

**HOAG MEMORIAL HOSPITAL PRESBYTERIAN
HOAG-ENABLED HEALTH INFORMATION EXCHANGE
DATA PARTICIPATION AGREEMENT**

This Hoag-Enabled Health Information Exchange Data Participation Agreement (the “**Agreement**”) is entered into this ___ day of _____ 20__ (the **Effective Date**”), between Hoag Memorial Hospital Presbyterian, with its principal place of business at One Hoag Drive, Newport Beach, CA 92663 (“**Hoag**”), and _____, with its principal place of business at _____, CA _____

(“**Participant**”). When used herein the term “**Agreement**” means the body of this Agreement and all of its Exhibits.

RECITALS

A. Hoag, a not-for-profit hospital offering a comprehensive mix of health care services, has continued to emphasize the development of sustained collaborative relationships and the provision of unduplicated services to disadvantaged residents in its community through its Community Benefit Program.

B. Hoag seeks to facilitate the adoption of and promote the use of health information technology (“**HIT**”) in the interests of quality of care, patient safety, and health care efficiency, while also maintaining patient data security and privacy. In support of these objectives, Hoag is facilitating the implementation and use of a community health record and health information exchange system to help link, electronically, all interested physicians’ practices, clinics, reference labs, imaging centers, pharmacies, diagnostic centers, patients, and other health care or related entities (collectively, the “**Health Information Exchange**” or “**HIE**”). Participant recognizes that data security and privacy are critical to facilitate the adoption and trust by the community in the HIE.

C. The HIE is intended to enable the exchange of, as appropriate, health information, including clinical and administrative information at both the patient and community-wide level, in an effort to (1) improve the quality of care, patient safety, and health care efficiency, (2) improve care coordination and collaboration within the Hoag community of caring, (3) facilitate reporting on clinical quality measures, (4) integrate patient care services at all levels of delivery, (5) assist in the evaluation of the necessity and cost effectiveness of care, (6) enhance measurement of patient satisfaction and outcomes, (7) comply with regulatory and accreditation agency reporting requirements, and (8) assist Hoag and the HIE Participants in effectively delivering care and in the collection, storage, retrieval, and protection of patient care and related information.

D. This Agreement specifically applies to the environment of the Health Information Exchange, and sets forth the terms and conditions that govern Participant’s participation in the HIE.

AGREEMENT

In consideration of the foregoing Recitals (which are incorporated herein) and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Participation. The Participant shall participate in the HIE, as and to the extent described in Exhibit B (*Participation*), and subject to and in accordance with the terms and conditions of this Agreement.

2. Entire Agreement. This Agreement hereby incorporates by reference and includes the following:

(a) Exhibit A (*Standard Terms and Conditions*), which describes the terms and conditions with which Hoag and the Participant shall comply related to participation in and the operations of the HIE (the “**Standard Terms and Conditions**”);

(b) Exhibit B (*Participation*), which describes the specific HIE programs in which Participant shall participate, and any additional terms and conditions that shall apply specifically to that participation; e.g., relationships with reference laboratories authorized to report results to the HIE;

(c) Exhibit C (*HIPAA Business Associate Agreement*), which sets forth the obligations of Hoag, in its capacity as the operator of the HIE and a business associate of Participant (the “**Business Associate Agreement**”); and

(d) The HIE Policies and Procedures, which may be amended from time to time, and which are found on the Internet at <http://hie.ehoag.org>.

To the extent that the terms of the Business Associate Agreement conflict with those of this Agreement, the terms of the Business Associate Agreement shall prevail, and in the event of a conflict between the terms of this Agreement and the HIE Policies and Procedures, the terms of the HIE Policies and Procedures shall prevail.

This Agreement, including all Exhibits (i) contains the entire agreement between Hoag and Participant and supersedes any and all prior agreements or representations, written or oral, of the parties with respect to the subject matter of this Agreement, and (ii) may be amended from time to time as described in the Standard Terms and Conditions.

described in the Standard Terms and Conditions and the Business Associate Agreement.

4. Term. The term of this Agreement shall commence on the Effective Date and continue until it is terminated as described in the Standard Terms and Conditions.

3. Definitions. Capitalized terms that are not defined in this Agreement shall have the meanings

HOAG MEMORIAL HOSPITAL PRESBYTERIAN (“HOAG”)

Signature

Amy Klepsa

Manager HIE Adoption and Quality

Date

(“PARTICIPANT”)

Signature

Name

Title, if applicable

Date

EXHIBIT A

STANDARD TERMS AND CONDITIONS

1. Definitions.

1.1 “Access” means, as the context requires,

(a) to cause data (such as Patient Information) to be viewed or viewable by an Authorized User, such as by transferring that data from one computer or other electronic data storage device to another and/or by causing that data to be displayed (*e.g.*, an Authorized User will “Access” Patient Information through the HIE); or

(b) the ability to cause data to be transferred and/or viewed as described above (*e.g.*, an Authorized User will have “Access” to Patient Information through the HIE).

