

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**FROM:** Supervisor Bob Buster

**SUBMITTAL DATE:** October 25, 2011

**SUBJECT:** Approve participation agreement with Inland Empire Electronic Health Record Resource Center

**RECOMMENDED MOTION:** That the Board of Supervisors directs:

- 1) Approve participation agreement between the County of Riverside and with Inland Empire E.H.R. Resource Center, a 501c(3), for participation in the Inland Empire Health Information Exchange; and
- 2) Authorize the Chairperson to sign the Agreement

**BACKGROUND:**

The Inland Empire Health Information Exchange (IEHIE) is a collaborative effort that will allow all healthcare provider stakeholders the ability to choose and access health information at the point-of-care in an immediate and secure manner. The IEHIE will be region-wide and will serve the more than 4.2 million people in Riverside and San Bernardino counties. The IEHIE coalition was formed in April 2009 and is comprised of members from the inland region of the Hospital Association of Southern California, Inland Empire medical associations, hospitals, physician groups, Riverside County, San Bernardino County, and other healthcare organizations. IEHIE's mission is to achieve continuity of care in the Inland Empire community by establishing a HIE within the Inland Empire.

On June 28, 2011, the Board approved item 3.3 to designate the IEHIE as the health information exchange for Riverside County, to accept \$150,000 investment from Inland Empire Health Plan (IEHP) for start up and the first year participation costs, and to require the Riverside County Regional Medical Center (RCRMC) and Riverside County Department of Public Health (DOPH) to participate in this IEHIE. This agreement will allow for RCRMC and DOPH to begin participating in the IEHIE. In addition to the first year costs, the IEHP will pay the participation costs for an additional four years for RCRMC and DOPH. Any unidentified additional costs beyond the start up and participation costs arise in excess of \$50,000 be determined, this agreement will be brought to the Board of Supervisors for approval.

A handwritten signature in blue ink that reads "Bob Buster". The signature is written in a cursive style and is positioned above a horizontal line.

Bob Buster  
1<sup>st</sup> District Supervisor

**Prev.Agn.ref.**

**Dist.**

**AGENDA NO.**

**3.31**

4 Draft 5

Inland Empire Health Information Exchange

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (“Agreement”) is made and entered into as of last date signed below (the “Effective Date”), by and between the Inland Empire E.H.R. Resource Center a 501 c (3) on behalf of the Inland Empire Health Information Exchange project (“IEHIE”), and the Participant identified on the Signature Page (the “Participant”) (IEHIE and the Participant are sometimes referred to individually as a “Party” and together as the “Parties”), with reference to the following facts:

A. IEHIE is organizing and developing technology to allow secure patient information sharing among healthcare providers at the point of care in San Bernardino, Riverside and adjacent counties.

B. IEHIE and the Participant wish to arrange for the Participant’s participation in the Exchange on the terms and conditions set forth in this Agreement.

IN CONSIDERATION of the recitals, covenants, conditions and promises herein contained, and for other valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. Exchange Overview.

1.1 Brief Description of Exchange. As more specifically described in the Exchange Overview attached hereto (the “Exchange Overview”), pursuant to the Exchange, (a) IEHIE shall, at IEHIE’s expense, obtain for the Participant a license to use certain technology (the “Technology”), and provide to the Participant certain implementation, training and support services; and (b) the Participant shall use the Technology and participate in the Exchange’s user participation programs, as described in the Exchange Overview.

1.2 Development of Exchange Overview. IEHIE shall be responsible for the ongoing development of the Exchange Overview. The contents of the Exchange Overview, including without limitation any terms and conditions specified therein, shall be incorporated into this Agreement by this reference.

1.3 Scope of Exchange Overview. The Exchange Overview shall describe: (a) the scope and objectives of the Exchange; (b) the technological and other infrastructure for the Exchange, including without limitation the Technology (collectively, the “Exchange Infrastructure”); (c) the phases of the Exchange’s activities and the timeline according to which those phases are to occur (the “Exchange Schedule”); and (d) and the ongoing development and refinement of the policies and procedures for the Exchange (the “Policies and Procedures”).

