

PARTICIPATION AGREEMENT

This Participation Agreement (this “Agreement”) is made by and between Taconic Health Information Network and Community, Inc. (“THINC”) and the participant identified on the signature page to this Agreement (the “Participant”).

1. Background

1.1 THINC is a New York State not-for-profit corporation that, in conjunction with MedAllies, Inc. (“MedAllies”), operates a clinical information data exchange (the “CDE”) that facilitates the exchange of health information among health care providers and other health-related entities in the Hudson River Valley region of New York State.

1.2 Pursuant to separate agreements with MedAllies, health care providers and other health-related entities in the Hudson River Valley region of New York have uploaded or will upload health information regarding individuals to or for whom such providers or other health-related entities have provided health care or related services.

1.3 The Participant is a not-for-profit hospital, nursing home, certified home health agency, diagnostic and treatment center, ambulatory surgery center, physician practice, other health care provider, or other entity that wishes to utilize the CDE in order to access the health information that has been uploaded to the CDE.

1.4 The parties wish to enter into this Agreement to set forth the terms governing the Participant’s use of the CDE.

2. Access of Information Through the CDE

2.1 Terms of Participation. When accessing information through the CDE, THINC and the Participant will comply with this Agreement, the THINC Terms and Conditions attached as Exhibit A (the “THINC Terms and Conditions”) and the THINC Policies & Procedures (as defined in the THINC Terms and Conditions).

2.2 Amendments. THINC may amend the THINC Terms and Conditions and the THINC Policies & Procedures from time to time as described in the THINC Terms and Conditions. If any such amendment affects a material right or obligation of the Participant, the Participant may terminate this Agreement by giving THINC written notice not more than thirty days following THINC’s notice of the amendment. Such termination will be effective as of the effective date of the amendment giving rise to such termination, unless the effective date is before THINC’s receipt of the Participant’s notice of termination, in which case termination will be effective as of THINC’s receipt of the Participant’s notice of termination.

3. Fees and Charges

3.1 Generally. THINC will not charge the Participant any fees to access information through the CDE. In the event that THINC determines, in the future, to charge such fees, such fees will be charged in accordance with a Fee Schedule adopted by THINC and incorporated into the THINC Terms and Conditions. THINC will notify the Participant of its intent to begin charging fees at least ninety (90) days before the implementation of such change.

3.2 Termination in the Event of Imposition of Fees. In the event that the Participant objects to the decision by THINC to begin charging fees, the Participant may terminate this Agreement by giving THINC written notice not more than thirty days following THINC’s notice of such decision. Such termination will be effective as of the effective date of THINC’s decision to begin charging fees.

4. Term; Termination

4.1 Term. The term of this Agreement will begin on the effective date set forth on the signature page and will continue in effect until terminated as described below.

4.2 Termination.

(a) The Participant may terminate this Agreement at any time without cause upon thirty days written notice to THINC.

(b) THINC may terminate this Agreement upon not less than thirty days written notice to the Participant if THINC determines to stop operating the CDE.

(c) THINC may terminate this Agreement at any time without cause upon not less than sixty days written notice to the Participant.

(d) Either party may terminate this Agreement upon a material breach by the other party of its obligations hereunder which is uncured for a period of thirty days after the non-breaching party has given the breaching party notice of that breach.

(e) Either party may terminate this Agreement immediately in the event of (a) a breach that cannot reasonably be cured within thirty days, (b) repeated breaches of the same obligation, (c) a breach that would expose the non-breaching party to civil or criminal liability or would otherwise cause a violation of applicable laws, rules, regulations or accreditation standards applicable to the Participant or (d) a breach of Exhibit B hereto.

(f) The Participant may terminate this Agreement in accordance with Section 2.2 or 3.2.

4.3 Effect of Termination. Upon any termination of this Agreement, the Participant will no longer have any rights to access patient data through the CDE; provided that nothing in this Section 4.3 will require the Participant to return any patient data that was accessed before such termination.

5. **General Provisions**

5.1 Applicable Law. This Agreement will be governed by the laws of the State of New York, without reference conflicts of laws principles. The venue of any action or other proceeding brought in connection with this Agreement will be exclusively in Dutchess County, New York.

5.2 Non-Assignability. Neither party may assign or transfer any of its rights under this Agreement, either voluntarily or by operation of law, without the prior written consent of the other party.

5.3 Supervening Circumstances. Neither the Participant nor THINC will be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of severe weather and storms, earthquakes or other natural occurrences, strikes or other labor unrest, power failures, nuclear or other civil or military emergencies, acts of legislative, judicial, executive, or administrative authorities or any other circumstances that are not within its reasonable control other than a lack of financial resources. This Section 5.3 will not apply to obligations imposed under applicable laws and regulations.

5.4 Severability. Any provision of this Agreement, the THINC Terms and Conditions or the THINC Policies and Procedures that proves to be invalid, void, or illegal, will in no way affect, impair, or invalidate any other provisions of such documents, and such other provisions will remain in full force and effect.

5.5 Survival. Any provision of this Agreement or the Terms and Conditions that contemplates performance or observance subsequent to termination will survive termination, including but not limited to Sections 4.3 and 5 of this Agreement.

5.6 Notices. Any and all notices required or permitted under this Agreement shall be sent by United States mail, overnight delivery service, or facsimile to the address set forth on the signature page, or such different address as a party may designate in writing. If notice is given by email, and the notifying party receives notice that the

email message was not delivered, it shall give the notice by United States mail, overnight delivery service, or facsimile.

5.7 Waiver. No provision of this Agreement will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

5.8 Complete Understanding. This Agreement, together with the Terms and Conditions, the THINC Policies and Procedures, and any exhibits thereto, contains the entire understanding of the parties hereto, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Agreement. All modifications or amendments to this Agreement will be in writing and signed by all parties.

5.9 Independent Contractors. The parties to this Agreement are separate and independent entities. Nothing in this Agreement will be construed or be deemed to create a relationship of employer and employee, principal and agent, partnership, joint venture, or any relationship other than that of independent contractors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of _____, 201_.

THINC:

Taconic Health Information Network and Community, Inc.

By: _____
Name: Susan Stuard
Title: Executive Director

THINC's address for notice purposes:

Taconic Health Information Network and Community, Inc.
300 Westage Business Center Drive, Suite 320
Fishkill, New York 12524
Attention: Executive Director

PARTICIPANT:

[Name of Participant]

By: _____
Name:
Title:

Participant's address for notice purposes:

Attention: _____

Exhibit A

Terms and Conditions

See Attached

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