

HIN-Specific Modifications Addendum to the Statewide Common Participation Agreement

This HIN-Specific Modifications Addendum (“HIN-Specific Modifications Addendum”) to the Statewide Common Participation Agreement (“SCPA”) is made and entered into by each Health Information Network (“HIN”) and Participant that executes this HIN-Specific Modifications Addendum on the signature page hereto. Each HIN and Participant may be referred to each individually as a “Party” and collectively as the “Parties.” Any terms not otherwise defined herein will assume the meanings set forth in the SCPA. In the event of any conflict or contradiction between the terms of the SCPA and the terms of this HIN-Specific Modifications Addendum, the SCPA shall take precedence.

RECITALS

1. Pursuant to Section 16.1(c) of the SCPA (“Section 16.1(c)”), upon the applicable Parties’ signed mutual written agreement, Participant and one or more HINs may modify specific terms of the SCPA as set forth in the SCPA and only as permitted by and in accordance with applicable law and Section 16.1(c).¹
2. In accordance with Section 16.1(c), no HIN-specific modifications shall conflict with any of the SHIN-NY SOPs, the statewide purposes of the SCPA and the SHIN-NY, or the statewide nature of sharing of SHIN-NY Data between and among SHIN-NY participants, or otherwise affect the rights of any other HIN except as agreed to in writing by such other HIN and permitted by the SCPA.
3. Section 16.1(c) further provides that HIN-specific modifications shall be effective only as to Participant and such HIN(s) who are parties to the such modifications.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

GENERAL TERMS.

- 1.1 The Parties acknowledge and agree that they have mutually agreed to modify one or more of the SCPA’s default terms as set forth herein and that such modifications modify the SCPA only as specified herein and do not modify the rights or obligations of any other HIN

¹ **Drafting Note:** For more detail on the specific SCPA provisions that may be modified through an HIN-Specific Modifications Addendum, please see Appendix A to the *HIN-Specific Modifications to SCPA SOP*, which is available at: **XXXX**

that has not agreed to such modifications by executing this HIN-Specific Modifications Addendum.

- 1.2 The Parties acknowledge and agree that the terms of this HIN-Specific Modifications Addendum shall not conflict with the terms of the SCPA and to the extent any term of such HIN-Specific Modifications Addendum conflicts with any term of the SCPA, such term of the HIN-Specific Modifications Addendum shall be null and void and severable from the rest of this HIN-Specific Modifications Addendum and the SCPA.
- 1.3 The Parties acknowledge and agree that each Party shall promptly produce a copy of any of its modifications made pursuant to Section 16.1(c) upon NYeC's request and in the event that the Parties have agreed to terms in any such modification that do not comply with the requirements of Section 16.1(c), NYeC may avail itself of any applicable remedy available to it under QEPA and/or the Funding Agreement.

HIN-SPECIFIC MODIFICATIONS.

2.1 **Scope of HIN-Specific Modifications.** In accordance with Section 16.1(c), the provisions of the SCPA as between the Parties hereto are modified as described in this section.²

2.2 **Disclaimer of Warranties.** The Parties agree to modify or replace any term or provision of Section 7.11 of the SCPA, or Section 7.11 of the SCPA in its entirety as follows:

7.11 Disclaimer of Warranties. EACH HIN DISCLAIMS ALL WARRANTIES REGARDING THE COMPLETENESS OR ACCURACY OF THE DATA IN THE SHIN-NY PLATFORMS, THE AVAILABILITY OF ITS SHIN-NY PLATFORM, OR ANY OF THE SERVICES IT PROVIDES UNDER THIS SCPA (INCLUDING, WITHOUT LIMITATION, THE REQUIRED PARTICIPANT SERVICES) OR THE COMPLETENESS OR ACCURACY OF THE DATA, REPORTS, NOTIFICATIONS, OR OTHER OUTPUTS OF THE SERVICES IT PROVIDES UNDER THIS SCPA, AS APPLICABLE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO HIN WARRANTS THAT THE REQUIRED PARTICIPANT SERVICES, THE SHIN-NY PLATFORMS, THE DATA OR ANY OUTPUTS ACCESSED OR USED IN CONNECTION WITH THE SHIN-NY (i) WILL OPERATE UNINTERRUPTED OR BE ACCESSIBLE ON DEMAND; (ii) WILL BE FREE FROM DEFECTS; (iii) WILL PRODUCE ACCURATE RESULTS; OR (iv) ARE DESIGNED, FORMATTED, OR DISPLAYED TO MEET PARTICIPANT'S SPECIFIC REQUIREMENTS.