1.4 Project Memoranda. IEHIE may from time to time, by issuing notices to Participants (each, a “Project Memorandum”), modify or supplement the Exchange Overview, as IEHIE determines is appropriate and in furtherance of the successful operation of the Exchange; provided, that any modification or supplement to the Exchange Overview that materially increases the Participant’s costs of performing its responsibilities pursuant to the Exchange, or that materially changes the Participant’s legal rights or obligations pursuant to this Agreement, shall require the Participant’s prior written consent, which shall not be unreasonably withheld. Each Exchange Memorandum shall be deemed to be incorporated into the Exchange Overview and this Agreement.

## 2. Participation.

2.1 Generally. IEHIE and the Participant shall participate in the Exchange, and perform their respective responsibilities pursuant thereto, as described in this Agreement, the Exchange Overview and Exchange Memoranda.

2.2 Adherence to Exchange Schedule. IEHIE and the Participant each shall use all reasonable efforts to complete each phase of the Exchange within the period of time assigned thereto by the Exchange Schedule. If at any time either Party determines that it will not be able to complete any phase of the Exchange within the period of time assigned thereto by the Exchange Schedule, that Party shall promptly notify the other of that fact and provide an explanation of the circumstances relevant thereto.

2.3 Dedication of Resources. Each Party shall devote to their respective participation in the Exchange sufficient funding, staffing and other resources reasonably required to accomplish the objectives of the Exchange.

2.4 Collaborative Work. IEHIE and the Participant each shall work collaboratively with each other and the other Participants to accomplish the objectives of the Exchange. IEHIE and the Participant shall coordinate their efforts to promptly resolve any operational problems and conflicts that may arise during the Exchange or may arise otherwise under this Agreement.

2.5 Accuracy and Completeness of Data. Subject to any more specific terms that may be set forth in the Exchange Overview, the Participant shall use reasonable and appropriate efforts to assure that all data it provides to the Exchange pursuant to the Exchange is accurate, free from serious error, reasonably complete, and provided in a timely manner.

2.6 Consents and Authorizations to Disclose Data. The Participant acknowledges and agrees that certain of the data transmitted to the Exchange pursuant to the Exchange shall include certain identifying information of third parties, including information that identifies certain hospitals, physicians and/or other health care providers, certain manufacturers, vendors and/or suppliers of drugs and/or medical devices, and/or patients. Participant shall be solely responsible for obtaining, and hereby represents and warrants that it shall have obtained, all consents and authorizations required for the disclosure of all such information to IEHIE for the purposes of the Exchange. The Participant shall indemnify and hold IEHIE and other Participants harmless from and against all claims and liabilities associated with the Participant's obtaining or failure to obtain such consents and authorizations.

2.7 License. The Participant hereby grants to IEHIE a perpetual, fully-paid, worldwide, non-exclusive, royalty free right and license (i) to use all data submitted by the Participant to the Exchange pursuant to the Exchange ("Participant Data") for the purposes of the Exchange and the Exchange, and (ii) to use such data to carry out IEHIE's responsibilities in connection with the conduct of the Exchange and the development and operation of the Exchange, including without limitation system administration, testing, problem identification and resolution, management of the Exchange Infrastructure and other technology, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as IEHIE determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations. The Participant represents and warrants Except as expressly provided in this Section 2.7 (License), IEHIE shall have no right or title in or to the Participant Data, and shall not be entitled to impose any limitation or restriction upon the Participant's use thereof or ownership rights with respect thereto.

2.8 Independent Analysis; Publication. Without limiting Section 2.7 (License), the Participant may perform its own independent analysis of any of the Participant's Data, and may publish or otherwise present the results of that analysis.

3. Exchange Funding. Except as expressly provided otherwise in the Exchange Overview with respect to the payment of fees by the Participant, each Party shall fund its own participation in the Exchange.

4. Pass-Through Terms and Conditions. The Participant acknowledges that the use of the Technology incident to the Exchange by the Participant, and by all individuals acting on the Participant's behalf, including without limitation, all employees and other staff, is and shall be subject to certain terms and conditions of the agreements and other arrangements pursuant to which IEHIE shall procure rights to use the Technology, as specified in the "Pass-Through Terms and Conditions" that shall be included in the Exchange Overview. The Participant shall comply, and assure the compliance of the Participant's employees and other staff, with the Pass-Through Terms and Conditions.

