

BIG BEND REGIONAL HEALTHCARE INFORMATION ORGANIZATION

Master Participation Agreement

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BBRHIO MASTER PARTICIPATION AGREEMENT

This Participation Agreement (this "Agreement") is entered into as of the ___ day of _____, 2007 (the "Effective Date") by and among the Big Bend Regional Healthcare Information Organization a Florida nonprofit corporation, and each of the registered Participants collectively referred to as the "Participants").

1. INTRODUCTION.

1.1 Nature of Organization.

Big Bend Regional Healthcare Information Organization ("BBRHIO") is a Florida nonprofit, public benefit corporation organized and operated exclusively for one or more purposes recognized as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Participants are public and private health care providers, payers, and other health related organizations operating in the Panhandle of Florida.

1.2 Purposes.

(a) BBRHIO seeks to reduce the cost and improve the quality and efficiency of health care provided by the Participants through the electronic management and exchange of health information acquired or generated by them in providing, paying for, and reporting on patient care items and services. The Participants anticipate that the electronic management and exchange of such information will simultaneously help eliminate unnecessary repeat testing, increase the accuracy of medical diagnoses, improve medical treatment, and improve outcomes for patients.

(b) BBRHIO is developing and will operate a Regional Health Information Network ("RHIN") to facilitate the electronic transmission, limited storage, and sharing of health information among participating providers of health care services, third-party payers for health care services, and other interested parties in their respective regions in a manner that complies with all applicable laws and regulations, including without limitation those protecting the privacy and security of health information.

(c) The intent of BBRHIO and for each of the Participants under this Agreement is to share information for administrative claims and/or treatment purposes., . Specifically, this Agreement is intended to provide a collaborative framework through which (i) the parties can securely share information for administrative claims and/or treatment purposes of Participants; (ii) BBRHIO can conduct its operations as provided in this Agreement; and (iii) BBRHIO, with participation from the Participants, can provide information related to data exchange. (iiii) receive data from Data Providers (see Section 4.2) and provide access to such data to appropriate and approved Data Recipients throughout the Big Bend Region. Any expansion beyond the purposes identified in this Section 1.2(c) must be approved by the Board of Directors of BBRHIO.

Participant authorizes BBRHIO to use and disclose data generated and received for all such approved purposes.

1.3 Description of Services.

BBRHIO will develop and operate a RHIN which shall include a master patient index and record locator service to assist the Participants in locating and sharing patient information. The RHIN shall provide a mechanism for resolving conflicts among the disparate health information management systems and applications among the Participants. BBRHIO shall make certain information-sharing and related services (“BBRHIO Services”) available to Participants as may be agreed upon between BBRHIO and each Participant in the Participant’s Registration Agreement described in Section 4 (Registration Required). An initial list of BBRHIO Services to be made available is provided in Schedule 1.3 attached to and hereby incorporated within this Agreement.

1.4 Change or Termination of Services.

BBRHIO, upon the authorization of the Board of Directors, may choose to participate in a Florida Health Information Network, a National Health Information Network (“NHIN”) or link with other state or regional networks in the future, and may change, add, or delete one or more BBRHIO Services, at any time in its sole discretion following sixty (60) days advance written notice to Participant.

1.5 Term.

The term of this Agreement shall commence on the Effective Date and shall remain in effect for so long as the Agreement is not terminated by a party in accordance with the terms and conditions set forth herein.

2. DEFINITIONS.

2.1 Administrative Claims.

The term “Administrative Claims” shall mean the transmission of information between two parties to carry out financial or administrative activities related to health care. It includes the following types of information transmissions:

- (1) Health care claims or equivalent encounter information.
- (2) Health care payment and remittance advice.
- (3) Coordination of benefits.
- (4) Health care claim status.
- (5) Enrollment and disenrollment in a health plan.
- (6) Eligibility for a health plan.
- (7) Health plan premium payments.
- (8) Referral certification and authorization.

- (9) First report of injury.
- (10) Health claims attachments.
- (11) Other transactions that the Secretary may prescribe by regulation

2.2 Agreement.

The term “Agreement” shall mean this Participation Agreement.

2.3 Applicant.

The term “Applicant” shall mean a person or entity that has applied to become a Participant in BBRHIO.

2.4 BBRHIO.

The term “BBRHIO” is defined in Section 1.1 and means the Big Bend Regional Healthcare Information Organization.

2.5 BBRHIO Services.

The term “BBRHIO Services” is defined in Section 1.3.

2.6 Associated Software.

The term “Associated Software” is defined in Section 8.1

2.7 Authorized Representative.

The term “Authorized Representative” shall mean an individual designated by a Participant to represent the Participant. The initial Authorized Representative for each Participant is identified on the signature page of the BBRHIO Participant Registration Application Agreement.

2.8 Authorized User.

The term “Authorized User” shall mean a Participant and individuals, i.e., natural persons, designated by a Participant to access and use the RHIN on behalf of the Participant. See Section 5.1.

2.9 Data Provider.

The term “Data Provider” shall mean a Participant that is registered and approved to provide information to BBRHIO for use through the RHIN. See Section 7.1.

2.10 Data Recipient.

The term “Data Recipient” shall mean a Participant that is registered and approved to use the RHIN to obtain health information. See Section 6.1.

2.11 Effective Date.

The “Effective Date” is set forth on the cover page to this Participation Agreement.

2.12 HIPAA.

The term “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 CFR Parts 160, 162, and 164, as such act and regulations may be amended from time-to-time.

2.13 Operations Committee.

The term “Operations Committee” is defined in Section 11.6.

2.14 National Health Information Network (“NHIN”).

The term “National Health Information Network” means the National Health Information Network, also known as the National Health Information Infrastructure.

2.15 Participant.

The term “Participant” mean an organization or individual registered with the BBRHIO and approved to act as a Data Provider and/or as a Data Recipient.

2.16 Participant Type.

The term “Participant Type” shall mean the category of Participants to which a particular Participant is assigned based upon that Participant’s role in the RHIN. See Section 4.3.

2.17 Participant’s Required Hardware and Software.

The term “Participant’s Required Hardware and Software” is defined in Section 10.3.

2.18 Policies and Procedures.

The term “Policies and Procedures” shall mean the policies and procedures created and maintained by BBRHIO as described in Section 3 of this Agreement.

2.19 Protected Health Information or PHI.

The term Protected Health Information or PHI shall have the meaning ascribed to it by 45 CFR 160.103.

2.20 Registration Application and Agreement.

The term “Registration Application and Agreement” shall mean an agreement between BBRHIO and a Participant pursuant to which BBRHIO registers the Participant in accordance with, and the Participant agrees to comply with, the terms and conditions of this Participation Agreement and all Policies and Procedures of BBRHIO applicable to the Participant. See Section 4.5.

2.21 Regional Health Information Network.

The term “Regional Health Information Network” shall mean the architecture and underlying infrastructure that provide the ability to exchange data from disparate systems throughout a geographic region.

