE TO THE PARTICIPANT

| Exhibit C: Data Contributed to Exchange by Participant | |
|---|--|
| <input checked="" type="checkbox"/> | Health Level 7 Data Feed |
| <input type="checkbox"/> | Laboratory Results & Reports (Only in the case of a Public Health Lab Integration) <i>Additional Interface Fee will apply</i> |
| <input type="checkbox"/> | Radiology Reports |
| <input checked="" type="checkbox"/> | Admit, Discharge, and Transfer; including allergies, diagnosis, and procedures (abstracts) |
| <input type="checkbox"/> | Immunization Feed |
| <input checked="" type="checkbox"/> | FULL EXCHANGE VIA XDS.b |
| <input type="checkbox"/> | Direct Messaging Only |
| <input checked="" type="checkbox"/> | OTHER: FHIR Query and Retrieve Interface (required for BHQIP) – TBD Additional Interfaces with additional EMR's \$5,000 per interface, Scope of work required |

SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT D: SYSTEM REQUIREMENTS

Exhibit D:

System Requirements

- A terrestrial persistent connection with an upload speed of at least 256 kilobits per second and a download speed of at least one megabit per second.
- Web Services with the ability to properly connect.

**SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT E: SECURITY REQUIREMENTS**

Exhibit E:

Security Requirements

- Each server that connects to the Exchange will comply with SACVALLEY MEDSHARE's authentication, encryption, and authentication requirements set forth in this Exhibit E.
- Participants accessing the Exchange via other than SVMS portal will implement authentication of each Authorized User at the point of access and will implement password policies based on prevailing industry standards and SVMS Policies and Procedures.
- Participant will limit access to the Hosted System to Authorized Users based on a Permitted Use of the Exchange and according to role-based access principles as described in the Policies and Procedures. Participant will impose appropriate sanctions for members of its workforce that violate applicable security specifications, policies or procedures or make improper use of the Exchange, including revocation of an Authorized User's authorization to access the Exchange as may be appropriate under the circumstances. Participant acknowledges that SACVALLEY MEDSHARE with prior notice to the Participant may terminate the access of any Authorized User at any time in its discretion if any Authorized User is in violation of the Policies and Procedures.
- Participant will review and update its list of Authorized Users as required under the Policies and Procedures.
- Participant will implement firewalls and intrusion detection software into Participant's own systems per industry standards.
- Participant will implement other safeguards to protect Participant's own servers based on information security best practices.
- Participant will perform periodic review of audit logs for both operational monitoring and system security as required by the Participation Requirements and the Policies and Procedures.

SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT F: SUPPORT SERVICES

Exhibit F:

Support Services

Support is available for password reset, training and other support issues.

- Self Help
<https://login.sacvalleymedshare.org> and click "forgot your password"
- SVMS support is available via phone or email during regular business hours of:
08:00 AM to 17:00 (5:00 PM), Pacific Time, Monday - Friday.
530-258-2544
support@sacvalleymys.org
- ICA technical support
24x7x365
877-442-2247

SERVICE LEVELS:

SACVALLEY MEDSHARE, through its licensor, shall provide the services under this Agreement in accordance with the Service Levels set out below ("**Support Services**"). There shall be no additional charge to Participant for Support Services.

- a. Priority One Issues: SACVALLEY MEDSHARE shall, through its licensor, begin work on the resolution of Priority One Issues (as defined in Exhibit H) immediately during normal business hours and within thirty (30) minutes during non-normal business hours of Participant's notification to SACVALLEY MEDSHARE and use commercially reasonable efforts to resolve such issues as promptly as practicable thereafter.
- b. Priority Two Issues: SACVALLEY MEDSHARE shall, through its licensor, begin work on Priority Two Issues (as defined in Exhibit H) within two (2) hours during normal business hours and within four (4) hours during non-normal business hours of Participant's notification to SACVALLEY MEDSHARE and use commercially reasonable efforts to resolve such issues as promptly as practicable thereafter.
- c. Other Issues: SACVALLEY MEDSHARE shall, through its licensor, begin work all other support issues within two (2) business days from receipt of a service request on and use commercially reasonable efforts to resolve the issue as promptly as practicable thereafter.
- d. Availability: SACVALLEY MEDSHARE shall, through its licensor, make the Software available, as measured over the course of each calendar month, 99.5% of the time, excluding unavailability as a result of the "Exceptions" described in Exhibit H (the "Availability Percentage").

SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT G: SAFEGUARDING PATIENT DATA

Exhibit G:

Safeguarding Patient Data

SACVALLEY MEDSHARE will, and Will Cause ICA (and any other contractor that stores or processes Patient Data on behalf of SACVALLEY MEDSHARE) to, comply with the requirements set forth below, and, to the extent SACVALLEY MEDSHARE stores or processes Patient Data, SACVALLEY MEDSHARE shall also comply with such requirements. SACVALLEY MEDSHARE, ICA, and each other entity contracted by SACVALLEY MEDSHARE that stores or processes Patient Data is referred to in this Exhibit as a “Processor”.

1. Processor shall store Patient Data on secure computers located in a physically secure data center. Processor shall establish, maintain, and comply with environmental, safety and facility procedures, data security practices and other safeguards against the destruction, loss, alteration, or unauthorized access or disclosure of Patient Data in the possession of Processor that are: (a) in conformance with the requirements set forth in the Agreement; (b) in conformance with, and sufficient for Participant to meet, applicable Laws, and security best practices outlined in National Institutes of Technology (“NIST”) and International Standards Organization (“ISO”) standards; and (c) no less rigorous than those maintained by Processor for its own information of a similar nature or for any of Processor’s other customers.
2. Without limiting the foregoing: (a) Processor shall employ technology that is at least consistent with industry standards for firewalls and other security technology to help prevent Processor computers and systems from being accessed by unauthorized persons; (b) Processor shall use the HTTPS standard for all data transmissions, and shall ensure that all Patient Data is encrypted while in transmission between Processor’s data center and Participant’s computer system or other device (as applicable) and at rest, using 128 bit SSL or greater encryption; (c) Processor shall provide and maintain the ability to transfer files via secure FTP, encrypted email, or HTTPS; and (d) Processor shall provide and maintain encrypted passwords for access to Processor systems.
3. Processor shall perform commercially reasonable monitoring of the Services and all Processor equipment and software for health and performance.
4. Processor shall develop and maintain procedures for the reconstruction of lost Patient Data, and Processor shall correct, at Participant’s request, any loss or unauthorized or inappropriate destruction or alteration of any Patient Data caused by the act or omission of Processor or any Processor Related Party.
5. Processor shall ensure that no Patient Data will be cached or stored on any Authorized User’s workstation, computer, or other device, except to the extent that, and only to the extent that, an Authorized User affirmatively and intentionally saves such Patient Data to such workstation, computer, or device.
6. Processor will perform daily an incremental backup of all Patient Data. Processor will perform a full backup (complete data copy) of all Patient Data at least once per week in accordance with industry standards.
7. Processor shall ensure that the System and Services will only be provided by Processor Related Parties residing within the United States of America. Processor shall ensure that any information learned by it as a result of entering into any Participation Agreement, including any Patient Data, will never leave the jurisdiction of the United States of America and will never be accessed by anyone other than a previously authenticated user temporarily travelling outside the United States of America. Any modification to the foregoing limitation will require the express written consent signed in ink by Participant’s President, Chief Operating Officer or Chief Information Officer.
8. SACVALLEY MEDSHARE represents, warrants, and covenants that no social security number, driver’s license or other government ID number, or credit card number is required to be provided in order for SACVALLEY MEDSHARE to perform its obligations under the Agreement and that SACVALLEY MEDSHARE shall not request any such data.
9. **Audit Logging.** SACVALLEY MEDSHARE represents and warrants that the System and Services shall automatically record and log each access to Patient Data by any person, through any portion of the system, and will provide Participant the capability to readily create reports showing the following with respect to each such access:
 - Date/time of record access
 - Unique username of accessing person
 - Name of accessing person
 - Specific data elements/fields accessed:
 - All types
 - Allergy History
 - Care Exchange Transaction Log
 - Clinical History
 - Clinical Results
 - Community Search

SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
 GENERAL PARTICIPATION AGREEMENT
 EXHIBIT G: SAFEGUARDING PATIENT DATA

- Demographics
- Document deletion
- Document Restoration
- Extended Search
- External Document
- Fast Labs
- Flowsheet
- Immunizations
- Lab Category
- Lab Graph
- Logged in
- Logged out
- Medications
- Messaging
- Moved Document
- Moved visit
- Patient Access Report
- Patient chart
- Patient chart Search
- Patient List
- Patient Merge Report
- Patient Opt Out Report
- Patient Registration
- Patient Summary
- Procedures/Diagnoses
- Secured document
- Secured patient
- Secured visit
- Security Override
- Sharing status change
- Visit Document
- Visit History
- Visit Summary
- Duration of access
- For each data element/field, what was accessed by accessing person
- For each data element/field, description of action taken (whether information was accessed or printed, etc.)
- For each data element/field, the purpose of the access (treatment, payment, operations, etc.)
- Patient name
- Patient Medical Record Number
- Patient DOB (if included in the report)
- IP address used to access the record
- Record of any printing activity

In addition, the Participant and its Authorized Users shall have easy access at all times to all of the foregoing routine audit reports/logs and related information and SACVALLEY MEDSHARE shall, at any time upon Participant's request promptly will make available and/or will cause ICA to make available without delay to the Participant personnel access to all of the foregoing custom audit reports/ logs and related information pertaining to access to or use of Patient Data.