1.2 “Authorized User” means an individual designated by Hoag or by an HIE Participant to Access and Use the HIE and Patient Information on behalf of Hoag or an HIE Participant, respectively, including without limitation, an employee, contractor, or other agent of an HIE Participant, and/or a credentialed member of an HIE Participant’s medical staff, pursuant to the terms of a separate end user license agreement (“ProAccess EULA”).

1.3 “Data Participation Agreement” means a written agreement between Hoag and an HIE Participant, pursuant to which the HIE Participant agrees to act as a Data Provider and/or pursuant to which the HIE Participant and its Authorized Users may access Patient Information.

1.4 “Data Provider” means any HIE Participant that is identified in Exhibit B (*Participation*) as a Data Provider to make Patient Information available so that other HIE Participants may Access that information through the HIE.

1.5 “HIE” shall mean, collectively, the community health record and health information exchange system enabled by Hoag to help link, electronically, all interested physicians’ practices, clinics, reference labs, imaging centers, pharmacies, diagnostic centers, patients, and other health care or related entities.

1.6 “HIPAA Rules” means the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information [45 C.F.R. Parts 160 and 164] promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act Of 1996 (“HIPAA”), and the applicable provisions of the American Recovery and Reinvestment Act, Public Law 111-5, as may be amended from time to time.

1.7 “HIE Policies and Procedures” means Hoag’s administrative and operations policies and procedures for the HIE, as may be amended from time to time, available on the Internet at <http://hie.ehoag.org>.

1.8 “HIE Participant” means an individual person or organization, including Participant, that is currently a party to a Data Participation Agreement with Hoag.

1.9 “HIE Participant’s System” means the hardware and software controlled by the relevant HIE Participant through which the HIE Participant conducts its HIE-related activities pursuant to a Data Participation Agreement.

1.10 “Patient Information” means all information relating to a patient that a Data Provider makes available so that Authorized Users may Access that information through the HIE, including any information that falls under the meaning given to “protected health information” as defined at 45 C.F.R. § 160.103. Patient Information shall be treated as “protected health information,” for purposes of complying with the HIPAA Rules.

1.11 “Use” means to apply data for one (1) or more purposes permitted under these Standard Terms and Conditions (*e.g.*, a party will Use Patient Information by applying that data to medical decision-making in the Treatment of a patient).

2. Hoag’s Responsibilities.

2.1 Enabling of HIE. Hoag shall enable and operate the HIE as described in this Agreement and the HIE Policies and Procedures.

2.2 Compliance with Laws and Regulations. Hoag shall comply with all laws and regulations applicable to the operations of the HIE.

2.3 Privacy and Security of Patient Information. Hoag shall implement reasonable safeguards to protect Patient Information from unlawful Access, tampering, or disclosure through the HIE.

2.4 Viruses and Other Threats. Hoag shall exercise commercially reasonable efforts to prevent exposure through the HIE of an HIE Participant’s System to any program, routine, subroutine, virus, data, or other software that will disrupt the proper operation of the HIE Participant’s System.

2.5 Reports. Hoag shall provide periodic reports to HIE Participants regarding the operation of the HIE, as described in the HIE Policies and Procedures.

3. **Participant's Responsibilities, Generally.**

3.1 Participation in HIE. Participant shall participate in the HIE in accordance with the terms and conditions of this Agreement and the HIE Policies and Procedures.

3.2 Compliance with Laws and Regulations. Participant shall comply with all laws and regulations applicable to the activities it conducts related to its participation in the HIE.

3.3 Responsibility for Acts of Authorized Users and Others. Participant shall be responsible for all acts and omissions, including without limitation privacy or security breaches and/or failures to comply with the requirements of this Agreement or the HIE Policies and Procedures, by Participant's employees, contractors, agents, and any other parties who Access or Use the HIE or Patient Information through HIE Participant's Systems, including without limitation Participant's Authorized Users.

3.4 Training. Participant shall provide or arrange for appropriate training in the Use of the HIE and the requirements of these Standard Terms and Conditions for all of Participant's Authorized Users.

3.5 HIE Liaison; Site Administrator. Participant shall designate a single individual who shall be responsible for managing communications between Participant and Hoag in connection with Participant's participation in the HIE, and a Site Administrator who shall be responsible for adding, deleting and maintaining the user level of Authorized Users' along with their access keys (user names and passwords) for using the HIE.

3.6 Unauthorized Use. Participant shall monitor Access and Use of the HIE and Patient Information by it and its Authorized Users for the purpose of detecting unauthorized Access or Use of the HIE or Patient Information through Participant's connection(s) to the HIE. Participant shall notify Hoag of any unauthorized Access or Use of the HIE in accordance with the HIE Policies and Procedures.