5. Compliance With Laws. In performing their respective responsibilities pursuant to the Exchange, IEHIE and the Participant shall comply in all respects with all applicable laws and regulations, including but not limited to the laws and regulations of the United States of America and the State of California applicable to use and disclosure of Protected Health Information (as defined below) such as the Privacy and Security Rules promulgated under the Health Insurance Portability and Accountability Act of 1996 (45 CFR Parts 160, 162 and 164; "HIPAA") and the Health Information Technology for Clinical and Economic Health ("HITECH") Act (42 U.S.C. §§ 300jj *et. seq.*) and all applicable state and federal laws and regulations relating to human subjects research. Without limiting the generality of the foregoing, each Party shall establish, implement and maintain commercially reasonable safeguards against the destruction, loss, alteration and unauthorized access and use of Protected Health Information in the possession or control of that Party. Each Party shall cause its respective employees and agents to comply with the foregoing safeguards.

6. Business Associate Agreement. The Parties acknowledge and agree that, pursuant to the performance of certain of its responsibilities pursuant to the Exchange, either IEHIE or a subcontractor of IEHIE is to act as the Business Associate (as that term is defined in 45 CFR Part 160.103) of the Participant. Therefore, on or before the Effective Date, IEHIE's shall issue to the Participant a Business Associate Agreement for the Exchange on IEHIE's standard form thereof.

7. Confidential Information.

7.1 Definition. It is anticipated that, in the performance of their respective roles in the Exchange, IEHIE and the Participant will exchange Confidential Information. "Confidential Information" means any non-public, proprietary or sensitive information (or materials) belonging to or in the possession or control of a Party that is disclosed or made available to the other Party in connection with this Agreement and that is either marked or identified in writing as confidential, proprietary, secret or with another designation sufficient to give notice of its sensitive nature, or is of a type that a reasonable person would recognize it to be commercially sensitive. Confidential Information includes, but is not limited to, each Party's trade secrets, business plans, marketing plans, know how, data, contracts, documents, scientific and medical concepts, patient lists, costs, financial information, profits and billings, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements of a Party and any of its departments or agencies, whether written or verbal. Confidential Information does not, however, include any information that a Party demonstrates: (a) is in the public domain; (b) is already known or obtained by that Party other than in the course of the Exchange; (c) is independently developed by that Party; and/or (d) becomes known to that Party from an independent source having the right to disclose such information and without similar

restrictions as to disclosure and use and without breach of this Agreement by that Party. Confidential Information also shall not include any Protected Health Information (as that term is defined in 45 CFR Part 160.103). The Parties' respective responsibilities with respect to the privacy and security of Protected Health Information are addressed in Sections 5 (Compliance With Laws) and 6 (Business Associate Agreement).

7.2 Nondisclosure. IEHIE and the Participant each shall keep and maintain in strict confidence all Confidential Information received from each other and/or from other Participants (as applicable, the "Disclosing Party"), or any of the Disclosing Party's officers, employees, attorneys, accountants or other agents or representatives, or of any of the Disclosing Party's departments or agencies, in connection with participation in the Exchange, and shall not use, reproduce, distribute or disclose any such Confidential Information, and shall prevent its agents, representatives and employees from making any such use, reproduction, distribution or disclosure, except to those employees, attorneys, accountants or other agents or representatives directly involved in the conduct of the Exchange, unless specifically authorized in writing by the Disclosing Party. On request, either Party shall restore to the Disclosing Party all copies of the Disclosing Party's Confidential Information in its possession or under its control and in whatever form and all materials developed based on the Disclosing Party's Confidential Information. Neither Party shall have any proprietary interest in any materials derivative of the other Party's Confidential Information.

7.3 Equitable Remedies. All Confidential Information represents a unique intellectual product of its owner. The unauthorized disclosure of said Confidential Information would have a detrimental impact upon its owner, and the damages resulting from said detrimental impact would be difficult to ascertain but would result in irreparable loss, and it would require a multiplicity of actions at law and in equity in order to seek redress against the receiving party in the event of an unauthorized disclosure. The owner of Confidential Information shall be entitled to equitable relief in preventing a breach of this Agreement and that such equitable relief is in addition to any other rights or remedies available to such owner.