2.22 Regional Health Information Organization (“RHIO”).

The term “Regional Health Information Organization” shall mean a collaborative effort of BBRHIO and its Participants to incrementally build the structure and capabilities

necessary for a secure health information exchange system that enables health care providers and patients to access vital medical information at the time and place it is needed.

2.23 Treatment.

The term "Treatment" shall have the meaning ascribed to it by 45 CFR 164.501, which currently defines the term as the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another and/or as may be defined under other applicable Federal or State law.

3. PARTICIPATION AGREEMENT AND POLICIES AND PROCEDURES.

3.1 Generally.

The Participation Agreement and accompanying Policies and Procedures shall apply to the operation of BBRHIO, the RHIN, the provision of BBRHIO Services, and the relationships among BBRHIO and Participants. Each Participant agrees to comply with all applicable requirements.

4. REGISTRATION REQUIREMENTS.

4.1. Registration Required.

Only organizations and individuals registered with BBRHIO as Participants shall be permitted to access the RHIN and use BBRHIO Services. A Participant may be registered as a Data Provider, as a Data Recipient, or as both, as described in this Section. A Participant may be registered to use some or all of the BBRHIO Services, as approved pursuant to that Participant's Registration Agreement.

4.2. Registration by Agreement.

As a condition of entering into this Agreement, Participant must submit a completed Registration Application for approval. The Registration Application shall include:

(a) The Applicant's relevant Participant Type, as described in Section 4.3. (Participant Type);

(b) Whether the Applicant would be a Data Provider, a Data Recipient, or both (subject to options available to the Participant under the Policies and Procedures corresponding to its Participant Type as referenced in Section 4.3 below);

(c) If the Applicant is registered as a Data Recipient, which of the BBRHIO Services the Applicant wishes to use; and

(d) Such other classifications and terms and conditions as BBRHIO may deem appropriate under its Policies and Procedures.

4.3. Participant Type.

Each organization or individual Applicant shall register to participate in one of the following Participant Types:

- (a) Medical practice;
- (b) Laboratory;
- (c) Hospital;
- (d) Pharmacy;
- (e) Payer; or
- (f) Such other types as may be created by BBRHIO.

4.4. Review of Registration Application and Agreement.

BBRHIO shall review each Registration Application and Agreement, conduct any necessary related evaluation activities, not limited to the licensure standing of any individual provider or entity, and approve or disapprove each Applicant in accordance with the Policies and Procedures and as BBRHIO determines in its sole discretion. BBRHIO shall not be required to approve any Applicant, however approval will not be denied without good cause, as determined by BBRHIO. Application from providers or entities that are currently excluded from participation in any state of federal health care benefit program shall automatically be denied.

4.5. Acceptance of Registration Application and Agreement.

Upon the BBRHIO's written acceptance of an Applicant, the Registration Application and Agreement shall become legally binding upon the BBRHIO and the Applicant as of the effective date of the BBRHIO's acceptance. Submission of the Registration Application and Agreement by an Applicant does not indicate acceptance of the Agreement by the BBRHIO. The Applicant shall not be permitted to access the BBRHIO RHIN and use BBRHIO Services until its Registration Application and Agreement has been accepted.

4.6. Effect of Participation Agreement, Policies and Procedures upon Registration Agreements.

Each Registration Application and Agreement shall require that the Applicant/Participant agree with all applicable provisions of the Participation Agreement currently in effect and the Policies and Procedures in effect from time to time. BBRHIO may make exceptions to the Policies and Procedures in a Registration Application and Agreement at BBRHIO's sole discretion, as long as any such exceptions do not otherwise conflict with the terms of this Agreement and are approved by the Board of Directors. Any such exceptions shall be indicated in a written addendum to the Registration Application and Agreement.

4.7. Changes to Policies and Procedures.

BBRHIO may amend or repeal and replace the Policies and Procedures at any time upon written notice to the Participants thirty (30) calendar days prior to any such change taking effect.

4.8. Request for Reconsideration or Termination Based on Objection to Change.

If a change to the Policies and Procedures described in Section 4.7 affects a right or obligation of a Participant under that Participant's Registration Agreement deemed to be significant or material, in Participant's sole discretion, and Participant objects to that change, Participant may, within thirty (30) days following BBRHIO's notice of the change to Participant: (a) make request to the Chairperson for reconsideration noting the reasons for the Participant's objection; or (b) terminate the Agreement and Registration Agreement by giving BBRHIO written notice thereof. The change objected to will not be implemented with respect to the objecting Participant prior to resolution of a requested reconsideration or to the effective date of termination under this section, unless such change was required in order for BBRHIO and/or Participants to comply with applicable laws or regulations.

(a) Request for Reconsideration. In the event of a request for reconsideration, the Operations Committee shall review the request for reconsideration within thirty (30) days of its receipt of the request and make a timely recommendation to the Board of Directors. The Board of Directors shall make the final determination as to the request for reconsideration, and will convey such determination within five (5) business days thereof.

(b) Termination Based on Objection. If Participant chooses not to request reconsideration, or is still unsatisfied after reconsideration, it may terminate the Agreement and Registration Agreement by giving BBRHIO written notice of termination pursuant to this subsection 4.8. Such termination will be effective upon receipt on the notice, or at a later date as specified in the termination notice.

4.9. Termination Without Cause.

Participant may terminate the Agreement and/or Registration Agreement at any time without cause by giving thirty (30) days advance written notice of termination to BBRHIO.

4.10. Participant's Right to Terminate for Breach of Business Associate Agreement.

Notwithstanding any other provision of this Section 4 to the contrary, if Section 9.4 (Business Associate Agreement) applies to a Participant's relationship with BBRHIO, Participant may terminate its Registration Agreement as set forth in Section 9.4(k) (Special Termination).

4.11. BBRHIO's Right to Terminate Registration Agreements.

BBRHIO's ability to terminate any Participant's Registration Agreement for breach or other cause shall be governed by the Agreement and the Registration Agreement. Notwithstanding the foregoing, BBRHIO may terminate the Agreement, and all Registration Agreements, upon: (a) forty-five (45) calendar days advance written notice in the event of termination of the FHIN grant for any reason, or (b) one hundred twenty (120) days advance written notice upon decision of the Board.

4.12. Effect of Termination.

Upon any termination of the Agreement and/or Registration Agreement, Participant shall cease to be a Data Provider and/or Data Recipient (as it was registered under such Registration Agreement) and shall immediately lose any and all rights to use the RHIN and/or BBRHIO Services. Provisions of this Agreement identified in Section 4.13 (Survival Provisions) and provisions of the Policies and Procedures which survive termination under the terms thereof shall continue to apply to the former Participant and its Authorized Users following termination. Following termination of the Registration Agreement for a Data Provider, all information stored by such Participant on the RHIN shall be maintained consistent with the requirements of Section 9.4(j) (Action Upon Termination).