3.7 Prerequisite Systems. Participant shall be solely responsible for obtaining, installing, and maintaining, at Participant's expense, the technology, other than the software provided by Hoag, necessary for Participant and its Authorized Users to Access and Use the HIE, as are described in the HIE Policies and Procedures (the "**Prerequisite System**"). Hoag shall not be responsible for Participant's inability to Access or Use the HIE if that inability is for any reason other than Hoag's failure to comply with the HIE Policies and Procedures, including without limitation any factors arising from Participant's computing environment, software, interfaces, or hardware, or any upgrade or alteration to any of them.

3.8 Data within Participant's Firewall. Participant shall be solely responsible for the control and protection of all data stored within Participant's firewall, and for Participant's compliance with all laws and regulations applicable thereto.

4. **Data Provider's Responsibilities.** Without limiting any other provision of this Agreement, if Participant is a Data Provider, the terms and conditions of this Section 4 (*Data Provider's Responsibilities*) shall apply.

4.1 Provision of Patient Information. Participant shall provide Access to Patient Information as described on Exhibit B (*Participation*) of this Agreement and in the HIE Policies and Procedures. Participant shall, by entering into this Agreement, grant each HIE Participant and their Authorized Users, subject to use in accordance with these Standard Terms and Conditions and the HIE Policies and Procedures, a perpetual, royalty-free license to Use the Patient Information that Participant makes available for Access through the HIE. The uses authorized above include use between multiple health information exchanges in accordance with appropriate terms and conditions, including that Patient Information may only be Accessed by other health information exchanges for Treatment purposes.

4.2 Quality of Information Provided. Participant shall exercise reasonable care to assure that the Patient Information to which Participant provides for Access through the HIE is correct, accurate and complete.

4.3 Reporting Inaccurate or Other Inappropriate Information. Participant shall, within the time frames set forth in the HIE Policies and Procedures, notify Hoag of any Patient Information to which Participant has provided Access as described in Section 4.1 (*Provision of Patient Information*) that Participant determines is corrupt, incomplete, erroneous or otherwise incorrect, or which is otherwise inappropriate for Access through the HIE.

4.4 Specifically Prohibited Activities. Without limiting any other provision of this Agreement, Participant shall not: (a) allow to be transmitted to the HIE any unlawful, threatening, abusive, libelous, defamatory, or otherwise objectionable information of any kind; (b) allow to be transmitted to the HIE any information or software that contains a virus, cancelbot, Trojan horse, worm or other harmful component; or (c) allow to be transmitted to the HIE any information that violates the proprietary rights, privacy rights, or any other rights of a third party, including any patient.

4.5 Prohibited Information. Participant shall not make available through the HIE any Patient Information that is protected from disclosure under state or federal law or regulation, including but not limited to: (a) information relating to a patient's participation in outpatient treatment with a psychotherapist, as defined in Cal. Civ. Code § 56.104; (b) psychotherapy notes, as defined in 45 C.F.R. § 164.501; (c) records of the identity, diagnosis, prognosis, or

treatment of any patient maintained in connection with any program or activity relating to substance or alcohol abuse education, training, treatment, rehabilitation, or research, as defined in 42 C.F.R. § 2.2 and Cal. Health & Safety Code § 11977; (d) public health records relating to AIDS, as defined in Cal. Health & Safety Code § 121025(a); (e) genetic test results, as defined in Cal. Civ. Code § 56.17; or (f) any other data protected from disclosure without valid consent or authorization from the patient under federal or state law or agreement with the subject. To the extent that Participant provides any Patient Information constituting information subject to the restrictions set forth in California Welfare and Institutions Code § 14100.2, Participant represents that such information is being disclosed for purposes directly connected with the administration of the Medi-Cal program.

4.6 Participant's Warranty as to Patient Information. By entering into this Agreement, Participant acknowledges that Patient Information will be Accessed through the HIE and Used by Hoag, HIE Participants, and Authorized Users for the provision of Treatment, as defined under the HIPAA Rules, without independently verifying that such data is correct and accurate, and Participant acknowledges sole responsibility for the Patient Information made available for Access through the HIE. By making Patient Information available through the HIE, Participant represents and warrants that it owns or has obtained (i) all necessary rights in the Patient Information, and (ii) the consents for its Use and disclosure, so that its Access through the HIE by other HIE Participants and Authorized Users does not violate any intellectual property rights, privacy rights, or other rights of a patient or other third party.

4.7 Notice to Patients. Participant shall notify affected individuals of Participant's participation in the HIE, Participant's policies regarding the use and disclosure of Patient Information through the HIE, and such individuals' rights with respect thereto, all as and to the extent required by applicable laws and regulations including without limitation the HIPAA Rules.

5. **Authorized User's Responsibilities.** If Participant is also an Authorized User, the terms and conditions of this Section 5 (*Authorized User's Responsibilities*) shall apply in addition to the terms of the ProAccess EULA then in effect.

5.1 Access of Patient Information for Permitted Use Only. Participant shall Access Patient Information through the HIE only for the purpose of Treatment, as defined in the HIPAA Rules, of an individual with whom Participant has a provider-patient relationship.

