

EXHIBIT A TO PARTICIPATION AGREEMENT THINC TERMS AND CONDITIONS

1. Definitions

1.1 “Authorized User” means any employee or independent contractor of the Participant or any credentialed member of the Participant’s professional staff designated by the Participant to access Patient Data through the CDE on behalf of the Participant. The types of employees, independent contractors or credentialed professional staff members who may qualify as Authorized Users are set forth in the THINC Policies and Procedures.

1.2 “CDE” shall have the meaning set forth in the Participation Agreement.

1.3 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, as amended from time to time.

1.4 “MedAllies” shall have the meaning set forth in the Participation Agreement.

1.5 “Other Participant” means any other individual or organization that enters into a Participation Agreement and is approved by THINC to access and use the CDE.

1.6 “Participant” shall have the meaning set forth in the Participation Agreement.

1.7 “Participation Agreement” shall mean the agreement between THINC and each Participant, pursuant to which such Participant has the right to access Patient Data through the CDE.

1.8 “Patient Data” means any patient information exchanged through the CDE.

1.9 “THINC” shall have the meaning set forth in the Participation Agreement.

1.10 “THINC Policies and Procedures” means the policies and procedures adopted by THINC governing the operation and utilization of the CDE, as amended from time to time. Copies of the THINC Policies and Procedures as in effect as of the date hereof are attached hereto as Appendix 1.

2. Use of System; THINC Policies and Procedures

2.1 Use of System. The Participant will use good faith efforts to utilize the CDE with the goal of having the CDE integrated into the Participant’s operations when and to the extent reasonably practicable. Nothing in this Section 2.1 or elsewhere in these Terms and Conditions establishes or implies any obligation on the part of any medical professional who is an employee, contractor, or medical staff member of the Participant to use the CDE in the course of his/her medical practice, and whether or not to use the CDE in the course of his/her medical practice will be left to the sole discretion of that individual or the Participant with which such individual is affiliated.

2.2 Compliance with THINC Terms and Conditions and THINC Policies and Procedures. The Participant agrees to comply at all times and in all respects with these THINC Terms and Conditions and with the THINC Policies and Procedures.

2.3 Amendment of THINC Terms and Conditions and THINC Policies and Procedures. THINC will notify the Participant of any amendment to these THINC Terms and Conditions or to the THINC Policies and Procedures at least thirty days before implementation of the amendment, unless the amendment is required in order for THINC, the Participant or any Other Participant to comply with applicable laws or regulations. In that case, THINC may implement the amendment within a shorter period of time as THINC reasonably determines is appropriate under the circumstances, but will provide the Participant with as much notice of the amendment as reasonably possible.

3. Authorized Users

3.1 Identification of Authorized Users. The Participant shall identify all of the Participant’s Authorized Users and the level of access to the CDE to be provided to each such Authorized User, in accordance with the THINC Policies and Procedures, and THINC and/or MedAllies shall issue credentials necessary for such Authorized Users to access the CDE, in accordance with the THINC Policies and Procedures.

3.2 Termination of Authorized Users. Access by an Authorized User to the CDE shall be terminated in accordance with the THINC Policies and Procedures when such individual is removed as an Authorized User, by reason of termination of employment, change in employment function, or otherwise.

4. Participant’s Obligations and Responsibilities

4.1 Permitted Use of CDE. The Participant may use the CDE only for the permitted uses described in the THINC Policies and Procedures.

4.2 Access to Patient Data. Prior to accessing any Patient Data through the CDE, the Participant will comply with all requirements regarding obtaining the consent of the patient for the Participant to access Patient Data set forth in the THINC Policies and Procedures.

4.3 No Warranties.

(a) THE PARTICIPANT ACKNOWLEDGES AND AGREES THAT ANY DATA ACCESSED BY THE PARTICIPANT OR ITS AUTHORIZED USERS IS PROVIDED ON AN “AS-IS” AND “WHERE-IS” BASIS, AND THE PARTICIPANT WILL TAKE ALL REASONABLE EFFORTS NECESSARY TO INFORM AUTHORIZED USERS OF THEIR RESPONSIBILITY TO REVIEW, UPDATE AND CONFIRM THE ACCURACY OF ANY INFORMATION ACCESSED THROUGH THE CDE.

