

Healthcare Information Exchange (HIE) PARTICIPATION AGREEMENT

This HIE Participation Agreement (the “Agreement”) is entered into between Southern Prairie Community Care, a Minnesota joint powers entity (“SPCC”) and _____, a _____ (“Participant”) effective this ____ day of _____, 2014. The purpose of this Agreement is to set forth the terms and conditions pursuant to which Participant may access the HIE vendor portal provided to SPCC pursuant to HIE Agreements dated August 1, 2013 as amended and attached hereto.

Grant of Sub-License

1. SPCC shall make available, subject to the terms and conditions set forth below, to Participant on the terms and conditions set forth herein.
2. The following provisions are conditions of accessing the HIE services. If Participant does not agree with any of the following provisions, it should not execute this Agreement nor, if presented in electronic form, should it or any of its Authorized Users click “accept” at the end of these terms. The provisions below may not be modified or amended by Participant without the prior written approval of SPCC and the HIE vendor.
3. For purposes of this Agreement, HIE Services means the hosted delivery of services as described in the Description of HIE Services entered into pursuant to the HIE Agreement and “use” means any or all of the following: (i) receiving, accessing, displaying, printing and saving data by means of the HIE Services; (ii) entering data into the HIE Services; or (iii) exchanging data with other HIE users by means of the HIE Services.
4. Any individual Participant or Authorized User, as that term is defined in the HIE Agreement, authorized to access or use the HIE Services shall also be subject to these terms pursuant to a click wrap version which the individual must accept in order to obtain a password to the HIE Services.
5. Subject to Participant’s compliance with the terms and conditions of this Agreement, SPCC grants to Participant a non-exclusive, non-transferable subscription and license during the term of this Agreement to (1) access and use the HIE Services and any Documentation relating to the HIE Services; (2) to allow their Authorized Users to access and use the HIE Services; and (3) to reproduce and distribute Documentation to Authorized Users for the sole purpose of utilizing the HIE Services as authorized herein. “**Documentation**” shall mean all user manuals and other written specifications distributed and/or made available to Participant in connection with the HIE Services and any software licensed hereunder.
6. The HIE Services may be used only by Participants and Authorized Users for whom all applicable fees have been paid.

7. Participant shall not use the HIE Services for any purpose outside the scope of the Agreement.

Terms of Agreement

8. Definitions. Any term not defined herein shall have the meaning given to it in the Subscription Agreement. If there is a conflict between a definition given in this Agreement and the definition given in the HIE Agreement, the definition in the HIE Agreement shall control.

9. Patient Care. HIE SERVICES ARE NOT DESIGNED OR INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS OR TREATMENT AND SHOULD NOT BE USED AS A REPLACEMENT OR SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, TREATMENT OR JUDGMENT. IN THE COURSE OF PROVIDING ANY SERVICE, YOU WARRANT THAT ALL MEDICAL TREATMENT DECISIONS ARE BASED ENTIRELY UPON THE PROFESSIONAL MEDICAL JUDGMENT OF PARTICIPANT.

a. AS BETWEEN PARTICIPANT AND SPCC, PARTICIPANT IS SOLELY RESPONSIBLE FOR ASSESSING THE SUITABILITY OF THE HIE SERVICES FOR USE IN PARTICIPANT'S FACILITIES AND SHALL BE SOLELY RESPONSIBLE FOR PERSONAL INJURY OR DEATH THAT MAY OCCUR AS A RESULT OF ITS USE OF PRODUCTS IN ITS FACILITIES.

10. Data Integrity. Participants shall be responsible for their data entry activities, and for the accuracy of any Participant data, to the best of Participant's knowledge, including, without limitation, patient data, uploaded to, stored in, or processed by the HIE Services ("Participant Data"). SPCC shall not be responsible for errors, inaccuracies or incomplete information in Participant Data or data entry done by Participant, or for errors in services, programs, hardware, data files, or output SPCC provides to or maintains for Participant pursuant to the Agreement unless such errors are caused by any error or omission in any part of the HIE Services.

a. Data Backup. Participant recognizes that it is solely responsible for Participant Data backup.

11. Minimum System Requirements. Participant agrees that it shall maintain the minimum system requirements as defined in Exhibit C, and as may be amended in the future pursuant to the mutual written agreement of the parties, attached hereto and made a part hereof during the term of this Agreement.