5.2 Limitations on Use and Disclosure of Patient Information. Any Use by Participant of Patient Information obtained through the HIE shall be solely in the Participant's capacity as a "covered entity" within the meaning of 45 C.F.R. § 160.103 or as a health care provider or health care facility licensed under California law. Participant shall Use such Patient Information solely for purposes of Treatment, as defined by the HIPAA Rules, of individuals with whom the Authorized User has a provider-patient relationship, and

pursuant to a valid authorization, when required under 45 C.F.R. § 164.508 and/or state law, or otherwise as required for the Authorized User's compliance with applicable laws and regulations and other requirements imposed or orders issued by any government agency or court with competent jurisdiction. Without limiting any other provision of these Standard Terms and Conditions, Participant shall not Use any Patient Information to compare the performance of health care services by one (1) or more HIE Participants against such performance by one (1) or more other HIE Participants.

5.3 Reasonable Safeguards for Privacy and Security. If Participant is responsible for any Authorized Users, Participant shall adopt and maintain reasonable safeguards, to prevent unauthorized Access or Use of Patient Information obtained through the HIE.

6. **Costs of Participation.** Except as expressly provided otherwise in this Agreement, Hoag and Participant shall each bear their own costs and expenses related to the performance of their respective roles and responsibilities pursuant to their respective participation in the HIE.

7. **Termination.**

7.1 Termination for Convenience. Either Hoag or Participant may terminate this Agreement for convenience, effective at any time after the first (1st) anniversary of the Effective Date, upon one hundred twenty (120) days' prior written notice to the other party.

7.2 Termination Incident to Termination of HIE. Hoag may terminate this Agreement and any or all other Data Participation Agreements at any time upon sixty (60) days' prior written notice incident to the termination (either planned or unplanned) of its operation of the HIE for any reason.

7.3 Termination for Breach. This Agreement may be terminated at any time by either party (the "**Terminating Party**") if the other party (the "**Breaching Party**") materially breaches any of its obligations arising hereunder and fails to cure that breach within thirty (30) days following receipt of written notice of the breach from the Terminating Party; provided, however, that if the nature of a curable breach (other than a breach of an obligation to pay money) precludes its cure within that thirty (30)-day period, and if the Breaching Party commences the cure of that breach within that thirty (30)-day period and diligently and continuously proceeds to cure that breach, then this Agreement shall not be terminated based thereon.

7.4 Termination for Placing Patient Information at Risk. In the event Participant (or any of Participant's Authorized Users) does not treat Patient Information in accordance with applicable federal and state laws, rules, and regulations governing such Patient Information, or is determined to have created an unreasonable risk of disclosure of Patient Information, Hoag may terminate this Agreement immediately and without notice.

7.5 Other Grounds for Termination. This Agreement may be terminated at any time (a) by either party if the other party is adjudicated or becomes bankrupt or insolvent; (b) by a party if another files a voluntary petition under any bankruptcy, reorganization, or insolvency law; (c) by a party after the appointment of a trustee or receiver (i) for the other party or (ii) to take possession of all or substantially all of the assets of the other party, whether applied for or consented to by the other party or otherwise; (d) by a party if the other party consents to or files an answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed under any bankruptcy, reorganization, or insolvency law; (e) by a party if the other party has commenced any proceedings of bankruptcy, reorganization, or insolvency that is not be dismissed within thirty (30) days after its commencement; (f) by a party if the other party makes any assignment for the benefit of creditors or other arrangement or composition under any laws for the benefit of insolvents; (g) by a party if an order for relief is entered against the other party under any bankruptcy, reorganization, or insolvency law of any jurisdiction or any case, proceeding, or other action seeking such order is not dismissed for thirty (30) days after its filing; or (h) by a party if a writ of attachment, garnishment, or execution is levied against all or substantially all assets of a party, or all or substantially all assets of the party becomes subject to any attachment garnishment, execution, or other judicial seizure, and the same is satisfied, removed, released, or bonded within thirty (30) days after the date of the attachment, garnishment, execution, or other judicial seizure.

7.6 Effect of Termination. Upon any termination of this Agreement, all licenses granted to Participant under this Agreement that are not specifically stated to be perpetual shall cease and terminate.

7.7 Survival of Provisions. The following sections of these Standard Terms and Conditions shall survive termination of this Agreement: Section 2.2 (*Compliance with Laws and Regulations*); Section 2.3 (*Privacy and Security of Patient Information*); Section 3.2 (*Compliance with Laws and Regulations*); Section 5.2 (*Limitations on Use and Disclosure of Patient Information*); Section 5.3 (*Reasonable Safeguards for Privacy and Security*); Section 7 (*Termination*); Section 9 (*Confidential Information and Patient Information*); Section 10 (*Warranties and Disclaimers*); Section 11 (*Indemnification*); Section 13 (*Dispute Resolution*); Section 14 (*Third-Party Beneficiaries*); Section 15 (*General Terms*); and Section 16 (*Notices*).