² **Drafting Note:** Sections 2.2 through 2.10 are included in this template document to guide users as to the specific SCPA provisions that may be modified through a HIN-Specific Modifications Addendum. Users should include in their HIN-Specific Modifications Addendum only those section(s) that are being modified and should delete those section(s) that are not being modified.

PARTICIPANT, IF A DATA RECIPIENT, ACKNOWLEDGES THAT ALL DATA, SERVICES AND ALL OUTPUTS THEREFROM ARE PROVIDED ON AN “AS-IS” AND AN “AS AVAILABLE” BASIS AND WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND, EXCEPT AS PROVIDED TO THE CONTRARY IN A VENDOR AGREEMENT, NON-INFRINGEMENT.

EACH HIN AND PARTICIPANT EACH DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OF THE SHIN-NY OR THE SHIN-NY PLATFORMS THEMSELVES.

2.3 **Dispute Resolution.** The Parties agree to modify Section 14 of the SCPA to set forth terms to submit a Dispute to any alternative mechanism of dispute resolution in place of or in addition to one or more of the mechanisms specified in Section 14.1 (Information Dispute Resolution) and Section 14.2 (Mediation) as follows:

14.1 Informal Dispute Resolution. The Parties shall use best efforts to resolve all disputes arising out of or in any way connected with the execution, interpretation or performance of this SCPA, including, but not limited to, the performance or receipt of the Required Participant Services, or the relationships created hereby (each, a “**Dispute**”), in accordance with this Section 14.1.

(a) To initiate dispute resolution under this Section 14.1, a Party raising the Dispute shall send a notice to the other Parties to the Dispute, which notice shall contain a detailed description of the issue under Dispute, the good faith basis for the Dispute, and a recommendation for resolution. Such notice shall be deemed a settlement communication and protected as such by Federal Rules of Evidence 408 and any state and common law protections for settlement communications.

(b) Authorized representatives of the disputing Parties shall meet and confer in good faith within forty-five (45) days after their receipt of such notice to attempt to resolve the Dispute prior to the expiration of such forty-five (45) day period. This period may be extended by mutual written agreement.

14.2 Mediation. If a Dispute cannot be resolved in accordance with Section 14.1, following the expiration of the forty-five (45) day period in Section 14.1(b), the Parties shall agree to submit the Dispute to mediation under terms mutually agreeable to the Parties prior to pursuing any other remedies, including litigation under Section 14.3.

2.3 **Indemnification by HINs of Participant.** The Parties agree to modify or replace any term or provision of Section 15.1 of the SCPA, or Section 15.1 of the SCPA in its entirety as follows:

15.1 Indemnification by HINs of Participant.

(a) Each HIN shall (x) indemnify, defend, and hold harmless Participant and its directors, officers, employees, contractors, representatives, and agents (the “**Participant Indemnified Parties**”) from and against any Losses paid by the Participant Indemnified Parties to any third party (whether pursuant to a court order, or as part of a settlement approved by such indemnifying HIN) arising out of an Action or any threat thereof (including by any Government Authority) against any Participant Indemnified Party, and (y) be liable to Participant Indemnified Parties for Losses, not including any indirect, consequential, special, incidental, punitive, or other exemplary losses or damages (e.g., lost or prospective profits), suffered by Participant Indemnified Parties; in each case to the extent related to, arising out of, or in connection with:

(i) Breach by such HIN of the BAA between Participant and such HIN;

(ii) Non-compliance with law (including, without limitation, HIPAA) or the SHIN-NY SOPs, in each case, in connection with such HIN’s performance of its obligations under this SCPA (including any performance of such obligations by its agents);

(iii) Negligence, willful misconduct, or fraud of such HIN or its agents, in each case, in connection with such HIN’s performance of its obligations under this SCPA; or

(iv) Any claim for actual or alleged infringement of intellectual property rights based on use of such HIN’s SHIN-NY Platform (“**Infringement Claim**”), except to the extent such infringement is a result of: (a) such Participant’s use of such SHIN-NY Platform in contravention of this SCPA or the SHIN-NY SOPs; (b) modifications to such SHIN-NY Platform made by such Participant other than at the instruction of such HIN; (c) failure of such Participant to cease using such SHIN-NY Platform within a reasonable period of time after notice from such HIN that such use is infringing; (d) failure of such Participant to install or implement promptly, at the instruction of such HIN, any change to render use of such SHIN-NY Platform non-infringing (but only to the extent that such installation or implementation would have rendered use of such SHIN-NY Platform non-infringing); or (e) any combination of such SHIN-

NY Platform by Participant with products or systems other than those provided by, or authorized by, such HIN.