10. **Audit Logging: Access to Processor's Data through Participant Electronic Medical Record (EMR).** SACVALLEY MEDSHARE represents and warrants that the System and Services shall automatically record and log access to Patient Data by any person, when accessed through the Participant's EMR, and will provide Participant the capability to readily create reports showing the following with respect to each such access:

- Date/time of record access
- Unique username of accessing person
- Name of accessing person
- Duration of Access



**SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT G: SAFEGUARDING PATIENT DATA**

11. **Media Disposal.** As part of the Services provided under the Agreement, unless otherwise instructed by Participant in writing, SACVALLEY MEDSHARE shall dispose of all electronic media that stores information using shredding or other secure means in accordance with 74 Fed. Reg. 19006 (2009) of physical destruction any device that stores information on media, whether that media be hard disk, random access memory or other forms of memory. Upon Participant's reasonable request, SACVALLEY MEDSHARE will promptly provide Participant with a written report of all electronic media used in the provision of Services to Participant which has been disposed of in the previous twelve (12) months. Such reports will identify the media disposed of including serial number of the unit and media, if a serial number is available, the method of destruction, and the date the media were disposed of.

SACVALLEY MEDSHARE HEALTH INFORMATION EXCHANGE
GENERAL PARTICIPATION AGREEMENT
EXHIBIT H: ICA SCHEDULE C

Exhibit H:

ICA Schedule C

Schedule C
Software Services

The purpose of this Software Services Schedule is to describe Software Services and Support Services to be provided by Licensor to Licensee in accordance with and subject to the terms and conditions of the Agreement and all the Participants participating agreements.

1. **SERVICE LEVELS:** Licensor will use commercially reasonable efforts to provide the Services in all material respects in accordance with the Service Levels set out below (“Support Services”). There shall be no additional charge to Licensee for the Support Services. Licensor shall provide twenty-four (24) hour access to the online support application and standard staffed support during normal business hours (7:00 a.m. – 6:00 p.m. Central Standard Time, Monday through Friday, excluding scheduled holidays).
 - a. **Priority One Issues:** Licensor shall begin work on the resolution of Priority One Issues (as defined below) immediately during normal business hours and within thirty (30) minutes during non-normal business hours of Licensee’s notification to Licensor and use commercially reasonable efforts to resolve such issues thereafter. “Priority One Issue” means an incident that causes a complete loss of the Software System to Licensee’s production environment such that work cannot reasonably continue and no workarounds to provide material functionality of the Software System required under this Agreement are possible or cannot be implemented in time to minimize the impact on Licensee’s business.
 - b. **Priority Two Issues:** Licensor shall begin work on Priority Two Issues (as defined below) within two (2) hours during normal business hours and within four (4) hours during non-normal business hours of Licensee’s notification to Licensor and use commercially reasonable efforts to resolve such issues thereafter. “Priority Two Issue” means an incident that results in a significant loss of the Software System such that processing can proceed in a restricted fashion but performance is significantly reduced and/or operation of the Software System or any portion thereof is considered severely limited and no workaround to provide the affected functionality is possible or cannot be implemented in time to minimize the impact on the Licensee’s business.
 - c. **Other Issues:** Licensor shall begin work all other support issues within two (2) business days from receipt of a service request on and use commercially reasonable efforts to resolve the issue thereafter.
 - d. **Availability:** Licensor will make the Software System available, as measured over the course of each calendar month, 99.5% of the time, excluding unavailability as a result of the “Exceptions” described below (the “Availability Percentage”). “Available” means the Software System are available for access and use by Licensee over the Internet and operating in material accordance with the requirements of this Agreement associated specifications. For purposes of calculating the Availability Percentage, the following are “Exceptions” to Downtime, and the Software System shall not be considered unavailable if any such inaccessibility is solely due to: (i) Licensee’s acts or omissions; (ii) Licensee’s own Internet connectivity; (iii) Internet traffic problems not under Licensor’s control; (iv) any hardware, software, service, or other equipment used by an individual user to access the Software System; (v) failure of services provided by the Licensee, or a third party under contract to Licensee for provision of such services, that are incorporated into the Software System, if any, due to no fault of Licensor; (vi) to the extent that Licensee’s material failure to meet the terms and conditions of this Agreement causes the Downtime; or (vii) scheduled maintenance.