8. **Amendments.** Hoag may amend this Agreement or the HIE Policies and Procedures upon thirty (30) days' prior written notice to Participant. Any amendment required for compliance with applicable laws and/or regulations shall take effect automatically upon the effective date thereof stated in Hoag's notice to Participant. For any other amendment, Participant shall have the option of accepting or rejecting the amendment by written notice to Hoag. If Participant does not object to the amendment in writing

within the thirty (30)-day notice period, such amendment shall automatically take effect upon the effective date specified in Hoag's notice of such amendment. If Participant does so object to the amendment, Hoag may, in its discretion, elect either (a) not to implement such amendment with respect to Participant, or (b) terminate this Agreement on the effective date of such amendment.

9. Confidential Information and Patient Information.

9.1 Obligations. Each party acknowledges that such party (the "**Receiving Party**") shall be provided with and exposed to information, materials, and data that are confidential and proprietary to the other party (the "**Disclosing Party**"), including without limitation documentation, confidential business information of the Disclosing Party, lists, and identities, password(s), or other identification or authentication devices ("**Confidential Information**"). The Receiving Party will hold any and all Confidential Information it obtains in the strictest confidence and will use and permit use of Confidential Information solely for the purposes of this Agreement and the operations of the HIE. Without limiting the foregoing, the Receiving Party shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like importance. The Receiving Party may disclose or provide access to its responsible employees, agents, and consultants who have a need to know and may make copies of Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder. The Receiving Party currently has, and in the future will maintain in effect and enforce, rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement, including without limitation written instruction to and agreements with employees, agents, or consultants who are bound by an obligation of confidentiality no less restrictive than set forth in this Agreement to ensure that such employees, agents, and consultants protect the confidentiality of Confidential Information. The Receiving Party will: require its employees, agents, and consultants not to disclose Confidential Information to third parties without the Disclosing Party's prior written consent; will notify the Disclosing Party immediately of any unauthorized disclosure or use; and will cooperate with the Disclosing Party to protect all proprietary rights in and ownership of its Confidential Information. The Receiving Party shall return all Confidential Information to the Disclosing Party, or destroy such information if return is not practical, retaining no copies, upon the termination of this Agreement. Confidential Information will not include any information or material, or any element thereof, to the extent any such information or material, or any element thereof: (a) has previously become or is generally known, unless it has become generally known through a breach of this Agreement or a similar confidentiality or non-disclosure agreement, obligation, or duty; (b) was already rightfully known to the Receiving Party prior to being

disclosed by or obtained from the Disclosing Party as evidenced by written records kept in the ordinary course of business or by proof of actual use by the Receiving Party; (c) has been or is hereafter rightfully received by the Receiving Party from a third party (other than the Disclosing Party) without restriction or disclosure and without breach of a duty of confidentiality to the Disclosing Party; or (d) has been independently developed by the Receiving Party without access to Confidential Information of the Disclosing Party. It will be presumed that any Confidential Information in a Receiving Party's possession is not within exceptions (b), (c) or (d) above, and the burden will be upon the Receiving Party to prove otherwise by records and documentation.

9.2 Patient Information. Patient Information is provided heightened protection under this Agreement as compared to Confidential Information, and therefore shall not be deemed to be Confidential Information hereunder.

9.3 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of Confidential Information and Patient Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach will cause substantial and continuing damages, the value of which will be difficult to ascertain, and other irreparable harm for which the payment of damages alone will be inadequate, and therefore, upon any such breach or any threat thereof, each party will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity.

9.4 Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the Receiving Party, the Receiving Party may disclose Confidential Information or Patient Information in accordance with such law or order or requirement, subject to the following conditions: as soon as possible after becoming aware of such law, order or requirement and prior to disclosing Confidential Information or Patient Information pursuant thereto, the Receiving Party will so notify the Disclosing Party in writing and, if possible, the Receiving Party will provide the Disclosing Party notice not less than five (5) business days prior to the required disclosure. The Receiving Party will use reasonable efforts not to release Confidential Information or Patient Information pending the outcome of any measures taken by the Disclosing Party to contest, otherwise oppose or seek to limit such disclosure by the Receiving Party and any subsequent disclosure or use of Confidential Information or Patient Information that may result from such disclosure. The Receiving Party will cooperate with and provide assistance to the Disclosing Party regarding such measures. Notwithstanding any such compelled disclosure by the Receiving Party, such compelled disclosure will not otherwise affect the Receiving Party's obligations hereunder with respect

to Confidential Information or Patient Information so disclosed.

10. **Warranties and Disclaimers.**

10.1 Disclaimers of Warranties. HOAG PROVIDES ACCESS TO THE HIE AND PATIENT INFORMATION "AS IS," "AS AVAILABLE," AND WITHOUT ANY WARRANTY OF ANY KIND TO PARTICIPANT, WHETHER EXPRESS, IMPLIED OR STATUTORY. HOAG DOES NOT WARRANT THAT THE PERFORMANCE OF THE HIE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS IN THE HIE OR PATIENT INFORMATION WILL BE CORRECTED. HOAG DOES NOT WARRANT THAT THE HIE WILL FULLY ENABLE PARTICIPANT TO COMPLY WITH ANY GOVERNMENTAL OR THIRD PARTY AGREEMENTS OR TO QUALIFY FOR ANY GOVERNMENTAL OR THIRD PARTY INCENTIVES RELATED TO ELECTRONIC HEALTH RECORDS, INCLUDING BUT NOT LIMITED TO, "MEANINGFUL USE" UNDER FEDERAL LAW. HOAG HEREBY DISCLAIMS ALL IMPLIED AND EXPRESS WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR PURPOSE AND NONINFRINGEMENT.

