

**DOCUMENT 25:
HEALTH INFORMATION EXCHANGE HOSPITAL AGREEMENT**

Health Information Exchange Hospital Agreement

This Health Information Exchange Agreement (“Agreement”) is made effective this ____ day of _____, 200_ (“Effective Date”), by and between Network, a non-profit corporation organized under the laws of the State of _____ and having its principal place of business at _____, North Carolina (“Network”); and _____ Hospital, Inc., a non-profit corporation organized under the laws of the State of _____ and having its principal place of business at _____, _____ (“Hospital”).

Witnesseth:

WHEREAS, Network has established a secure, electronic patient data exchange system to allow authorized users to electronically access patient information from participating _____ health care providers (“Exchange”); and

WHEREAS, Network has entered into an agreement with _____ (“Access Provider”) under which Access Provider has agreed to provide Network’s designated “registered users” with access to the Exchange in order to view patient information generated by participating _____ health care providers (“Data Providers”); and

WHEREAS, Network has entered into an agreement with _____ (“Host”) to host the Exchange; and

WHEREAS, Hospital desires to participate in the Exchange in order to contribute and access patient information for the continuing care and treatment of its patients; and

WHEREAS, Network desires Hospital to have the same privileges to the Exchange as a “Registered User” has pursuant to the End User Agreement between Access Provider and Network; and

WHEREAS, Hospital agrees to share in the ongoing operational costs of Exchange;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth below, the parties agree as follows:

1. Definitions

“Documentation” means the user documentation, manuals, and user guides, whether in paper, electronic, or other form, furnished to Hospital by Network for use with the Exchange.

“Data” means any data or information accessible via the Exchange by or on behalf of Hospital or its registered users, including, without limitation, personally identifying information and protected health information.

2. Hospital License and Restrictions. Subject to the terms and conditions of this Agreement and during the term of this Agreement, the Hospital is hereby granted a limited license to allow its Authorized Users (as defined in Exhibit A) to remotely access and use the Exchange and Documentation for the sole purpose of accessing and viewing Data in the Exchange as authorized by Network. Any access to or use of the Exchange not expressly permitted in this Agreement is prohibited. Except as expressly permitted in this Agreement, Hospital shall not, and shall not allow or authorize any third party to: (i) use or access to the Exchange; (ii) alter, enhance or otherwise modify, or create derivative works of the Exchange, or reverse engineer, disassemble, or decompile the Exchange or any of its components; or (iii) sublicense,

transfer, or assign its rights to access and use the Exchange, in whole or in part, to a third party. Hospital in no event shall access, transfer, use, or disclose Data in any manner or for any purpose that is prohibited by any applicable state or federal law, rule, or regulation. Except as expressly set forth in this Agreement, Hospital will not obtain any rights in the Exchange, Documentation, any of the technology used to create the Exchange, including electronic formats and tools that Network or Access Provider uses in interfacing the Data into the Exchange, or in all related software, hardware, documentation, and methodologies used by Network, Access Provider, or Host to develop, maintain, and operate the Exchange and deliver services to Hospital.

3. Hospital Responsibilities.

3.1. Hospital shall be responsible for ensuring the security and confidentiality of the password protected accounts within the Exchange to which Hospital's employees are granted access in order to access and use the Exchange ("Data User Account"), including, without limitation, all user IDs and passwords assigned to such Data User Accounts. Hospital employees shall not disclose their Data User Accounts to any third party, and Hospital employees hereby are expressly prohibited from sharing their Data User Accounts with any third party.

3.2. Hospital shall acquire, install, provide, and properly maintain, at its own cost, the hardware and software including, without limitation, all of Hospital's core systems necessary or appropriate to receive, access and utilize the Exchange, as permitted by this Agreement.

3.3. Hospital acknowledges and agrees that the Exchange: (a) is accessed over the Internet; (b) relies, in part, on the existence and proper operation of equipment and software that is outside of the control of Network, Access Provider, and/or Host; and (c) relies on access to information from, and the provision of information controlled by, third-parties and, as a result, access to the Data by Hospital may be prevented by events or actions outside of Network's, Access Provider's, and/or Host's control. Network, Access Provider, and Host have made and hereby make no guarantee or warranty to Hospital as to the availability or accessibility of the Exchange or Data.

3.4. Hospital shall provide its employees who are granted Data User Accounts with education and training on HIPAA requirements to maintain the confidentiality of patient information accessed through Exchange.

3.5. Hospital shall abide by and follow the Exchange Policies and Procedures, attached hereto as Exhibit A, including but not limited to: enrollment of authorized users, user restrictions, audit trails, sanctions of users, privacy notices, restrictions on patient information, and response to patient requests.