2.4 Indemnification by Participant of HINs. The Parties agree to modify or replace any term or provision of Section 15.2 of the SCPA, or Section 15.2 of the SCPA in its entirety as follows:

15.2 Indemnification by Participant of HINs. Subject to Section 16.11, Participant shall (x) indemnify, defend, and hold harmless each HIN and their respective directors, officers, employees, contractors, representatives, and agents (the “**HIN Recouping Parties**”) from and against any Losses paid by the HIN Recouping Parties to any third party (whether pursuant to a court order, or as part of a settlement approved by such Participant) arising out of an Action or any threat thereof against any HIN Recouping Party (including by any Government Authority); and (y) be liable to HIN Recouping Parties for any Losses, not including any indirect, consequential, special, incidental, punitive, or other exemplary losses or damages (e.g., lost or prospective profits), suffered by HIN Recouping Parties, in each case to the extent related to, arising out of, or in connection with:

(a) Non-compliance with law (including without limitation HIPAA) or the SHIN-NY SOPs, in each case, in connection with Participant’s performance of its obligations under this SCPA (including any performance of such obligations by its agents); or

(b) Negligence, willful misconduct, or fraud of Participant or its agents, in each case, in connection with Participant’s performance of its obligations under this SCPA.

2.5 Indemnification Procedure. The Parties agree to modify or replace any term or provision of Section 15.3 of the SCPA, or Section 15.3 of the SCPA in its entirety as follows:

15.3 Indemnification Procedure.

(a) If a third-party Action is commenced against any SHIN-NY Recouping Party, prompt notice thereof shall be given by the SHIN-NY Recouping Party to the SHIN-NY Liable Parties. The SHIN-NY Recouping Parties and the SHIN-NY Liable Parties shall agree upon the party who will be responsible for the defense of such Action; provided, however, that, if the SHIN-NY Recouping Parties and the SHIN-NY Liable Parties cannot agree upon the party who will be responsible for the defense of such Action within 15 days after receipt by the SHIN-NY Liable Parties of notice of such Action, (1) the SHIN-NY Liable Parties shall immediately take control of the defense of such Action and shall engage attorneys acceptable to the SHIN-NY Recouping Parties (which acceptance shall not be unreasonably withheld) to defend such Action; and (2) the

SHIN-NY Recouping Parties shall cooperate with the SHIN-NY Liable Parties (and their attorneys) in the defense of such Action. Each SHIN-NY Recouping Party may, at its own cost and expense, participate (through its attorneys or otherwise) in such defense. If no SHIN-NY Liable Party assumes control over the defense of an Action as provided in this Section 15.3(a), the SHIN-NY Recouping Parties may defend the Action in such manner as they may deem appropriate, at the cost and expense of the SHIN-NY Liable Parties. If the SHIN-NY Liable Parties assume control over the defense of an Action as provided in this Section 15.3(a), the SHIN-NY Liable Parties may not settle such Action without the consent of the SHIN-NY Recouping Parties if the settlement provides for relief other than the payment of monetary damages or for the payment of monetary damages for which the SHIN-NY Recouping Parties will not be indemnified in full pursuant to any of the SHIN-NY Agreements.

(b) If an Infringement Claim occurs or if an HIN determines that an Infringement Claim is reasonably likely to occur, such HIN will have the right, in its sole discretion, to either: (i) procure for the SHIN-NY Recouping Parties the right or license to continue to use the applicable SHIN-NY Platform free of the Infringement Claim; or (ii) modify the applicable SHIN-NY Platform to make it non-infringing, without loss of material functionality.

2.6 **Limitation of Liability.** The Parties agree to modify or replace any term or provision of Section 15.4 of the SCPA, or Section 15.4 of the SCPA in its entirety as follows:

15.4 Limitation of Liability.

(a) Except as otherwise set forth in this Section 15.4, the aggregate liability of a SHIN-NY Liable Party to all SHIN-NY Recouping Parties for any Losses incurred by such SHIN-NY Recouping Parties arising under or in connection with the SHIN-NY, regardless of the SHIN-NY Agreements under which such payment obligation of such Party arises, shall be limited to:

(i) In the event that the Losses are subject to insurance coverage, (i) any insurance proceeds actually recovered by the SHIN-NY Liable Party, plus (ii) any amounts actually received by the SHIN-NY Liable Party from third-party service providers, vendors and suppliers (e.g., indemnification payments made by such persons), in each case in respect of the Action giving rise to such Losses; or

(ii) In the event that the Losses are not subject to insurance coverage, (i) One Million Dollars (\$1,000,000) per incident and Three Million Dollars (\$3,000,000) aggregate per annum, plus (ii) any amounts actually received by the SHIN-NY Liable Party from third-party service

providers, vendors, and suppliers (e.g., indemnification payments made by such persons) in respect of the Action giving rise to such Losses.