10.2 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATED ENTITIES, OR ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR INSURERS BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR ANY OTHER THIRD PARTY, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS, DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT, THE USE OF THE HIE OR ANY COMPONENT THEREOF, OR ANY PATIENT INFORMATION. HOAG SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (A) THE ACCURACY OR COMPLETENESS OR INPUTTING OF PATIENT INFORMATION; OR (B) THE ACTS OR OMISSIONS OF THE PARTICIPANT, WHETHER SUFFERED BY HOAG OR ANY THIRD PARTY. HOAG'S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THREE MILLION DOLLARS [\$3,000,000.00]. THE EXISTENCE OF ONE OR MORE CLAIMS SHALL NOT ENLARGE THESE LIMITS. EACH PARTY ACKNOWLEDGES THAT THE ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION WILL APPLY

REGARDLESS OF WHETHER ANY LIMITED OR EXCLUSIVE REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

10.3 Disclaimer of Responsibility. Hoag accepts no responsibility for (a) the performance of the Prerequisite Systems or any other systems of Participant, (b) the transmission of the Patient Information to or from the HIE, (c) all Use of the HIE or the Patient Information by Participant and its Authorized Users, (d) the accuracy, completeness or appropriateness of Patient Information and any health care decision made in reliance, either in whole or in part, thereon by Participant or its Authorized Users; and (e) all Use by Participant or its Authorized Users of information obtained through the HIE including, without limitation, Patient Information. Participant and its Authorized Users shall be solely responsible for all decisions involving patient care, utilization management and quality management for its patients. Without limiting the generality of the foregoing, Participant shall have full responsibility for use of the HIE by its Authorized Users. THE HIE SHOULD BE USED AS A SUPPLEMENT TO, AND NOT IN PLACE OF, OTHER DATA THAT IS AVAILABLE TO PARTICIPANT AND ITS AUTHORIZED USERS IN PERFORMING THE ABOVE FUNCTIONS. Neither, Participant nor its Authorized Users shall have recourse against Hoag for any loss, damage, claim, or cost relating to or resulting from the use or misuse of the HIE by Participant or its Authorized Users or data Accessed through the HIE by Participant or its Authorized Users.

10.4 Carrier Lines. Participant acknowledges that Access to the HIE will be provided over various facilities and communication lines, and information will be transmitted over the internet and through routers, switches, and other devices (collectively, "Carrier Lines") that are owned, maintained, and serviced by third-party carriers, utilities, and internet service providers, and other service providers all of which are beyond Hoag's control. Hoag 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 Patient 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 laws.

11. Indemnification. In consideration for the parties' use of the HIE, each party hereto shall indemnify, defend, and hold the other and other HIE Participants, and their respective employees, agents, subcontractors, and licensors harmless from and against any and all liability to third parties (including reasonable attorneys' fees), injury, or damage that arises from an act or omission of said party, including, without limitation, either party's breach of any obligation, representation, or warranty of such party set forth herein.

12. Force Majeure. If either party cannot perform any of its obligations because of any act of God, court order, war, or

any other cause not within the party's reasonable control and which act, etc., could not be avoided through the exercise of reasonable care and diligence (a "**Force Majeure Event**"), then the non-performing party will: (a) immediately notify the other party; (b) take reasonable steps to resume performance as soon as possible; and (c) not be considered in breach during the duration of the Force Majeure Event. Notwithstanding the foregoing, a Force Majeure Event will not relieve Participant of its obligations under Section 9 (*Confidential Information and Patient Information*) or its obligations to protect the confidentiality, privacy, and security of Patient Information.

13. **Dispute Resolution.**

13.1 Informal Dispute Resolution. It is the intent of the parties that all disputes arising under this Agreement be resolved expeditiously, amicably, and at the level within each party's organization that is most knowledgeable about the disputed issue.