4.13. Survival Provisions.

The following provisions of this Agreement shall survive any termination of a Participant's Registration Agreement and/or this Agreement: Section 5.4 (Responsibility for Conduct of Participant and Authorized Users), Section 6.3 (Prohibited Uses), Section 7.5 (Limitations of Use of PHI), Sections 8.3 and 8.4 (Copying and Modifications; Derivative Work), Section 9 (Confidentiality and PHI), Section 13 (Proprietary Information), Section 14.7 (Limitation on Liability), and Section 16 (Dispute Resolution). In addition, the obligations contained in Section 15 for retention of insurance for a certain period of time following termination of this Agreement shall survive as well.

5. AUTHORIZED USERS.

5.1. Identification of Authorized Users.

Participant shall provide BBRHIO with a list, in a medium and format approved by BBRHIO, identifying all of Participant's "Authorized Users," together with the information and any items required regarding Authorized Users pursuant to the Policies and Procedures and the Registration Agreement. This list shall enable BBRHIO to establish a unique identifier for each Authorized User. Participant shall notify BBRHIO, within 72 hours of termination of employment or affiliation of an Authorized User of Participant and take such other actions as are required by the Policies and Procedures with respect to such former Authorized User and take steps within its systems and control to terminate the former Authorized User's access to BBRHIO. Participant shall be solely liable for any acts or omissions related to its failure to properly terminate a former Authorized User's access and/or failing to notify BBRHIO within the appropriate time frame.

5.2. Passwords and Other Security Mechanisms.

Based on the information provided by Participant for its Authorized Users, BBRHIO shall issue a user identifier to each Authorized User. Upon issuance by BBRHIO of a user identifier the Authorized User shall be authorized to access the RHIN and use the BBRHIO Services consistent with the rights of his or her Participant under its Registration Agreement, the Policies and Procedures, and the Authorized User's role(s) for the Participant. If BBRHIO provides the user identifier to the Participant for implementation with Participant's Authorized Users, the Participant shall be responsible for and oversee the implementation and use of the user identifier and any other measures appropriate to the Authorized User. Any violation by an Authorized User of this Agreement, the Participant's Registration Agreement, or the Policies and Procedures shall be cause for suspension or termination of the Authorized User's access to the RHIN and use of BBRHIO Services. Participant shall notify BBRHIO of removal of an Authorized User from its list of Authorized Users as required under the Policies and Procedures. Participant shall take such actions as are required by the Policies and Procedures and within its systems and control with respect to such former authorized user to terminate the individual's access to the RHIN and BBRHIO Services. Following receipt of notice from the Participant, BBRHIO shall take actions required by the Policies and Procedures and within its systems and control to terminate the individual's access to the RHIN and BBRHIO Services.

5.3. No Use by Other than Authorized Users.

Participant agrees to restrict access to the RHIN and, if applicable, use of BBRHIO Services, to only those Authorized Users identified by Participant to BBRHIO in accordance with Section 5.1.

5.4. Responsibility for Conduct of Participant and Authorized Users.

Participant shall be solely responsible for all acts and omissions of the Participant and jointly and severally liable for all acts and omissions of the Participant's Authorized Users and all other individuals who access the RHIN and/or use BBRHIO Services either through the Participant or by use of any password, identifier, mechanism, or log-on received or obtained from the Participant or any of the Participant's Authorized Users.

6. DATA RECIPIENTS' RIGHTS AND OBLIGATIONS.

6.1. Grant of Rights.

BBRHIO grants to each Data Recipient, and each Data Recipient by entering into this Agreement and its Registration Agreement accepts, a non-exclusive, personal, nontransferable, limited right to access and use, and allow its Authorized Users to access and use, the RHIN and BBRHIO Services consistent with the Data Recipient's registration and approval, subject to the Data Recipient's full compliance with this Agreement, the Policies and Procedures, and the Data Recipient's Registration Agreement. BBRHIO retains all other rights to the RHIN and all components thereof. No Data Recipient shall obtain any rights to the RHIN except for the limited rights to use the

RHIN expressly granted by this Agreement, the Registration Agreement, or the Policies and Procedures.

6.2. Permitted Uses.

A Data Recipient may use the RHIN and the BBRHIO Services only for the permitted uses described in this Agreement and in the Policies and Procedures that apply to all Participants or Data Recipients and specifically to the Participant Type under which the Data Recipient is registered pursuant to Section 4.3 (Participant Type).

6.3. Prohibited Uses.

Without limiting the prohibition against any use not permitted under Section 6.2 above, a Data Recipient shall specifically not use or permit the use of the RHIN or BBRHIO Services for any prohibited use described in the Participant's Registration Agreement, the Participation Agreement, the Policies and Procedures, or described below.

(a) No Services to Third Parties. Data Recipient agrees to limit its use of the RHIN and BBRHIO Services only for the Data Recipient's own account, and shall not allow access to any third parties (other than its Authorized Users) or use any part of the RHIN or BBRHIO Services to provide separate services or sublicenses to any third party, including without limitation providing any service bureau services, data processing services, or equivalent services to a third party.

(b) No Use for Comparative Studies. Data Recipient shall not use the RHIN or any BBRHIO Services (i) to aggregate data to compare or analyze the performance of other Participants, or (ii) otherwise utilizing data of other Participants for purposes not expressly approved under this Agreement.

(c) Marketing. Data Recipient shall not use the RHIN or any BBRHIO Services for purposes of marketing health services or products.

7. DATA PROVIDERS' RIGHTS AND OBLIGATIONS.

7.1. Grant of Rights by BBRHIO.

BBRHIO grants to each Data Provider, and each Data Provider by entering into this Agreement and its Registration Agreement accepts, a non-exclusive, personal, nontransferable, limited right to have access to and to use, and for its Authorized Users to have access to and to use, the RHIN for the purpose of complying with the obligations described in this Section 7 (Data Provider's Obligations), subject to the Data Provider's full compliance with this Agreement, the Policies and Procedures, and the Data Provider's Registration Agreement. BBRHIO retains all other rights to the RHIN and all the components thereof. No Data Provider shall obtain any rights to the BBRHIO System except for the limited right to use the RHIN expressly granted by this Agreement, the Participant's Registration Agreement, or the Policies and Procedures.

7.2. Provision of Data.

Each Data Provider shall provide the data described in its Organization Implementation Plan Agreement and required by the Policies and Procedures. Each Data Provider represents and warrants that, to the best of its knowledge, storing data, including without limitation PHI, on the RHIN does not violate any rights, including without limitation copyrights, of any third parties.

7.3. Measures to Assure Accuracy of Data.

Each Data Provider shall use reasonable efforts to provide, in a timely manner data to the RHIN that is accurate, free from serious error, reasonably complete.