12. Term of Agreement. Participant shall have the right to terminate this Agreement with or without cause immediately if the HIE Services provided by Sandlot materially change, and the right to immediately remove its data and terminate the Agreement upon a breach of the HIPAA Business Associate Agreement, as defined herein, by SPCC or any unauthorized use or threat of unauthorized use of Participant's data by SPCC, Sandlot, a participant in the HIE, or other third party.

13. HIPAA Compliance. This Section applies only to the extent that SPCC is receiving Client Data from or on behalf of Participant, which constitutes private health information (“PHI”) as defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its corresponding regulations, as amended from time to time. Participant shall not provide any PHI to SPCC until such time as the parties hereby agree to execute a Business Associate Agreement (“BAA”). Unless otherwise specified in this Agreement, all capitalized terms used in this Section 12 or the BAA and not otherwise defined have the meaning established for purposes of the Privacy Rule and the Security Rule under HIPAA, as amended from time to time. Client agrees that each time it provides PHI to SPCC it shall retain a copy of such PHI, such that SPCC shall not have possession of the only copy of such PHI.

14. Disclaimer of Warranties. SPCC disclaims all warranties of any kind relating to the sandlot platform, other than that the HIE Services will perform in substantially accordance with the then-current documentation for the HIE Services made available to participant by SPCC. The software licensed and services provided hereunder are provided “as is,” and SPCC does not guaranty that the HIE Services will be performed error-free or uninterrupted, or that SPCC will correct all services errors. Participant acknowledges that SPCC does not control the transfer of data over communications facilities, including the internet, and that the HIE Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. SPCC is not responsible for any delays, delivery failures, or other damage resulting from such problems. To the extent not prohibited by law, these warranties are exclusive and there are no other express or implied warranties or conditions including for hardware, systems, networks or environments or for merchantability, satisfactory quality, fitness for a particular purpose, or non-infringement.

15. Limitation of Remedies. Except for damages arising out of SPCC’s breach of the Business Associate Agreement executed between the parties, SPCC shall not be liable to Participant or patient of Participant for any indirect, incidental, consequential, special, punitive or exemplary damages arising out of or in connection with this Agreement, including but not limited to loss or interruption of data or computer time, alteration or erroneous transmission of data, unauthorized access to, or use of data processed or transmitted by, to, or through the HIE Services, or program errors, even if SPCC has been advised in advance of the possibility of such damages. SPCC’s maximum liability to any Participant (whether in tort, strict liability, contract, or otherwise) shall be limited to the maximum amount available to SPCC pursuant to any insurance policy for which SPCC is a beneficiary.

16. Fees: Participant shall not be responsible for payment of any fees for the HIE Services.

Sandlot Participant Flow Down Provisions

As between Participant and Sandlot, Participant agrees as follows:

17. Participant is solely responsible for Participants own use of the HIE Services, and for the accuracy and adequacy of information and data furnished to the HIE Services

for processing. Participant shall have full responsibility for the care and well-being of Participant patients, if any, and any reliance by Participant upon the HIE Services, data, or information provided by the HIE Services will not diminish that responsibility.

18. Neither Sandlot nor its subcontractors make any representations or warranties directly to Participant with regard to the HIE Services. All warranties regarding the HIE Services are made by Sandlot to SPCC. Accordingly, Participant agrees that Sandlot shall have no liability to Participant in connection with the Services or the HIE Services. Without limiting the foregoing, except for liability or obligations of Sandlot and/or its subcontractors that may arise by operation of law, neither Sandlot nor its subcontractors shall be responsible to Participant for personal injury or death that may occur as a result of Participant use of the HIE Services except as provided in the Agreement.

19. Participant acknowledges and agrees that all training, support and other information about the HIE Services will be provided to Participant by or on behalf of SPCC.

20. Participant's right to use the HIE Services is for the exchange of data within the SPCC HIE and not to operate Participant own business without exchanging data in the HIE Services. For the avoidance of doubt, Participant may not process Participant own data through the HIE Services unless Participant output is posted on the SPCC HIE; however, Participant may transmit and access (communicate and view) Participant own data through the HIE Services without violating this Section, i.e., Participant may transmit data from an ambulatory location to Participant hospital through the HIE Services. Similarly, the ambulatory location would have the right to view data through the HIE Services.