(b) The Parties acknowledge and agree that SHIN-NY Data originates from SHIN-NY participants and not from the HINs, and that all such data is subject to change arising from numerous factors, including, without limitation, changes to PHI made at the request of an individual, changes in individuals' health conditions, the passage of time, and other factors. Accordingly, in no event shall an HIN shall have any liability to Participant for any act or omission taken or not taken in reliance on the SHIN-NY Data, including any decision or action taken or not taken involving patient care, utilization management, or quality management for Participant's and its Authorized Users' respective patients, clients, members or enrollees.

(c) IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL ANY HIN OR ANY SHIN-NY PARTICIPANT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF INFORMATION OR DATA, BODILY INJURY, OR OTHER THIRD-PARTY LIABILITIES, 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 ANY HIN OR ANY SHIN-NY PARTICIPANT HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING.

(d) The limitations set forth in this Section 15.4 shall not apply to
(x) any HIN's indemnification obligations with respect to an Infringement Claim;
(y) any Losses caused by the willful misconduct or fraud of the SHIN-NY Liable Party; or (z) Participant's obligation to pay any amounts properly due and payable pursuant to a Value-Added Services agreement.

2.7 **Sole Recourse.** The Parties agree to modify or replace any term or provision of Section 15.5 of the SCPA, or Section 15.5 of the SCPA in its entirety as follows:

15.5 Sole Recourse. Except for the rights to injunctive relief, or as otherwise provided under Section 15.7, the rights to indemnification or to impose liability or responsibility on another person, as set forth in the SHIN-NY Agreements, as limited herein, shall constitute the sole and exclusive recourse of the SHIN-NY Recouping Parties with respect to any Losses incurred by such SHIN-NY Recouping Parties or any other liability of the SHIN-NY Liable Parties to the SHIN-NY Recouping Parties, in connection with the SHIN-NY Agreements, regardless of the theory under which any claim for Losses or other liability is made.

2.8 **Insurance.** The Parties agree to modify Section 15.8 of the SCPA to set forth insurance policy limits for any coverage type set forth therein, with respect to an HIN, in amounts exceeding the minimum amounts set forth therein (Section 15.8(a)), and/or with respect to Participant, in any particular amount specified by the parties (Section 15.8(b)), as follows:

15.8 Insurance.

(a) Each HIN, at its sole cost and expense, shall maintain liability insurance covering such activities of the following coverage types and to include the following features:

(i) Professional and Commercial General Liability in the minimum amount set forth in the QEPA.

(ii) Cyber Liability Insurance, with respect to NYeC in the minimum amount of \$10,000,000 per occurrence and \$10,000,000 in the aggregate, and with respect to each QE (x) for the period of time prior to January 1, 2027, in the minimum amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate, and (y) on after January 1, 2027, in the minimum amount of \$10,000,000 per occurrence and \$10,000,000 in the aggregate.

(iii) Such other policies of insurance as may from time to time be required under the SHIN-NY SOPs, applicable laws, the QEPA, or the Funding Agreement or, directly or indirectly, pursuant to any agreement with the Department with respect to the SHIN-NY, including, without limitation, workers' compensation insurance and disability insurance.

(b) Subject to Section 16.11, each Participant, at its sole cost and expense, shall maintain liability insurance covering such activities of the following coverage types and to include the following features:

(i) Professional and Commercial General Liability in the amount commercially reasonable and necessary, that is approved by such Participant's governing board, to insure itself and its officers, directors, and employees against third-party claims or causes of action arising out of or relating to this SCPA.

(ii) Cyber Liability Insurance in the amount commercially reasonable and necessary, to the extent permitted by the SHIN-NY SOPs and as approved by such Participant's governing board, to insure itself and its officers, directors, and employees against third-party claims or causes of action arising out of such Participant's participation in the SHIN-NY,

including, without limitation, its obligations thereunder and its obligations pursuant to this SCPA.