(b) USE OF THE CDE IS NOT A SUBSTITUTE FOR A HEALTH CARE PROVIDER’S STANDARD PRACTICE OR PROFESSIONAL JUDGMENT. ANY DECISIONS WITH RESPECT TO THE APPROPRIATENESS OF DIAGNOSES OR TREATMENTS OR THE VALIDITY OR RELIABILITY OF INFORMATION IS THE SOLE RESPONSIBILITY OF THE PATIENT’S HEALTH CARE PROVIDER.

4.4 Compliance with Laws and Regulations. Without limiting any other provision of the Participation Agreement, these Terms and Conditions or the THINC Policies and Procedures relating to the parties’ compliance with applicable laws and regulations, the Participant agrees to comply with all applicable federal, state and local laws, ordinances and regulations relating to its use of the CDE and of Patient Data accessed through the CDE.

4.5 Responsibility for Conduct. As between the Participant, on the one hand, and THINC and any Other Participant, on the other hand, the Participant will be solely responsible for all acts and omissions of the Participant and/or any Authorized User with respect to the CDE and/or any confidential and/or other information accessed in connection therewith. In addition, as between the Participant, on the one hand, and THINC and the Other Participants, on the other

hand, the Participant will be solely responsible for all acts or omissions of any other individual who accesses the CDE either through the Participant or any Authorized User or by use of any password, identifier or log-on received or obtained from the Participant or any Authorized User if such access and/or use was due to the negligent or intentional failure of THINC to comply with its obligations under the Participation Agreement.

4.6 Authorized User Training. The Participant will, at its own expense, in accordance with the THINC Policies and Procedures and utilizing such training and educational materials, if any, as THINC may furnish to the Participant, provide to all Authorized Users appropriate and adequate training regarding, without limitation, access and use of the CDE, and privacy and security of clinical information obtained using the CDE.

4.7 Software and Hardware. The Participant shall be responsible for providing and configuring all hardware and software necessary for the Participant to access and use the CDE, including but not limited to the operating system, web browser and internet connectivity.

5. THINC’s Obligations and Responsibilities

5.1 Execution of Participation Agreement by Other Participants. THINC will require all Other Participants to enter into a Participation Agreement before being granted access to the CDE.

5.2 Participant Training. THINC will provide training and/or educational materials to the Participant regarding access and use of the CDE so that the Participant may train all of its Authorized Users regarding the access and use of the CDE as required under Section ~~4.64.64.9~~ hereof.

5.3 Compliance with Laws and Regulations. Without limiting any other provision of the Participation Agreement, these Terms and Conditions and the THINC Policies and Procedures relating to the parties’ compliance with applicable laws and regulations, THINC agrees to comply with applicable federal, state and local laws, ordinances and regulations relating to its operation of the CDE.

5.4 Responsibility for Conduct. As between the Participant and THINC, THINC will be solely responsible for all acts and omissions of THINC with respect to the CDE, and all such acts and omissions will be deemed to be the acts and omissions of THINC. In addition, as between the Participant and THINC, THINC will be solely responsible for all acts or omissions of any

other individual who accesses the CDE either through THINC or by use of any password, identifier or log-on received or obtained from THINC if such access and/or use was due to the negligent or intentional failure of THINC to comply with its obligations under the Participation Agreement.

6. Audits and Reports

6.1 Participant Audits. The Participant will be responsible for performing periodic audits, in accordance with the THINC Policies and Procedures, to confirm compliance with the Participation Agreement, these Terms and Conditions and the THINC Policies and Procedures, and for reporting the findings of such audits to THINC in accordance with the THINC Policies and Procedures.

6.2 THINC Audits. The Participant may be subject to audit by THINC (or a third party engaged by THINC for such purposes) from time to time to confirm compliance with the Participation Agreement, these Terms and Conditions and the THINC Policies and Procedures.

7. Disclaimers, Exclusions of Warranties, Limitations of Liability

7.1 Carrier lines. By using the CDE, the Participant acknowledges that access to the CDE is to be provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and internet service providers, all of which are beyond THINC's control. THINC assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the Participant's risk and is subject to all applicable local, state, national, and international laws.