21. Participant is responsible for the manner in which Participant and Participant permitted users use the HIE Services, including the policies and procedures Participant establishes to protect, except as to data in Sandlot's custody, the security of Participant data, computer network and other facilities; the content Participant places on servers hosting the HIE System, including obtaining any necessary consents; the data Participant send through the Internet; and all other matters related to how Participant use the Services not covered in this Agreement.

22. Sandlot will be entitled to rely upon any instructions, authorizations, approvals and information provided to Sandlot by Participant. Except as otherwise defined in the Agreement, Sandlot will incur no liability or responsibility of any kind in relying on or complying with any such instructions or information.

23. Specifically with regard to the HIE Services, Participant may not:

- a. attempt to interfere with or disrupt the HIE Services or attempt to gain access to any systems or networks that connect thereto;
- b. use, copy, reproduce, publish, modify, or excerpt any of the HIE Services, fixes or Services deliverables for any purpose other than as expressly permitted under this Agreement;

- c. distribute, rent, sublicense, share, transfer or lease the HIE Services, Services or any component thereof to any person or entity, or use the HIE Services or any software, Documentation or other component thereof to provide service bureau or similar services to third parties.
- d. Translate, adapt or otherwise attempt to derive the source code (or underlying components or algorithms) from the HIE Services or associated data files; or
- e. Reverse engineer, de-compile or disassemble products, fixes or service deliverables, except to the extent expressly permitted by applicable law despite this limitation.

24. For the avoidance of doubt, Sandlot represents, without opinion, legal or otherwise of SPCC, that neither Sandlot nor its subcontractors are Participant direct business associates, as that term is defined in HIPAA and the HITECH Act. (“HIPAA” is the Health Insurance Portability and Accountability Act of 1996 and the privacy and security rules promulgated thereunder, found at 45 C.F.R. Parts 160, 162 and 164, as amended; and the “HITECH Act” is found in Subtitle D of the American Recovery and Reinvestment Act of 2009, as amended.)

25. Participant will provide Sandlot or its subcontractor with the prompt, reasonable access and support, without the requirement to expend funds, required to allow Sandlot or its subcontractors to implement, maintain and provide the HIE Services. For the avoidance of doubt, Sandlot will not have access to Participant computer systems via remote access or otherwise as part of providing the HIE Services

26. Sandlot may suspend or terminate an Authorized User’s access to the HIE Services if Sandlot reasonably determines that an Authorized User has violated the terms and conditions of this Agreement or applicable law, or suspension or termination is otherwise necessary to protect the integrity of the HIE Services or any SPCC Data. Sandlot will provide Authorized SPCC Representative with no less than two hours prior emailed notice of any planned suspension or termination; provided that Sandlot may provide SPCC with notice following such suspension or termination if Sandlot determines in a commercially reasonable manner that immediate suspension or termination is required to prevent violation of law or maintain the integrity of the HIE Services and determines in a commercially reasonable manner that prior email notice to the Authorized SPCC Representative is not practicable.

27. Participant acknowledges and agrees that Sandlot may suspend or terminate Participant access to the HIE Services in the event that Participant breaches Sandlot’s confidentiality rights or intellectual property rights.

28. If Sandlot or its subcontractor notifies Participant of a security risk that could or has compromised the HIE Services, then, for any hardware, software or systems that are managed or maintained by Participant, Participant agree to use commercially reasonable efforts to (i) apply all of Sandlot’s reasonable recommended security patches in accordance with Sandlot’s instructions and within the time frames Sandlot specifies, and/or (ii) take reasonably appropriate action as recommended by Sandlot. While Sandlot will give Participant prior notice

to the extent practicable under the circumstances, Sandlot may suspend Participant Services (or any part thereof) without notice if Participant have failed to apply a required security patch or to take appropriate action to mitigate an identified security risk, and such failure jeopardizes Sandlot's or its subcontractors' network, other clients or third parties.

29. Participant is solely responsible for Participant security policy, including but not limited to choosing the necessary services to comply with technical or regulatory requirements and establishing and using any passwords, access codes, firewall rule sets or other means necessary to restrict access to Participant computers, servers, or other equipment connected through the Services, and for safeguarding content, including data, from loss, corruption, disclosure or misappropriation.

30. Participant acknowledges and agrees that Participant is not a third party beneficiary of the HIE Agreement between Sandlot and SPCC.