7.4 Notice of Disclosure. Notwithstanding any other provision hereof, nothing in this Agreement shall prohibit or be deemed to prohibit a Party from disclosing any Confidential Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that such Party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction, and such disclosures are expressly permitted hereunder, provided, however, that a Party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction shall provide the other Party with notice thereof within five (5) calendar days, or, if sooner, at least three (3) business days before such disclosure will be made so that the other Party may seek a protective order or other appropriate remedy. In no event shall a Party be deemed to be liable hereunder for compliance with any such subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction.

## 8. Liability.

8.1 Exclusions and Limitations. Subject to Section 8.2 (Exceptions), in no event shall either IEHIE, the Participant or any other Participant, be liable, whether in contract, tort, negligence, strict liability in tort or by statute or otherwise, to the others for any direct, indirect, special, incidental consequential, exemplary or punitive loss, damages or expenses (including without limitation lost profits and/or savings) arising out of their respective participation in the Exchange.

8.2 Exceptions. The limitations and exclusions set forth in Section 8.1 (Exclusions and Limitations) shall not apply with respect to: (a) damages attributable to intentional torts, unlawful conduct or gross negligence; (b) damages attributable to a Party's breach of its obligations pursuant to Section 7 (Confidential Information); (c) a third-party claim that is the subject to indemnification pursuant to Section 9 (Indemnification); or (d) intentional misappropriation or intentional infringement of a Party's intellectual property rights.

9. Indemnification and Insurance.

9.1 Indemnification. IEHIE and the Participant (each, the "Indemnifying Party") each shall indemnify and hold harmless the other, and other Participants (as applicable, the "Indemnified Party"), free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of the negligence, intentional misconduct or willful act or omission of the Indemnifying Party or any of the Indemnifying Party's employees or agents, including without limitation the Indemnifying Party's failure to comply with or perform its obligations under this Agreement.

9.2 Insurance. The Participant shall maintain at its own expense professional and general liability insurance, and other insurance, as described in the Exchange Overview.

10. Representations and Warranties.

10.1 Generally. Each Party hereby represents and warrants to the other that it is duly authorized to enter into this Agreement and legally able to perform its obligations hereunder, and that it has all rights necessary for the performance of its obligations under this Agreement, without violating any rights of any other party.

10.2 Disclaimer of Warranties. Except as expressly provided in this Agreement, neither Party makes nor shall be deemed to made or have made any representations or warranties of any kind or nature, either directly or indirectly or express or implied, either in fact or by operation of law, and each Party expressly disclaims all warranties of merchantability, title, design, non-infringement, operation or fitness for a particular purpose and all warranties arising from conduct, course of dealing or usage in trade.

11. Term and Termination.

11.1 Term. The term of this Agreement (the "Term") shall commence on the Execution Date and shall continue through and until the completion of the Exchange, unless terminated earlier pursuant to Section 11.2 (Termination).

11.2 Termination. IEHIE may terminate this Agreement, whether incident to the termination of the Exchange or otherwise, at any time after two years if it determines in good faith that it is appropriate to do so. The Participant may terminate this Agreement upon not less than 120 days notice to IEHIE and payment of any Termination Fees described in the Exchange Overview Section 2.2.

12. General Provisions.

12.1 Notice. Any and all notices required or permitted under this Agreement, and any significant communication made by either Party to the other incident to the Exchange (collectively, "notice"), shall be given in writing and sent by United States certified mail (return receipt requested), overnight delivery service or facsimile transmission to the other Party at the address as set forth below each Party's signature, or to such other address as a Party may designate in writing as its address for purposes of notice hereunder, or by electronic mail as described in this Section. Notice shall be deemed to have been given (a) upon receipt, if by electronic mail, by facsimile transmission or by personal

delivery, or (b) on the date on which receipt is confirmed by an overnight delivery service or by the United States Postal Service. If a Party has provided an electronic mail address to the other Party, notice may be given by e-mail message addressed to such address; provided, that if the Party giving notice receives notice that the e-mail message was not delivered, it shall give the notice by United States mail, overnight delivery service or facsimile.

12.2 Applicable Law. The interpretation of this Agreement and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of California. If any action or other proceeding is brought on or in connection with this Agreement, the venue of such action shall be exclusively in San Bernardino County, California.

12.3 Assignment. No rights of a Party hereunder may be assigned or transferred by that party, either voluntarily or by operation of law, without the prior written consent of the other Party.