13.2 Arbitration. If a dispute cannot be resolved informally as provided in Section 13.1 (*Informal Dispute Resolution*), the dispute will be resolved by final and binding arbitration conducted in accordance with and subject to the Commercial Arbitration Rules of the AAA then applicable. One arbitrator will be selected by the parties' mutual agreement or, failing that, by the AAA, and the arbitrator will allow such discovery as is appropriate, consistent with the purposes of arbitration in accomplishing fair, speedy and cost effective resolution of disputes. The arbitrator will reference the rules of evidence of the Federal Rules of Evidence then in effect in setting the scope of discovery, except that no requests for admissions will be permitted and interrogatories will be limited to identifying (a) persons with knowledge of relevant facts and (b) expert witnesses and their opinions and the bases therefore. Any negotiation or arbitration conducted pursuant to this Section will take place in Orange County, California. Other than those matters involving injunctive relief or any action necessary to enforce the award of the arbitrator, the parties agree that the provisions of this Section 13.2 are a complete defense to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any jurisdiction or venue in any dispute. Nothing in this Section 13.2 prevents the parties from exercising their right to terminate this Agreement in accordance with Section 7 (*Termination*). Any award entered by the arbitrator(s) shall be final and judgment thereon may be entered in any court having jurisdiction. The prevailing party shall be entitled to recovery of costs, fees (including reasonable attorneys' fees) and/or taxes paid or incurred in obtaining the award. Furthermore, any costs, fees or taxes involved in enforcing the award shall be fully assessed against and paid by the party resisting enforcement of the award. Participant acknowledges that under this Section 13.2, Participant is waiving its right to a jury trial.

14. Third-Party Beneficiaries. Except as expressly provided with respect to other HIE Participants, there shall be no third-party beneficiaries of this Agreement.

15. General Terms. If a party wishes to assign or otherwise transfer this Agreement to anyone, such party must obtain the other party's prior written consent, which shall not be unreasonably withheld. Any attempted transfer or assignment in violation of the foregoing shall be void and of no effect. This Agreement shall be binding on the parties, their successors, and permitted assigns. For any breach or threatened breach of obligations identified hereunder as subjecting a non-breaching party to irreparable harm, the non-breaching party shall be entitled to seek equitable relief in addition to its other available legal remedies in a court of competent jurisdiction. This Agreement shall be construed under the laws of the State of California, without regard to its conflicts of law principles. Participant waives any objections against and agrees to submit to the personal jurisdiction of the state and federal courts in Orange County, California. Participant waives any objections or defenses it may have based upon an inconvenient forum. If any provision of this Agreement is found invalid or unenforceable by an arbitrator or a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. All waivers hereunder must be made in writing by a duly authorized representative of the party against whom the waiver is to operate, and failure at any time to require the other party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver, in whole or in part, of any provision of this Agreement will not be considered to be a waiver of any other provision. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. A facsimile signature shall be considered true and genuine. The relationship of the parties hereto is one of independent contractors and shall not be deemed to be that of employer and employee, master and servant, principal and agent or any other relationship except that of independent contractors contracting for the purposes of this Agreement. This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in this Agreement shall not be construed against either party.

16. Notices. All notices required under this Agreement, including these Standard Terms and Conditions, shall be in writing. Notices shall be deemed to have been duly made and received (a) when personally served, (b) when delivered by a bonded courier service, (c) ten (10) days after deposit in mail via certified mail, return receipt requested, or (d) on delivery, when delivered by a nationally recognized overnight delivery service, charges prepaid or charged to the sender's account, if delivery is confirmed by said overnight delivery service. Notices must be delivered to the addresses specified below, or at such other address as the parties shall designate in writing from time to time. Written notice shall also be sufficiently given for all purposes as follows: (i) when delivered by facsimile, notice is effective on delivery, if delivery is acknowledged by the receiving party; or (ii) when delivered by email, notice is effective on delivery, if delivery is confirmed by a return receipt or by acknowledgment by the receiving party. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service. Any party may change contact information by giving the other party written notice.

If to Hoag: Hoag Memorial Hospital Presbyterian Attn: Vice President and General Counsel One Hoag Drive P.O. Box 6100 Newport Beach, CA 92658-6100 Facsimile: (949) 764-4416
If to Participant:

EXHIBIT B

**HOAG-ENABLED HEALTH INFORMATION EXCHANGE
PARTICIPATION AUTHORIZATION**

Please Print Legibly

Organization Name: _____

Name of Authorized Representative:

Title of Authorized Representative _____

Address: _____

City: _____ State: CA Zip: _____

E-Mail: _____ Telephone: _____ Fax: _____

Participant operates a: (indicate the type of operating entity under which the Participant conducts business; e.g.)

Participant is legally organized as a: (indicate the legal nature of business entity; e.g., corporation, partnership, etc.) _____.

Will this organization be sending data to the HIE: No _____ Yes X

Please indicate the type of data:

Clinical Summaries/Continuity of Care Documents (CCD) X Lab Results/Reports X

Radiology Reports X Claims Data _____ Others, please specify: _____

Participant authorizes the following reference laboratories to send lab results to the HIE for the associated account numbers as specified below:

Quest Diagnostics Account Number(s):

LabWest/LabCorp Account Numbers(s):

Other Laboratory Account Numbers(s):

Signature of Authorized Representative

Date

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“BAA”) is entered into effective this ___ day of _____ 20__ (“Effective Date”) by and between _____ (“Covered Entity”) and Hoag Memorial Hospital Presbyterian (“Business Associate”) (each a “Party” and collectively, the “Parties”).