7.4. License.

During the term of the Agreement and subject to any express limitations pertaining to such data contained in the Participant's Registration Agreement or the Policies and Procedures, the Data Provider grants to BBRHIO a limited, fully-paid, non-exclusive, royalty free right and license: (a) to permit other Participants to access through the RHIN and use all data provided by the Data Provider pursuant to this Agreement and applicable law, and (b) to use such data to carry out BBRHIO's duties under this Agreement, Registration Agreements with Participants, and the Policies and Procedures, including without limitation system administration, testing, problem identification and resolution, management of the BBRHIO System, and otherwise as BBRHIO determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state and local laws and regulations.

7.5. Limitations on Use of PHI.

Data, including without limitation PHI, provided by a Data Provider hereunder shall not be used for any purpose other than one permitted under Section 7.4. Without limiting the foregoing, Data Provider shall make no uses of data prohibited by the Policies and Procedures or by applicable law.

8. SOFTWARE PROVIDED BY BBRHIO.

8.1. Description.

BBRHIO shall provide to each Participant access to software required to access the RHIN (i.e., beyond a web browser) and, if necessary, use the BBRHIO Services which the Participant has registered to receive, as more particularly described on Schedule 8.1 (the "Associated Software") attached to and hereby incorporated within this Agreement.

8.2. Grant of License.

BBRHIO grants to each Participant a non-exclusive, personal, nontransferable, limited license to use the Associated Software for access to or use of the RHIN and, if the Participant is a Data Recipient, for the purpose of obtaining the BBRHIO Services.

8.3. Copying.

The Participant shall not, without BBRHIO's prior written consent, copy any of the Associated Software.

8.4. Modifications; Derivative Work.

Participant shall not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create the Associated Software or the BBRHIO System, or to create any derivative works from the Associated Software or the BBRHIO System. The Participant shall not modify the Associated Software or combine the Associated Software with any other software or services not provided or approved by BBRHIO.

8.5. Third-Party Software and/or Services.

BBRHIO shall secure on behalf of the Participants, the right for Participants to use such third party software and services on the same basis as provided herein by BBRHIO. Participant shall not be required to enter into any direct contracts with such third party software and services providers, nor shall Participant be bound by any such third party terms or conditions unless Participants expressly consents in writing.

8.6. Open-Source Software.

Nothing in the Policies and Procedures shall be construed to limit BBRHIO use of open-source software in accordance with the applicable open-source software license (if any).

9. CONFIDENTIALITY AND PROTECTED HEALTH INFORMATION.

9.1 General. Each of BBRHIO and Participant acknowledges that certain information of the other party that it may acquire or be exposed to will constitute information of a proprietary or confidential nature including, without limitation: (a) information concerning the other party's business affairs, property and methods of operation that is marked "confidential" and/or "proprietary"; and (b) in the case of Participant, regardless of whether such information is marked confidential or proprietary: (i) any and all Protected Health Information and all other patient and medical information; (ii) any information and materials relating to third party vendors that have provided any part of Participant's and/or any of its affiliates' information or communications infrastructure; and/or (iii) any information of Participant and/or any of its affiliates that is maintained or stored by or through the RHIN (collectively, "*Confidential Information*"). Confidential Information shall not include, however, information that is: (c) publicly available or later becomes available other than through a breach of the Agreement; (d) known to the receiving party or its employees, agents or representatives prior to disclosure by the disclosing party; (e) independently developed by the receiving party or its employees, agents or representatives subsequent to such disclosure; or (f) subsequently lawfully obtained by the receiving party or its employees, agents or representatives from a third party without obligations of confidentiality. The party that has received Confidential Information agrees: (g) to exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential Information that it exercises with respect to its own Confidential

Information, but in no event less than a reasonable degree of care; (h) not to use the disclosing party's Confidential Information except as permitted or contemplated hereunder; and (i) not to directly or indirectly disclose, distribute, republish or allow any third party (other than Authorized Users) to have access to any Confidential Information of the disclosing party without the disclosing party's prior written consent.

9.2 Compliance with HIPAA and Policies and Procedures; Other.

BBRHIO and Participant with respect to its participation in BBRHIO shall comply with all applicable standards for the confidentiality, security, and use of PHI under HIPAA, the Policies and Procedures, and any related requirements under other applicable federal, state, and local law. Each party shall report promptly to the other any breach of this Section 9. The parties acknowledge and agree that any breach of Section 9 by a party may cause irreparable injury and damages to the other party for which there may be no adequate remedy at law, and as to which money damages may not be readily ascertained. In the event of a breach of confidentiality or security Participant and BBRHIO shall promptly meet and determine what notification, if any is required under 817.5681, F.S., or other applicable law. The party who was at the fault for the unauthorized disclosure, shall be responsible and liable to the other for all the costs and expenses associated with notifying the affected patients or individuals.

9.3 Additional Requirements.

[INTENTIONALLY DELETED]

9.4 Business Associate Agreement.

The provisions of this Section 9.4 (Business Associate Agreement) shall apply to implement the requirements imposed under HIPAA for agreements between covered entities and their business associates. All capitalized terms not defined herein shall have the meanings given to them under HIPAA.

(a) Use and Disclosure. BBRHIO may Use and Disclose PHI only for the purpose of the BBRHIO's performance of its responsibilities described in this Agreement, the Registration Agreement, and the Policies and Procedures, provided that such Use and Disclosure would not violate HIPAA if done by Participant. Without limiting the foregoing, BBRHIO may Use and Disclose PHI for the proper management and administration of the BBRHIO's business and to carry out its own legal responsibilities; provided, that any Disclosure pursuant to this Section 9.4(a) (Use and Disclosure) shall either be Required by Law or be made with reasonable written assurances from the person to whom the information is disclosed that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purposes for which it was disclosed to such person, and that the person will notify BBRHIO of any instances of which it is aware in which the confidentiality of the information has been breached

(b) Limits on Uses and Disclosures. BBRHIO shall not make the following disclosures that are otherwise allowed to be made by a Participant under 45 CFR 164.512 unless compelled to do so by law or unless such a disclosure is specifically authorized or required by this Agreement:

- (i) About victims of abuse, neglect, or domestic violence;
- (ii) For health oversight activities;
- (iii) For judicial and administrative proceedings;
- (iv) For law enforcement purposes;
- (v) About decedents;
- (vi) For cadaveric organ, eye, or tissue donation purposes;
- (vii) To avert a serious threat to health or safety;
- (viii) For specialized government functions;
- (ix) For workers' compensation purposes;
- (x) For marketing purposes; or
- (xi) For fundraising purposes.

If BBRHIO is requested to make a disclosure for one of the foregoing reasons, it shall forward such request to Participant so that the Participant can coordinate and prepare a timely response. BBRHIO shall make PHI available to Participant for the foregoing reasons if information in the BBRHIO System is necessary and if requested to do so in writing by the Participant for the Participant to coordinate and prepare a timely response.