31. Participant agrees not to use or permit the HIE Services or any components of the HIE Services to be used: (a) in violation of any applicable national, state, or local laws or regulations, including without limitation U.S. export laws or any laws governing the content that Participant make available via the HIE Services;; or (b) in ways that infringe the rights of others, or interfere with other users or networks.

32. The rights and responsibilities in this document are not transferable to any third person or party, except in the event of a merger, acquisition or consolidation; provided (i) Participant provide prompt written notice of the event to SPCC (SPCC to promptly forward notice to Sandlot), and (ii) the assignee agrees to pay integration (if applicable) and annual HIE Services fees to SPCC that reflect the fees that would be charged to an organization that meets the profile of the assignee.

33. Participant acknowledges that in the course of performing under the Agreement, or in the course of discussing future agreements between the parties, Participant may learn confidential, trade secret, or proprietary information concerning Sandlot ("Confidential Information"). Without limiting the foregoing, Sandlot's Confidential Information shall include, without limitation, the terms of this Agreement, financial information and employee information; information regarding the HIE Services, Sandlot products, marketing plans, business plans, customer names and lists, software, data products, services and documentation not otherwise in the public domain; non-client reports generated by Sandlot; Sandlot's methods of database creation; Sandlot's translation, standardization, enhancement, and health data analysis techniques, health data reporting and profiling methods and formats; software tools for report creation, distribution and retrieval; and associated algorithms, developments, improvements, know-how, code programs, software architecture, technology and trade secrets.

34. Sandlot shall be a third party beneficiary of the rights of the SPCC with respect to the provisions of this Agreement as they relate to the HIE Services. Sandlot shall be expressly entitled to enforce its rights pursuant to the provisions of the Agreement as they relate to the HIE Services, regardless of any alleged or actual breach or default by SPCC under the HIE Agreement, or any expiration or termination of the Agreement or the HIE Agreement.

35. Participant agrees that (a) Participant will use the Confidential Information, designated as confidential by Sandlot, only as may be necessary in the course of performing duties, receiving services or exercising rights under this Agreement; (b) Participant will treat such information as confidential and proprietary; (c) Participant will not disclose such information orally or in writing to any third party without the prior written consent of the Sandlot; (d) Participant will take all reasonable precautions to protect the Confidential Information; and (e) except as expressly provided by this Agreement Participant will not otherwise appropriate such information to Participant own use or to the use of any other person or entity. Without limiting the foregoing, Participant agree to take at least such precautions to protect the Confidential Information as Participant take to protect Participant own Confidential Information. Participant is solely responsible for all use of the Confidential Information by anyone who gains access to the Confidential Information under Participant authorization, including all of Participant Authorized Users. Upon termination or expiration (without renewal) of this Agreement, Participant will return to the Sandlot or certify as destroyed all tangible items containing any of Sandlot's Confidential Information that are held by Participant or its employees, agents, contractors or Authorized Users, other than archival copies. Participant agree to notify Sandlot if Participant become aware of any unauthorized use or disclosure of the Confidential Information.

36. If Participant believes Participant is required by law or by a subpoena or court order to disclose any of the Confidential Information, Participant shall, if legally permissible, promptly notify Sandlot and shall make all reasonable efforts to allow Sandlot an opportunity to seek a protective order or other judicial relief prior to any disclosure.

37. Nothing in this Agreement shall be construed to restrict disclosure or use of information that (a) was in the possession of or rightfully known by Participant, without an obligation to maintain its confidentiality, prior to receipt from the Sandlot; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Participant in good faith from a third party having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by the Participant without reference to the Confidential Information.

38. Participant shall be responsible for Participant own data entry activities, and for the accuracy of any data delivered to Sandlot or the HIE Services. Participant agrees that the data Participant provide to Sandlot or the HIE Services under this Agreement contains true and accurate data and information, to the best of Participant knowledge. Sandlot shall not be responsible for errors, inaccuracies or incomplete information in Participant data or data entry done by Participant or Participant Authorized Users.

39. Participant agrees that Participant will use the HIE Services only as authorized in this Agreement, and for no other purposes, and will comply with all reasonable security controls, policies, standards, and guidelines applicable to the HIE Services which have been disclosed to Participant. Participant agrees that Participant will not (i) knowingly introduce any virus or disabling code into the HIE Services; (ii) attempt to access any portions of the HIE Services that are not required for Sandlot's performance under this Agreement; (iii) use the HIE Services in any manner that might reasonably be expected to damage or impair the HIE Services in any material respect, or (iv) intentionally attempt to circumvent or bypass Sandlot's security procedures for the HIE Services that are known to Participant.