RECITALS

A. Covered Entity is a “Covered Entity” as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, (“HIPAA”), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“Secretary”), including, without limitation, the regulations codified at 45 C.F.R. Parts 160 and 164 (“HIPAA Regulations”);

B. Business Associate performs the *Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information (“PHI”)*;

C. The Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the “HITECH Act”) and its implementing regulations and guidance issued by the Secretary, and other applicable state and federal laws, all as amended from time to time; and

D. Covered Entity is required under HIPAA to enter into a BAA with Business Associate that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

AGREEMENT

In consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

The following terms shall have the meaning set forth below. Capitalized terms used in this BAA and not otherwise defined shall have the meanings ascribed to them in HIPAA, the HIPAA Regulations, or the HITECH Act, as applicable.

1.1 “**Breach**” shall have the meaning given under [45 C.F.R. § 164.402](#).

1.2 “**Designated Record Set**” shall have the meaning given such term under [45 C.F.R. § 164.501](#).

1.3 “**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than member of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

1.4 “**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

1.5 “**Protected Health Information**” and “**PHI**” shall have the meaning given such term in [45 C.F.R. § 160.103](#), limited to information created or received by Business Associate from or on behalf of Covered Entity for purposes of performing the Services. Protected Health Information includes e-PHI.

1.6 “**Required by Law**” shall have the meaning given to such term under [45 C.F.R. § 164.103](#).

1.7 “**Security Incident**” shall have the meaning given to such term under [45 C.F.R. § 164.304](#).

1.8 “**Services**” shall mean the provision and operation of the Health Information Exchange and support of a community health record as provided under the Hoag-Enabled Health Information Exchange Data Participation Agreement (the “Agreement”).

1.9 “**Unsecured PHI**” shall have the meaning given to such term under [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act by the Secretary.

1.10 “**Use**” or “**Uses**” mean, with respect to PHI, the sharing, employment, application, utilization,

examination or analysis of such PHI within Business Associate's internal operations, as set forth in [45 C.F.R. § 160.103](#).

1.11 "Workforce" shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by the Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the HIPAA Regulations or the HITECH Act if so Used or Disclosed by Covered Entity. However, Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosures either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains reasonable assurances from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached; and (ii) for Data Aggregation purposes for the Health Care Operations of Covered Entity.

2.2 Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall comply with Subpart C of 45 C.F.R. Part 164.

2.3 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

2.4 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate that is not specifically permitted by this BAA, including a Breach of Unsecured PHI, no later than three (3) business days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. If

such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Covered Entity shall comply with the requirements of Section 2.5 below. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such unsuccessful Security Incidents is required.

2.5 Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA, the HIPAA Regulations, and the HITECH Act.

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall make the PHI it maintains in Designated Record Sets available to Covered Entity for inspection and copying or, as directed by Covered Entity, to an individual, within five (5) days of a request by Covered Entity, to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524.

2.7 Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall make such PHI available to Covered Entity for amendment to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526.

2.8 Accounting. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, within thirty (30) days of receipt of a request from Covered Entity or an individual for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528. .

2.9 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that have access to, or create or receive PHI on behalf of Business Associate to provide the Services, to execute a written agreement with the same

restrictions and conditions that apply to Business Associate under this BAA with respect to PHI.

2.10 Minimum Necessary. Business Associate shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and any guidance issued thereunder.

2.11 Delegation of Obligations. To the extent Covered Entity delegates any of its obligations under Subpart E of 45 C.F.R. Part 164 to Business Associate, Business Associate shall comply with the relevant provisions set forth in such subpart.

ARTICLE III TERM AND TERMINATION

3.1 Term. Subject to the provisions of Section 3.2, the term of this BAA shall be the term of the Agreement.

3.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in the Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within thirty (30) days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may immediately terminate this BAA and the Agreement upon written notice to Business Associate;

or upon written notice to Business Associate, immediately terminate this BAA and the Agreement if Business Associate and Covered Entity determine that such breach cannot be cured.

3.3 Disposition of Protected Health Information Upon Termination or Expiration. Upon termination or expiration of this BAA, Business Associate shall either return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall extend the protections of this BAA to PHI, and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of PHI not feasible.

ARTICLE IV MISCELLANEOUS

4.1 Amendment to Comply with Law. This BAA shall be deemed amended to incorporate any mandatory obligations of Covered Entity or Business Associate under the HITECH Act and its implementing HIPAA Regulations. Additionally, the Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Regulations, or the HITECH Act.

4.2 Survival. The respective rights and obligations of the Parties under Sections 2.8 and 3.3 shall survive the termination of this BAA.

[Signature Page Follows]

The Parties hereto have executed this BAA as of the Effective Date.

For BUSINESS ASSOCIATE:

Hoag Memorial Hospital Presbyterian

By: _____

Print Name: Amy Klepsa

Title: HIE Adoption and Quality

Dated: _____

For COVERED ENTITY

Organization Name: _____

By: _____

Print Name:

Title:

Dated: _____