(c) Appropriate Safeguards. BBRHIO shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Agreement, the Registration Agreement, and the Policies and Procedures, including Administrative Safeguards, Physical Safeguards, and Technical Safeguards to reasonably and appropriately protect the Confidentiality, Integrity, and Availability of that PHI.

(d) Reports to Participant. BBRHIO shall report to the Participant promptly the discovery of any Use or Disclosure of PHI of the Participant not authorized by this Agreement, the Registration Agreement, or the Policies and Procedures of which the BBRHIO becomes aware, and shall report security incidents concerning electronic PHI.

(e) Agents, Subcontractors. BBRHIO shall ensure that its agents, including any subcontractor, to whom BBRHIO provides PHI received from, or created or received by BBRHIO on behalf of Participant, agree to the same restrictions and conditions that apply to the BBRHIO with respect to such information and implement the safeguards required by Section 9.4(c) (Appropriate Safeguards) with respect to PHI.

(f) Inspection and Copying. If applicable, BBRHIO shall make PHI maintained in a Designated Record Set in BBRHIO's possession available to a Participant or any person designated by the Participant for inspection and copying within ten (10) calendar days of a request by the Participant therefore in order to enable Participant to meet the requirements of Section 164.524 of HIPAA.

(g) Amendments. If applicable, BBRHIO shall make PHI maintained in a Designated Record Set in BBRHIO's possession available for amendment and

incorporate any amendments to PHI requested by Participant pursuant to Section 164.526 of HIPAA.

(h) Reports. BBRHIO shall promptly report to Participant or, at Participant's direction, to an Individual the information required to enable Participant to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with Section 164.528 of the HIPAA.

(i) Availability of Records. BBRHIO shall make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Participant's compliance with its legal obligations.

(j) Action Upon Termination. From and after the date of termination of the Agreement and/or Registration Agreement, BBRHIO shall be permitted to retain a copy of Participant's data only for archival purposes, and it shall not make such data available for continued BBRHIO Services or to any other Participant.

(k) Special Termination. Notwithstanding any other provision of this Agreement and the Policies and Procedures to the contrary, Participant may immediately terminate its Registration Agreement if it determines that BBRHIO has violated a material term of Section 9.3 (Business Associate Agreement).

(l) Change or Revocation of Permission. Participant shall provide BBRHIO with notice of any changes in, or revocation of, permission by an Individual to use or disclose PHI, or of any restriction to the use or disclosure of PHI that Participant has agreed to in accordance with 45 CFR 164.522, if such changes or restrictions affect BBRHIO permitted or required Uses and Disclosures of PHI.

10. OTHER OBLIGATIONS OF PARTICIPANTS.

10.1. Compliance with Laws and Regulations.

Without limiting any other provision of this Agreement or the provisions of a Registration Agreement or the Policies and Procedures relating to parties' compliance with applicable laws and regulations, Participant agrees to comply with applicable federal, state, and local laws, ordinances, and regulations relating to its use of the RHIN and BBRHIO Services, and BBRHIO agrees to comply with applicable federal, state, and local laws, ordinances and regulations relating to the operation of the RHIN and the provision of BBRHIO Services.

10.2. System Security.

Participant shall adopt and implement at least the minimum security measures provided in the Policies and Procedures.

10.3. Software and/or Hardware Provided by Participant.

BBRHIO shall provide the Participant the recommended equipment configuration to access the BBRHIO System and use BBRHIO Services. Participant acknowledges that access to the BBRHIO system and use of the BBRHIO Services may or depend upon Participant's meeting the equipment configuration requirements.

10.4. Viruses and Other Threats.

BBRHIO and Participant shall each use their reasonable efforts to ensure that the provision and transmission of data does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data which will disrupt the proper operation of Participant's systems or the RHIN or any part thereof, as applicable, or any hardware or software used by Participant (with respect to its systems) or BBRHIO in connection therewith, as applicable, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the Participant's system, the RHIN or any part thereof, as applicable, or any hardware, software, or data used by Participant, BBRHIO or any other Participant in connection therewith, to be destroyed, damaged or rendered inoperable. Each party shall further use reasonable efforts to prevent unauthorized access to computers used to access the BBRHIO System or receive data from the BBRHIO System.

10.5. Training.

Participant shall provide appropriate and adequate training to all of the Authorized Users to familiarize them with their obligations pursuant to their use of the RHIN and BBRHIO Services.

11. BBRHIO'S OPERATIONS AND RESPONSIBILITIES.

11.1. Compliance with Policies and Procedures.

The BBRHIO shall require that all Participants enter into a Participant Registration Application and Agreement or another legally binding agreement agreeing, among other things, to comply with the Policies and Procedures in such form as the BBRHIO determines is appropriate as well as the terms of the Master Participation Agreement in effect well as the terms of the Business Associate Agreement in effect.

11.2. Use of Contractors.

BBRHIO shall administer the RHIN and BBRHIO Services and may delegate responsibilities related to such to one or more subcontractors. Consistent with its obligations under Section 9, BBRHIO shall obtain assurances from its subcontractors that only specifically authorized representatives of the subcontractor shall be granted access to the RHIN in connection with the subcontractor's responsibilities. The Participant acknowledges and agrees that access to data (including aggregate data) shall be granted to BBRHIO and its subcontractors for purposes of the BBRHIO's functions and obligations under this Agreement, including without limitation for purposes of complying with grant agreement(s) requirements.

11.3. Training.

BBRHIO shall provide training to Authorized Users identified by Participant to serve as internal trainers for Participant and thereafter as BBRHIO determines appropriate. Training will include instruction on access and use of the RHIN and BBRHIO Services. BBRHIO shall also provide such user manuals and other resources the BBRHIO determines appropriate to support the RHIN and BBRHIO Services. BBRHIO will work with Participant on a training plan for Participant to train new or additional Authorized Users when added by Participant.

11.4. Telephone and/or E-Mail Support.

BBRHIO shall provide, by telephone, e-mail, and/or other means, support and assistance in resolving difficulties in accessing and using the RHIN and BBRHIO Services during hours and on days as provided in the Policies and Procedures.

11.5. Audits and Reports Access Reporting to Participants.

Upon request, BBRHIO shall provide to Participant statistical summaries indicating the number of accesses to Participant's own PHI by accessing site and including a list of all queries to the RHIN by patient names and date of birth. The foregoing summaries shall be provided at no cost. Additional detail about Participant's own PHI may be obtained by Participant as made available by BBRHIO under the Policies and Procedures. Other usage and audit trail reports will be delivered as defined in the Policy and Procedures.