40. Participant is responsible for keeping a copy of all data entered into the HIE Services. Participant agrees that Sandlot shall at no time have the only copy of any of Participant data.

41. Participant is responsible for compliance with the terms of these Flow Down Provisions, by Participant employees, agents, representatives and Authorized Users, and any other person or entity to whom Participant gives access to the HIE Services, and Participant shall be liable for breach of these Flow Down Provisions by any such person or entity, to the same extent as if such breach were committed by Participant.

42. At the termination of the Agreement, Participant shall discontinue use of the HIE Services and return any and all Documentation to SPCC who shall provide such to Sandlot.

43. Sandlot is a third party beneficiary of the terms set forth in this Agreement as to the "Flow Down Provisions" for purposes of enabling Sandlot to enforce its own rights against Participant regardless of any alleged or actual breach or default by SPCC under the HIE Agreement, or any expiration or termination of the Agreement or the HIE Agreement.

Miscellaneous Provisions

44. Assignment. Neither party may assign this Agreement without in whole or in part, by operation of law or otherwise, without the other party's prior written consent. Any attempt to assign this Agreement, without such consent, will be null and void and without effect. Subject to the foregoing, this Agreement shall inure to the benefit of the parties' respective successors and permitted assigns.

45. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

46. Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

47. Notice. Any notices permitted or required under this Agreement shall be in writing and will be sent by certified United States mail, postage prepaid, return receipt requested, or by facsimile transmission or overnight courier service, addressed to the party as set forth below, or at a different address as a party has notified the other party in writing.

SPCC:

Southern Prairie Community Care
Lyon County Government Center
607 West Main Street
PO Box 513
Marshall, Minnesota 56258
Attn: Ms. Mary Fischer

With a Copy to

Halleland Habicht, P.A.
33 South Sixth Street #3900
Minneapolis, Minnesota 55402

48. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to, denial-of-service attacks, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, act of God or governmental action.

49. Relationship of Parties. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

50. Entire Agreement. This Agreement constitutes the complete understanding and agreement of the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of the parties.

51. Choice of Law and Venue. This Agreement shall be governed by the laws of the State of Minnesota without reference to choice of law principles. The exclusive personal jurisdiction for any legal proceeding regarding this Agreement shall be the state and federal courts having jurisdiction in Hennepin County, Minnesota, and the parties expressly agree that jurisdiction and venue are proper in said courts.

52. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

53. Headings. The headings in this Agreement are for the convenience of reference only and have no legal effect.

54. Addendum. The terms and conditions of all addenda, exhibits, policies and internet website references expressly described herein are hereby incorporated into this Agreement and made a part hereof.

[The remainder of this page left intentionally blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Effective Date: _____

PARTICIPANT

Southern Prairie Community Care

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

Exhibit A

HIE Agreement Between SPCC and Sandlot

**Exhibit B HIE
Fees**

Not Applicable

Exhibit C

Minimum System Requirements

Minimum System Requirements for Participant and Authorized User Computers

Connect can be used independently of the underlying operating system. The application can be run with Mozilla Firefox 15 or Microsoft Internet Explorer 8 and 9. SPCC recommends a PC or Notebook running Windows8, Windows7 or Windows Vista with at least 1GHZ, and 2GB RAM.

Minimum Connectivity Requirements

Connectivity requirements are determined in the assessment phase of the engagement.

- 1) Hospitals typically know the overall volume of HL7 messages per day. The size of the required interconnection for integration depends on the expected daily volume as well as the expected daily peak volume. Typically this could be a fractional T1 or larger dependent on the size of the service area.
- 2) Ambulatory HER system integration is also dependent on the daily as well as expected peak volume. Typically this could be a fractional T1 or larger dependent on the size of the service area.
- 3) Browser connect connectivity is provided to Sandlot solutions via HTTPS over the internet. Performance of the browser system is partially dependent on the speed of the available connection and the number of other systems (Sandlot or others) accessing the connection at the same time. For small offices this is typically at least a fractional T1. For larger offices the size would be a T1 or larger.