12.4 Independent Parties. In the performance of their respective responsibilities under this Agreement, IEHIE and the Participant are and shall be independent contractors of the other. Nothing in this Agreement shall be deemed or construed as creating any joint venture or partnership between IEHIE and the Participant. Except as expressly set forth in this Agreement, neither Party shall have the power to control the activities or operations of, or contractually bind or otherwise commit, the other Party.

12.5 No Third Party Beneficiaries. Except as otherwise expressly provided herein with respect to other Participants, there shall be no third party beneficiaries of this Agreement.

12.6 Supervening Circumstances. Neither Party shall be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. This Section 12.6 (Supervening Circumstances) shall not apply to obligations imposed under applicable laws or regulations or to obligations to pay money.

12.7 Severability. Any provision of this Agreement that shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.

12.8 Waiver. No provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by a Party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

12.9 Complete Understanding. This Agreement and the exhibit(s) incorporated herein contain the entire understanding of the Parties with respect to the Exchange, and there are no other written or oral understandings or promises between the Parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement or the Exchange. All modifications or amendments to this Agreement shall be in writing and signed by both IEHIE and the Participant.

12.10 Use of Name and Marks. Neither Party shall be permitted to use the other's name, trade name, fictitious business name, trademark, service mark or logo for any purpose without the prior written consent of the other Party; provided, that either Party may use the name of the other Party to identify and describe their respective roles in the conduct of the Exchange.

12.11 Survival. The rights and obligations of the Parties as set forth in Sections 7 (Confidential Information), 8 (Liability), 9.1 (Indemnification), and 12 (General Provisions) shall survive the termination of this Agreement.

Signature Page Follows



Inland Empire Health Information Exchange

PARTICIPATION AGREEMENT

Signature Page

Intending to be legally bound, each of the undersigned Parties has caused its duly authorized representative to execute this Agreement as of the Effective Date specified above.

“IEHIE”

Participant

[Inland Empire E.H.R. Resource Center a 501 c (3)  
on behalf of the Inland Empire Health Information  
Exchange project (“IEHIE”)]

\_\_\_\_\_, a California

\_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

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\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Inland Empire Health Information Exchange

### EXCHANGE OVERVIEW AND PAYMENT TERMS

The Inland Empire Health Information Exchange is operating as a project under the Inland Empire E.H.R. Resource Center, a non-profit 501c(3) that includes stakeholder oversight from community participants. The IEHIE is governed by the stakeholder participants and is not owned by one entity. The IEHIE has contracted with Orion Health Systems to provide community participants the ability to securely access personal health information at the point of care for treatment of patients in the San Bernardino and Riverside Communities.

#### 1.1 The EXCHANGE will provide the following BASE HIE Services:

- Secure Data exchange with all participating HIE members using two factor authentication for remote access
- Unified, Single Sign-On, Secure view of patient data aggregated from whole region
- Real-Time alerting of patient updates
  - Subscribe to the data you want, for the patients you want
  - Control parameters to alert only exceptions etc
  - Reporting to portal inbox, e-mail, iPhone or EMR system
- Access to data and applications based on clinician's permissions
  - Clinician type
  - Patient relationship
  - Opt-In/Opt-Out
- Clinical data, based on participating sources:
  - Patient Records & Medical Histories,
  - Discharge summaries
  - Laboratory and Radiology Results
  - ECG/EKG Data
  - Medication Records
- Application Management services for 24 x 7 monitoring and maintenance, including all
  - Functions necessary to keep the SaaS solution operational and running efficiently
  - High-availability hosted hardware, database, and network sufficient to meet all performance and availability metrics, and in a dedicated and isolated environment so that the performance and data is 100% independent from all other SaaS customers.

#### **A. Solution Specifications and Documentation**

##### (1) Functional Description of Solution:

###### 1.1 Orion Health's Base SaaS HIE solution which includes:

- Web-based access to the longitudinal patient record (Clinical Portal)
- Clinical Messaging (Rhapsody™ Integration Engine)
- Storage of clinical information (Clinical Data Repository)
- Patient identity management (MPI)
- Record Locator, Notifications and Subscriptions, Privacy & Consent (HIE Module)
- Semantic interoperability (Terminology Service)
- Administrative Functions: create and manage users; auditing

The above functionality is delivered by the following products:

- Concerto Portal v7.0 (including Results Viewer v 5.1) or higher
- Rhapsody Integration Engine v4.1 or higher
- Concerto Clinical Data Repository (CDR) v 6.2 or higher
- Concerto HIE Module v1.1 or higher
- EMPI (one million unique identifiers)
- Terminology Service

1.2 The EXCHANGE will also offer additional Modules of services that the participant may select to participate at any time. These modules include:

- Computerized Diagnostic Laboratory Orders – Bi-directional data exchange
- Computerized Radiology Orders – Bi-directional data exchange
- Case / Disease Management for one implemented pathway
  - Individualized care plans based on “best-practice” guidelines
- EMR Lite Functions: (once approved by ONC certifying body)
  - Patient Registration, including demographics & encounter information
  - Problem Lists
  - Add/update problems and allergies
  - Clinical Notes
  - Document upload
  - View patient record
  - Clinical Documentation
  - Diagnostic Orders
- *Secure and private access for Patients to their data through the Patient Portal*
  - *View particular clinical data*
  - *Enter data (e.g. blood sugar, blood pressure, lifestyle etc)*
- Online Electronic Prescribing through ONC certified system
  - Ordering & Renewals
  - Formulary Checking
  - Streamlined workflow
  - Standalone, or integration with existing EMR systems
- Enterprise Image Viewer
  - Radiology results & images from anywhere
  - Zero Client Footprint
  - Low bandwidth use

- **2.1 FEES AND PAYMENTS.**

- 2.1.1 In order to access the EXCHANGE, Inland Empire Health Plan (IEHP) agrees to pay IEHIE the Fees specified in below, plus any applicable Taxes, within thirty (30) days of receipt of an invoice from IEHIE including the 5 years of participation.

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- 2.1.2 IEHIE shall be entitled to increase the Fees not more than once per year by the Communication and Information Processing *Consumer Price Index CPI* beginning in year three (3) of the Initial term and thereafter; provided, that no annual increase to any Fees may in the aggregate exceed 5% percent.
- 2.1.3 The following County Departments are included in this agreement with the startup, first year and ongoing fees identified:

County Department	Startup	Annual (year 1)	Annual (ongoing)	Total (Year 1)
RCRMC	\$40,000	\$42,500	\$85,000	\$82,500
CHA	\$5,000	\$62,500	\$62,500	\$67,500
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Total Fees				\$150,000

2.1.3.2 Additional fees for Modules will be outlined in Appendix B and can be amended from time to time at the discretion of the Participant. Fees will be paid annually in advance unless otherwise stipulated by the parties. Subject to Section 2.1.1, overdue Fees shall accrue interest at the rate of the official cash rate plus 1.5% per annum calculated monthly, from the due date until paid. All payments to be made by Participant under this Agreement shall be made free of any deduction, set-off or counter claim, except for any portion of an invoice that is subject to a genuine dispute by the Participant. Where Fees are more than two (2) months overdue (except for any invoice subject to a dispute), IEHIE shall be permitted on Thirty (30) days written notice to suspend any services being provided to the Participant under this or any other agreement until such time as overdue Fees have been paid.

#### 2.1.4

Participant may select from any or all services listed in 1.1 above but at a minimum will select base HIE services for a period of two years. Other services may be selected and implemented at any time at the discretion of the Participant and will be paid on a separately negotiated fee schedule upon commencement of services.

### 2.2 EARLY TERMINATION FEES

2.2.1 Upon ninety (90) days prior written notice (“Termination Notice”), Participant may terminate the Agreement during the Initial Term, for any or no reason. A Termination Fee shall accrue and be payable if Participant terminates the Participant Agreement during the Term. The penalty of 15% of the remaining balance of annual subscription fee for the entire Term will be paid to the IEHIE as calculated by the remaining months of the Term.

### 3.1. EXCHANGE IMPLEMENTATION SCHEDULE

3.1.1 The IEHIE will develop a pilot program for the exchange which includes specific Participants that will receive a discount for early adoption. Once the IEHIE is operational, which is anticipated to

be 90 days from commencement, the Exchange will offer services to the Participant and make them available within 3 days of approved interface implementation.

3.1.2 Both parties agree to assign a project manager that will coordinate a mutually agreed upon implementation timeline and schedule in order to successfully access the IEHIE. Neither party will unreasonably withhold acceptance of the software and interfaces to achieve the full implementation.