11.6. Operations Committee.

(a) Composition. BBRHIO shall create and maintain an Operations Committee (the "Operations Committee"), which shall act as a resource to the BBRHIO's Board of Directors. The initial Operations Committee shall be composed of not less than three (3) and not more than five (5) members selected by the Board of Directors and pursuant to the bylaws of BBRHIO. The Operations Committee initially shall be composed of the members as provided in Schedule 11.6 attached to and hereby incorporated within this Agreement. Participant shall be provided notice relating to any change in the membership of the Operations Committee. Regardless of the number of Operations Committee members, and even though Participant may have more than one representative serving on the Committee, Participant shall have only one (1) vote on matters requiring action by the Operations Committee. Actions taken by the Operations Committee must be approved by the Board of Directors of the BBRHIO before any such matter can be implemented

(b) Meetings and Responsibilities of Operations Committee. The Operations Committee shall meet not less than quarterly to consider and resolve various issues pertaining to the RHIN and BBRHIO Services. The dates and times of such meetings shall be appropriately noticed to all Participants and Participant shall be allowed to have at least one representative attend such meetings.

(c) Amendment of the Participation Agreement and/or Policies and Procedures. The Operations Committee shall propose such amendments of revisions

to the BBRHIO's Master Participation Agreement and/or Policies and Procedures that it deems to be in the best interest of the BBRHIO and its participants.

11.7. Addition of New Participants.

The Participants acknowledge that additional Participants may be added to this Agreement upon approval of the Operations Committee. Subsequent Participants shall be required to execute an Agreement with an effective date corresponding to the new Participant's Registration Agreement, the terms and conditions of which shall be substantially identical to the terms and conditions of this Agreement.

12. FEES AND CHARGES.

12.1. Agreed-Upon Fees.

The Policies and Procedures and the terms of the Registration Agreement with respect to the payment of fees and charges shall apply.

12.2. Service & Membership Fees.

Unless the Registration Application and Agreement provides otherwise, each Participant shall pay to the BBRHIO service & membership fees for those BBRHIO Services for which the Participant has registered in accordance with the Registration Application Agreement.

12.3. Changes to Fee Schedule.

BBRHIO may change its Policies and Procedures related to fees at any time upon thirty (30) days prior written notice to.

12.4. Miscellaneous Charges.

Unless the Registration Application and Agreement provides otherwise, Participant also shall pay the BBRHIO's charges for all goods or services that BBRHIO provides at Participant's request that are not specified in BBRHIO's then-current Policy and Procedures ("Miscellaneous Charges").

12.5. Payment.

Participant shall pay all Service Fees and any Miscellaneous Charges within thirty (30) days following the documented date of mailing of invoice by BBRHIO sent to the Participant's address as shown in BBRHIO's records.

12.6. Late Charges.

Service Fees and Miscellaneous Charges not paid to the BBRHIO within thirty (30) days following the due date are subject interest at the rate of one percent (1%) per month on the outstanding balance.

12.7. Suspension of Service.

Failure to pay Service Fees and Miscellaneous Charges within thirty (30) days following the due date may result in suspension or termination of the Participant's access to the BBRHIO RHIN and/or use of the BBRHIO Services. In the event of any suspension,

Participant's obligation as a Data Provider to provide BBRHIO data shall also be suspended. A reconnection fee as contained in the Policies and Procedures or otherwise set by the BBRHIO from time to time shall be assessed to re-establish connection after suspension or termination due to non-payment.

12.8. Taxes.

All Service Fees and Miscellaneous Charges shall be exclusive of federal, state, municipal, or other government excise, sales, use, occupational, or similar taxes existing as of the date of this Agreement or enacted in the future. Participant shall pay its pro rata share of any tax (excluding taxes on BBRHIO's net income) that BBRHIO may be required to collect or pay, now or at any time in the future, and that are imposed upon the sale or delivery of items or services provided pursuant to the Policies and Procedures.

12.9. Other Charges and Expenses.

Participant shall be solely responsible for any other charges or expenses Participant incurs in connection with BBRHIO System or BBRHIO Services, including without limitation, telephone and equipment charges, and fees charged by third-party vendors of products and services.

13. PROPRIETARY INFORMATION.

BBRHIO and Participant shall comply with the Policies and Procedures and the prohibitions contained in this Agreement with respect to prohibited uses and requirements for non-disclosure of confidential and proprietary information of the BBRHIO and Participants. BBRHIO agrees that no aggregate data concerning Participant's operations (e.g., data on patient volume, charges to patients or third-party payers and similar reimbursement data, or Participants' practice patterns) will be provided to other Participants or published in an identifiable form without the prior written permission of Participant. Provided, however, the Parties understand and agree that certain data, including aggregate data, may be used and provided to the FHIN for evaluation purposes as required under FHINs Grant Agreement(s) that provided funding for the start-up and operations of the BBRHIO. All such uses and disclosures must be accomplished in a manner that complies with HIPAA and must be approved by the Board of Directors.

14. DISCLAIMERS, EXCLUSIONS OF WARRANTIES, AND LIMITATIONS OF LIABILITY.

14.1. Carrier lines.

Participant acknowledges that in connection with use the RHIN and receipt of BBRHIO Services access to the RHIN is to be provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers,

utilities, and internet service providers, all of which are beyond BBRHIO's control. The BBRHIO assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at Participant's risk and is subject to all applicable local, state, national, and international laws.

14.2. Warranties; Disclaimer.

BBRHIO REPRESENTS AND WARRANTS TO PARTICIPANT THAT DATA RECEIVED FROM PARTICIPANT WILL BE MANIPULATED, PROCESSED, DISPLAYED, STORED, RETRIEVED AND OTHERWISE MANAGED BY BBRHIO WITHOUT MATERIAL DEFECT. FOR PURPOSES HEREIN, THE TERM "**MATERIAL DEFECT**" MEANS ANY DEFECT THAT: (A) CAUSES DATA TO BE CORRUPTED, LOST OR OTHERWISE INACCURATE; (B) CAUSES OR RESULTS IN A BREACH OF CONFIDENTIALITY OR SECURITY; OR (C) IMPACTS PATIENT CARE, SAFETY OR DATA. SUBJECT TO THE FOREGOING REPRESENTATION AND WARRANTY, ACCESS TO THE BBRHIO SYSTEM, USE OF BBRHIO SERVICES AND THE INFORMATION OBTAINED BY A DATA RECIPIENT PURSUANT TO THE USE OF THOSE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY FURTHER WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EXCEPT WITH RESPECT TO DAMAGES ARISING UNDER **ARTICLE 9**, and **SECTIONS 10.4**, and **15.1**, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL BBRHIO BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE BBRHIO HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE BBRHIO DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR OTHER THIRD PARTIES.

14.3. Participant's Actions.

Participant shall be solely responsible for any damage to a computer system, loss of data, and any damage to the BBRHIO System caused by Participant, an Authorized User of Participant, or any person using a user ID assigned to Participant or a member of Participant's workforce.