(iii) Such other policies of insurance as may from time to time be required under the SHIN-NY SOPs or applicable laws, including, without limitation, workers' compensation insurance and disability insurance.

2.9 **Government Participants.** The Parties agree to modify Section 16.11 of the SCPA to set forth a specific exclusive venue for any legal action, suit or proceeding as follows:

16.11 Government Participants. The applicability of the terms of this SCPA and the SHIN-NY SOPs to Government Participants are subject to applicable law. To the extent the application of such terms to a Government Participant conflict with applicable law, including but not limited to terms related to indemnification, insurance, or dispute resolution, applicable law shall control. Participant, if a Government Participant, does not waive sovereign immunity by executing this SCPA.

2.10 **SCPA BAA.** Pursuant to Section 16.1(c), the Parties may modify the SCPA BAA with respect to any terms relating to: (1) additional Safeguards with which an HIN must comply, including those required under 10 N.Y.C.R.R. § 405.46, and any representations and warranties that an HIN or Participant must make with respect to such Safeguards, (2) the time period by which an HIN must report any Data Breaches or Security Incidents to Participant, and (3) the information that an HIN must report to Participant with respect to any Data Breaches or Security Incidents.

(1) The Parties agree to modify the SCPA BAA with respect to Additional Safeguards with which an HIN must comply, including those required under 10 N.Y.C.R.R. § 405.46, and any representations and warranties that an HIN or Participant must make with respect to such Safeguards by adding Section 2(b)(iii) and/or Section 2(b)(iv) to the SCPA BAA as follows:

2(b)(iii) Business Associate agrees to comply with the following additional Safeguards:

- 1.
- 2.
- 3.

2(b)(iv) Business Associate and/or Covered Entity, as specified below, agree(s) to comply with the following representations and warranties with respect to the Additional Appropriate Safeguards in Section 2(b)(iii):

- 1.
- 2.
- 3.

(2) The Parties agree to modify Section 2(c)(ii) and/or Section 2(c)(iii) of the SCPA BAA with respect to the time period by which an HIN must report any Data Breaches or Security Incidents to Participant as follows:

(ii) Business Associate shall provide Covered Entity with notice of the applicable Reportable Event promptly after Business Associate becomes aware of the Reportable Event, and in no event shall Business Associate provide such notice more than ten (10) Business Days after becoming aware of such event, provided that such notice shall be provided sooner if required by applicable law.

(iii) Any required notice of a Reportable Event shall include, to the extent known, (A) the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during such Reportable Event; (B) the date the Reportable Event occurred; (C) any corrective actions Business Associate took or will take with respect to such Reportable Event; and (D) any other relevant information regarding the Reportable Event, including the cause of such Reportable Event. If any such information is not known as of the date by which Business Associate must report the Reportable Event, Business Associate shall promptly provide Covered Entity with an updated report containing the necessary information no later than ten (10) Business Days after Business Associate obtains such information.

(3) The Parties agree to modify Section 2(c)(iii) of the SCPA BAA with respect to the information that an HIN must report to Participant with respect to any Data Breaches or Security Incidents as follows:

(iii) Any required notice of a Reportable Event shall include, to the extent known, (A) the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during such Reportable Event; (B) the date the Reportable Event occurred; (C) any corrective actions Business Associate took or will take with respect to such Reportable Event; and (D) any other relevant information regarding the Reportable Event, including the cause of such Reportable Event. If any such information is not known as of the date by which Business Associate must report the Reportable Event, Business Associate shall promptly provide Covered Entity with an updated report containing the necessary information no later than ten (10) Business Days after Business Associate obtains such information.

EXECUTION.

3.1 This HIN-Specific Modifications Addendum may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same instrument. Each HIN and Participant shall each execute this HIN-Specific Modifications Addendum by signing as indicated below. An electronic signature that complies with applicable law shall be as effective as delivery of a manually executed signature and shall be sufficient to bind the Parties to the terms and conditions hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this HIN-Specific Modifications Addendum to the SCPA to be executed by their respective authorized signatories.

PARTICIPANT

Participant Name: _____

Signature: _____

Signatory Name: _____

Signatory Title: _____

Address: _____

Email: _____

HEALTH INFORMATION NETWORK³

Health Information Network Name: _____

Signature: _____

Signatory Name: _____

Signatory Title: _____

Address: _____

Email: _____

³ **Drafting Note:** If the Parties to this HIN-Specific Modifications Addendum include more than one HIN, users should add an additional signature block(s) as needed.