7.2 NO WARRANTIES. ACCESS TO THE CDE AND THE INFORMATION OBTAINED BY THE PARTICIPANT PURSUANT TO THE USE OF THE CDE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED

WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE CDE OR THE INFORMATION IN THE CDE, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE CDE.

7.3 Other Participants. By using the CDE, the Participant acknowledges that Other Participants have access to the CDE. Such Other Participants have agreed to comply with the THINC Policies and Procedures; however, the actions of such other parties are beyond the control of THINC. Accordingly, THINC does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the CDE resulting from any Other Participant's actions or failures to act, except where THINC has been notified in writing of such Other Participant's actions or failures to act and has failed to take action to prevent further improprieties by such Other Participant.

7.4 Unauthorized Access; Lost or Corrupt Data. THINC is not responsible for unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the CDE or for unauthorized access to, or alteration, theft, or destruction of the Participant's data files, programs, procedures, or information through the CDE, whether by accident, fraudulent means or devices, or any other method, except to the extent that such access, alteration, theft or destruction was due to the negligent acts or omissions or willful misconduct of THINC. As between the Participant and THINC, the Participant is solely

responsible for validating the accuracy of all output and reports and protecting the Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. The Participant waives any claims against THINC for damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, or the use of third-party software, except to the extent that such damages arise as a result of the negligent acts or omissions or willful misconduct of THINC. THINC is not responsible for the content of any information transmitted or received through the CDE, except to the extent that the content of such information is distorted or corrupted as a result of the negligent acts or omissions or willful misconduct of THINC.

7.5 Inaccurate Data. All data available through the CDE originates from the Participant and Other Participants and not from THINC. All such data is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. THINC neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of the THINC Policies and Procedures, THINC will have no responsibility for or liability related to the accuracy, content, currency, completeness, content or delivery of any data either provided or accessed by the Participant, except to the extent that the content of such information is distorted or corrupted as a result of the negligent actions or omissions or willful misconduct of THINC.

7.6 Patient Care. Without limiting any other provision of the Participation Agreement, these Terms and Conditions and the THINC Policies and Procedures, as between THINC, on the one hand, and the Participant, on the other hand, the Participant will be solely responsible for all decisions and actions taken or not taken by the Participant or the Participant's Authorized Users resulting from or in any way related to the use of the CDE or the data made available through the CDE. The Participant will not have any recourse against THINC, and the Participant hereby waives any claims against THINC, for any loss, damage, claim or cost relating to or resulting from its own use or misuse of the CDE and/or the data made available through the CDE, except to the extent that such loss, damage, claim or cost arises as a result of the negligent acts or omissions or willful misconduct of THINC.

7.7 Limitation of Liability. Notwithstanding anything in the Participation Agreement, these Terms and Conditions and the THINC Policies and Procedures to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of THINC and THINC's officers, directors, employees and other agents to the Participant under the Participation Agreement, these Terms and Conditions and the THINC Policies and Procedures, regardless of theory of liability, will be limited to the amount of insurance coverage available to THINC with respect to such liability plus any amounts for which THINC is entitled to indemnification by third parties, such as technology vendors.

8. Insurance. Both the Participant and THINC will obtain and maintain, throughout the term of this Agreement, insurance coverage as specified in the THINC Policies and Procedures; provided that if the Participant has medical malpractice liability coverage under the Federal Tort Claims Act, such coverage shall be deemed to meet all requirements in the THINC Policies and Procedures related to medical malpractice liability coverage.

9. Publicity. Except as otherwise provided in the Participation Agreement, these Terms and Conditions and the THINC Policies and Procedures, neither party may use the name or logo of the other party or any Other Participant in any news or publicity release, policy recommendation, advertising, or any commercial communication in any form of media without the prior written consent of the other party or such Other Participant, except that (i) THINC may identify the Participant as a participant in the CDE and (ii) the Participant may identify itself as a participant in the CDE. The foregoing limitations will not apply to any documents that either party may be required to provide to a federal, state or local governmental agency.

Appendix 1

THINC Policies and Procedures

200107340.2