4. Operational Costs. To support the ongoing costs of Exchange, including the Access Provider maintenance fees and the Host hosting fees, Hospital agrees to pay Network a monthly fee of _____ and No/100 Dollars (\$_____), payable on the first day of each month beginning _____.

5. Data. Hospital acknowledges that the information provided through the Exchange is drawn from numerous sources, and Hospital and its employees agree to verify, to the best of their ability, that the Data obtained from Exchange which Hospital's employees rely upon in making treatment decisions about each patient in fact corresponds to that patient. Hospital agrees and understands that the Data accessed through Exchange may not include a patient's entire record of treatment in the region. Hospital shall establish and implement appropriate policies and procedures for purposes of preventing unauthorized access to and disclosure of Data. Hospital shall protect the confidentiality of all Data in accordance with applicable laws and the terms and conditions of this Agreement.

6. HIPAA.

6.1. Hospital represents and warrants that: (i) it shall access and use the Exchange solely in its capacity as a “covered entity,” as that term is defined in 45 C.F.R. § 160.103; and (ii) each such access and use by Hospital shall be made solely for purposes of treatment, payment, and those health care operations specified in 45 C.F.R. § 164.506(c), or pursuant to a valid patient authorization or court order when required under 45 C.F.R. § 164.508, 45 C.F.R. § 2.1, *et seq.*, and/or state law.

6.2. Hospital shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the security and integrity of Data on Hospital’s computer network, and the confidentiality of all Data displayed, transmitted, or accessed at or from Hospital’s facility using the Exchange. Hospital shall report to the relevant Data Provider any use or disclosure of Data created at that Data Provider of which Hospital becomes aware that is not permitted or required by this Agreement or by law.

7. Confidential Information. Hospital acknowledges that in accessing and using the Exchange, it will be exposed to and provided with Access Provider confidential information, including but not limited to the Exchange and all related software, documentation, and services provided by Access Provider in establishing and maintaining the Exchange. Hospital must maintain the confidentiality of such information and materials pursuant to the terms and conditions of this Agreement, and Hospital agrees to exercise no less than reasonable care when handling the Access Provider confidential information. Except as provided in this Agreement, Hospital shall not disclose the Access Provider confidential information to a third party without the express written consent of Access Provider, unless: (a) Hospital is required to do so by law, (b) the Access Provider confidential information becomes publicly available, or (c) Hospital obtained the Access Provider confidential information prior to the Effective Date of this Agreement, or obtains that information through another source who had no duty of confidentiality to Access Provider

8. Term and Termination. This Agreement shall commence on the Effective Date and shall continue in effect for five (5) years. Either party may terminate this Agreement by providing the other party with ninety (90) days written notice of such termination. Upon termination, all licenses granted to Hospital relating to access to or use of the Exchange or the accompanying software tools and documentation will cease. Upon termination, Hospital promptly shall return all Access Provider confidential information to Network.

9. Disclaimers. Network provides the Exchange “as is” and without any warranty of any kind to Hospital, whether express, implied, or statutory. Network does not warrant that the performance or delivery of the Exchange will be uninterrupted or error-free. Network 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 merchantability or fitness for a particular purpose. Network shall not be liable to Hospital for any consequential, incidental, indirect, punitive, or special damages suffered by Hospital 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. Network shall not be liable for any damages arising out of or related to the acts or omissions of Hospital in (a) accessing or using the Exchange or (b) disclosing any Data contained therein.

10. Indemnification. Hospital will indemnify and hold Network and its employees, agents, subcontractors, and licensors harmless from and against any and all liability (including reasonable attorney’s fees), injury, or damages that arise from or are related to: (a) Hospital’s use of or inability to use the Exchange; or (b) Hospital’s breach of this Agreement, including, without limitation, Hospital’s breach of any obligation, representation, or warranty set forth herein.

11. Miscellaneous. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or representations, written or oral, of the parties with respect to the subject matter of this Agreement. This Agreement may not be modified, altered, or amended except by a written instrument duly executed by both parties. No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. Hospital shall not assign this Agreement, or any of the rights or obligations contained herein. This Agreement shall be binding on the parties, their successors and permitted assigns. The parties agree that any breach of a party's obligations under Sections 2 and 6 will result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, in the event of any breach or threatened breach of such obligations, the nonbreaching party will be entitled to seek equitable relief in addition to its other available legal remedies in a court of competent jurisdiction. If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remaining portions shall remain in full force and effect. All notices required under this Agreement shall be: (a) in writing; and (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in the mail via certified mail, return receipt requested, to the addresses specified in the first paragraph of this Agreement or to such other address as the parties shall designate in writing from time to time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NETWORK

_____ HOSPITAL, INC.

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Printed Name

Printed Name

Title

Title

**Health Information Exchange
Policies and Procedures**

[Placeholder page: Information to be inserted by users of the agreement]