14.4. Unauthorized Access; Validation of Data; Lost or Corrupt Data.

BBRHIO is not responsible for unauthorized access to Participant's transmission facilities or equipment by individuals or entities using the RHIN or for unauthorized access to, or alteration, theft, or destruction of Participant's data files, programs,

procedures, or information through the BBRHIO System, whether by accident, fraudulent means or devices, or any other method, except to the extent such resulted from acts or omissions of BBRHIO. Participant is solely responsible for validating the accuracy of all output and reports and protecting Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures.

14.5. Inaccurate Data.

All data to which access is made through the BBRHIO System and/or BBRHIO Services originates from Participants and not from BBRHIO. All such data is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage time, and other factors. The BBRHIO neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of the Policies and Procedures and except as provided in **Section 14.2**, BBRHIO shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content or delivery of any data either provided by a Data Provider, or used by a Data Recipient, pursuant to this Agreement or the Policies and Procedures.

14.6. Patient Care.

Without limiting any other provision of the Policies and Procedures, Participant and Participant's Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from or in any way related to the use of the RHIN or BBRHIO Services or the data made available thereby. Except as provided in **Section 14.2**, Participant nor its Authorized User shall have any recourse against, and each hereby waives, any claims against BBRHIO for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the BBRHIO System and/or BBRHIO Services or the data made available thereby.

14.7. Limitation of Liability.

Notwithstanding anything in the Policies and Procedures to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of BBRHIO, and BBRHIO's officers, directors, employees and other agents, under this Agreement, regardless of theory of liability, shall be limited to \$1,000,000_____.

15. INDEMNITIES AND INSURANCE.

15.1 Indemnities.

(a) General. Each party shall indemnify, defend and hold harmless the other party and other Participants, their respective affiliates, and their respective members, directors, officers, shareholders, employees, representatives, agents, attorneys, successors and assigns (collectively, the "**Indemnified Parties**") from

and against any third party demand, claim, allegation, cause of action, investigation, suit or proceeding ("**Claim**") arising out of or relating to: (a) personal injury, including death, and/or property damage caused by such party's or its employees', agents' or representatives' acts or omissions; (b) such party's or its employees', agents' or representatives' failure to comply with the terms of **Article 9**; or (c) any other breach by such party of the terms of the Agreement. The indemnity provisions in this Section shall not be limited by reason of any insurance coverage required under the Agreement. A party's indemnity obligations under this **Section 15.1** may be reduced to the extent the other party is found to have been contributory negligent.

(b) Infringement. BBRHIO shall indemnify, defend and hold harmless the Participant's Indemnified Parties from and against any Claim alleging that the RHIN, the BBRHIO System or BBRHIO Services, or any part thereof, or Participant's use of the RHIN, the BBRHIO System or BBRHIO Services constitutes a misappropriation of any proprietary or trade secret information or an infringement of any patent, copyright, or other intellectual property right. If BBRHIO is required to indemnify the Indemnified Parties in accordance with the terms of this Section, then BBRHIO shall be responsible for paying all settlements, judgments, awards, fines, penalties, interest, liabilities, losses, costs, damages and expenses, including attorneys' fees and disbursements and court costs (collectively, "**Losses**") sustained or incurred by the Indemnified Parties. If BBRHIO reasonably believes that any such Claim may be successful, BBRHIO shall, at no additional cost to the Indemnified Parties, either: (a) procure for the Indemnified Parties the right to continue using the RHIN, the BBRHIO System or BBRHIO Services, or continue receiving the portion of the RHIN, the BBRHIO System or BBRHIO Services subject to such Claim without liability; or (b) replace or modify the RHIN, the BBRHIO System or BBRHIO Services so that it no longer is subject to any such Claim while maintaining equivalent or better functionality and performance capabilities that are satisfactory to Participant.

(c) Procedures for Indemnification. If any Claim is asserted against an Indemnified Party, such Indemnified Party shall give written notice thereof to the other party promptly after such Claim is asserted. After receiving such notice, if the party against whom indemnity is sought acknowledges in writing to the Indemnified Party that the right of indemnification under this Agreement applies with respect to such Claim, then such party shall take control of the defense, investigation and settlement (subject to the further terms of this Section) of such Claim at its sole cost and expense. The Indemnified Party shall cooperate in all reasonable respects with the indemnifying party and its attorneys, at the indemnifying party's expense, in the defense, investigation and trial of such Claim and any appeal arising there from. The defense counsel selected by the indemnifying party shall be reasonably acceptable to the Indemnified Parties.

15.2 Insurance.

BBRHIO shall maintain, throughout the term of this Agreement, at its sole expense, a policy of technology and information errors and omissions (TIE&O) insurance coverage as well as such professional and general liability insurance coverage with limits not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$3,000,000) annual aggregate, and such insurance shall cover all claims against all losses, claims, demands, proceedings, damages, costs, charges and expenses for injuries or damage to any person or property arising out of or in connection with the Agreement that are the result of the acts, errors or omissions of BBRHIO or its employees, agents or subcontractors and shall designate Participant and its affiliates as an "additional insured's" (except with respect to TIE&O insurance coverage's). BBRHIO's insurance policies shall apply on a primary basis. On or before the Effective Date and thereafter upon Participant's request, BBRHIO shall provide to Participant a certificate of insurance evidencing such coverage, which shall also state that Participant shall be provided a minimum of thirty (30) calendar days prior written notice of any proposed cancellation or expiration without renewal, and thirty (30) calendar days prior written notice of any material change in coverage. Within thirty (30) calendar days following the Effective Date, BBRHIO shall deliver to Participant the underlying insurance endorsement evidencing the coverage types and amounts shown in the insurance certificate. Upon written request, BBRHIO shall provide Participant with a complete copy of the involved insurance policy or policies within ten (10) business days of receipt of such request. Neither the insurance required herein nor the amount and type of insurance maintained by BBRHIO shall limit or affect the extent of BBRHIO's liabilities and obligations under the Agreement. To the extent commercially available and feasible, in the event of termination of this Agreement for any reason, BBRHIO and each Participant either shall maintain its insurance coverage called for under this Section for a period of not less than three (3) years, or shall provide an equivalent extended reporting endorsement ("tail policy").

16. DISPUTE RESOLUTION.

16.1. Scope.

Any controversy, dispute, or disagreement arising out of or relating to this Agreement, the Policies and Procedures, or any Participant's Registration Agreement (individually and collectively referred to in this Section 16 as "this Agreement"), or the breach of this Agreement, (referred to in this Section as a "dispute") shall be settled according to the procedure set forth in this Section.

16.2. Informal Conference.

In the event a dispute arises between or among any of the parties concerning their respective duties and obligations under this Agreement, each party shall be obligated to meet and confer with the other(s) in good faith, on reasonable notice, and at a mutually agreeable location. The parties agree that if any party refuses to participate in such a conference, or if such a conference fails to produce a mutually acceptable resolution of the dispute within fifteen (15) calendar days after the parties' receipt of notice of the

dispute, the other party or parties may submit the matter to mediation or arbitration pursuant to this Section.

16.3. Mediation.

In the event a dispute arises between or among the parties that cannot be settled by informal conference as set forth above, the parties may, on mutual agreement, submit the matter to mediation to be conducted in Leon County, Florida. The process for selecting the mediator shall be determined by the mutual written consent of the parties. If the parties fail to agree to a process within ten (10) calendar days from a request, the requesting party may proceed to invoke the arbitration process provided for herein. The consent of any party to such mediation may be withdrawn at any time, without cause.

16.4. Arbitration.

(a) In the event a dispute cannot be settled by informal conference or mediation as set forth above, or in the event either party refuses or withdraws consent to mediation, the matter shall be settled by arbitration in Leon County, Florida. The process for selecting the arbitrator(s), and the rules for arbitration, shall be determined by the mutual written consent of the parties. If the parties fail to agree to an arbitrator or panel of arbitrators, or the rules for arbitration within ten (10) calendar days after receipt of a demand for arbitration, the arbitration shall proceed in accordance with the American Arbitration Associations (AAA) Commercial Arbitration Rules, except as modified below. Judgment on the award rendered by the arbitrator or panel of arbitrators may be entered in any court of competent jurisdiction.

(b) Immediately after the filing of the submission or the answering statement or the expiration of the time within which the answering statement is to be filed, the AAA shall send simultaneously to each party to the dispute an identical list of ten (10) (unless the AAA decides that a greater number is appropriate) names of persons chosen from AAAs National Roster of Commercial Arbitrators. The parties will attempt to agree on an arbitrator from the submitted list, and if they are able to do so, they will promptly advise the AAA of their choice. The same person may serve as both mediator and arbitrator only with the consent of all parties.

(c) If the parties are unable to agree on an arbitrator within fifteen (15) calendar days of the date the AAA transmitted the list, each party to the dispute shall have an additional seven (7) calendar days in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on each party's list, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of one (1) arbitrator to serve. If the parties fail to agree on any of the persons named within the time specified by AAA, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall appoint a three-person panel of arbitrators from among other members of AAAs National Roster of Commercial Arbitrators without the

submission of additional lists. The arbitrator selection process set forth above shall apply regardless of whether there are two or more claimants or two or more respondents involved in the dispute.

(d) Each party shall bear its own costs and expenses, and an equal share of the arbitrators' and administrative fees of arbitration.

17. GENERAL PROVISIONS.

17.1. Applicable Law.

The interpretation of this Agreement, the Policies and Procedures, or any Participant's Registration Agreement (individually and collectively referred to in this Section 17 as "this Agreement"), and the resolution of any dispute arising under this Agreement, shall be governed by the laws of the State of Florida. Venue for any action at law or in equity to interpret or enforce the terms and conditions of this Agreement or to enforce any arbitration award under this Agreement shall lie exclusively in the state or federal courts of Leon County, Florida.

17.2. Non-Assignability.

No benefit or obligation of any Participant under this Agreement may be assigned or transferred by the Participant, either voluntarily or by operation of law, without the prior written consent of BBRHIO, which BBRHIO may withhold in its sole discretion.

17.3. Independent Contractors.

The parties intend to create an independent contractor relationship, for all purposes, including tax purposes. Any contrary final determination by a board, administrative proceeding, or court of competent jurisdiction shall entitle the parties to amend this Agreement in any way necessary to establish and maintain an independent contractor relationship. In the event such amendment is not possible, this Agreement may be terminated by either party. Neither party to this Agreement has any authority to employ or retain any person on behalf of the other. Each shall have the exclusive right to select, engage, fix the compensation of, discharge and to otherwise manage, supervise and control any persons hired by them, and shall be responsible for all obligations and discharge all liabilities imposed under labor, wage hour, workers' compensation, unemployment compensation or insurance, Social Security and other federal, state and municipal laws and regulations. Nothing in this Agreement shall constitute or be construed to create a partnership or joint venture between or among the parties.

17.4. Third Party Beneficiaries.

Except as set forth in **Section 15.1** with respect to Indemnified Parties, there shall be no third party beneficiaries of this Agreement.

17.5. Supervening Circumstances.

Neither Participant nor BBRHIO shall be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or

other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. This Section 17.5 (Supervening Circumstances) shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.

17.6. Severability.

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

17.7. Notices.

Any and all notices required or permitted under this Agreement shall be sufficient if given in writing and hand delivered or sent by United States Certified Mail, postage prepaid, return receipt requested or by overnight delivery service with confirmation of delivery to the address provided by BBRHIO or by the Participant in the Participant's application for registration or such different addresses as a party may designate in writing. Notice given by hand delivery will be effective on delivery. Notice given by Certified Mail or overnight courier will be effective the day after it is mailed or sent. The party giving notice by Certified Mail or overnight courier should retain a postmarked Certified Mail Receipt or equivalent documentation as evidence of the mailing date.

17.8. Waiver.

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

17.9. Schedules and Exhibits.

The schedules referenced in this Agreement are numbered to correspond to the Section or subsection number in which they are first referenced. Such schedules, along with any exhibits thereto, are an essential part of the agreement of the parties, and shall be considered for all purposes a part of this Agreement.

17.10. Complete Understanding.

This Agreement, including each Participant's Registration Agreement and the Policies and Procedures, constitute the entire understanding of the parties, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of any this Agreement other than those contained or referenced herein. In the event of any conflict between the provisions of this Participation Agreement and the provisions of a Registration Agreement or the Policies and Procedures, the terms of this Participation Agreement shall govern. In the event of any conflict between the provisions of a Participant's Registration Agreement and the Policies and Procedures, the document providing greatest specificity to the issue in question shall control. All

modifications or amendments to this Agreement shall be in writing and signed by all parties.

Schedule 1.3

BBRHIO Services

- Health information exchange to provide data to the RHIN
- Health information exchange including access and aggregation of patient data
- Regional master patient Index
- Record locator service
- Simple e-Prescribing
- Document upload
- Audit reporting
- Usage and operations reporting
- Personal health record and intake form
- Secure messaging
- Electronic referral transmission
- Training and support services identified in Section 11 of this Agreement

Schedule 8.1

Associated Software

Subject to a separate agreement between BBRHIO and Avocare the Associated Software includes:

- Core RHIN Platform including the RHIN Web Portal
- RHIN Patient Portal & PHR
- RHIN Documents
- RHIN Referrals
- RHIN Messaging

Schedule 11.6

Operations Committee

Name: Lawrence D. Kaelin, MD Title: Partner
Participant Organization: Vascular Surgery Associates

Name: Sharon Roush Title: CEO
Participant Organization: Capital Regional Medical Center

Name: Allen Byington Title: President & CEO
Participant Organization: ElectroNet Intermedia Consulting

Name: John Detelich Title: CEO/Practice Manager
Participant Organization: Radiology Associates of Tallahassee

Name: _____ Title: _____
Participant Organization: _____