

_____ **MANIFEST MEDEX**
PARTICIPATION AGREEMENT
WEBPAGE MODEL

(11/28/2017)

This Participation Agreement (the “**Agreement**”) is entered into and effective as of _____ (the “**Effective Date**”), by and between Manifest MedEx, a California nonprofit public benefit corporation (“**MX**”), and _____ (“**Participant**”). MX and Participant are referred to in this Agreement individually as a “**Party**” or collectively as the “**Parties.**”

Recitals

- A. MX is organized to facilitate health information aggregation and sharing in a manner that complies with Law.
- B. MX operates a health information exchange (the “**HIE**”) that will enable its participants to electronically provide and receive health information regarding their patients.
- C. Participant will both provide data to and receive data from the HIE.

The Parties agree that:

1. **Participation.** Participant shall participate in the HIE as set forth in this Agreement. [The persons listed in Exhibit 1 (“**Participant Affiliates**”) shall also participate in the HIE pursuant to this Agreement. Participant shall ensure that Participant Affiliates comply with the terms of this Agreement, except that only Participant will be obligated to pay Fees or perform other duties specified herein which, by their context, clearly apply only to Participant.]
2. **Agreement.** The Agreement includes this document and incorporates by reference the following:
 - a. The *Terms and Conditions* (“**Terms**”) attached as Exhibit 2.a.
 - b. The *Service Description* attached as Exhibit 2.b., which includes: a description of: the Tech Services that MX will provide to Participant; and the Data Submission Guidelines.

- c. The *Fee Schedule* attached as Exhibit 2.c., which sets forth Subscription Fees and Implementation Fees that Participant will pay to MX, and identifies any other fees that might be paid by Participant pursuant to this Agreement.
 - d. The *Policies and Procedures (“Policies”)* set forth on MX’s website (<http://www.manifestmedex.org/pdf/Policies.pdf>), and labeled Exhibit 2.d., as amended from time to time pursuant to this Agreement.
 - e. The *HIPAA Business Associate Agreement (“BAA”)* attached as Exhibit 2.e., as amended from time to time pursuant to this Agreement. The BAA sets forth the obligations of MX, in its capacity as the operator of the HIE and a business associate of Participant, and is separately executed by MX and Participant.
 - f. The documentation (“**Documentation**”) set forth in MX’s website (<http://www.manifestmedex.org/pdf/Documentation.pdf>) or delivered to Participant by MX, as amended from time to time pursuant to this Agreement.
- 3. Term.** The term of this Agreement shall commence on the Effective Date and continue until it is terminated as described in the Terms.

4. General Provisions.

- a. **Conflicts.** If the BAA conflicts with this Agreement, the BAA shall prevail. If the Policies conflict with this Agreement, the Policies shall prevail. If the terms of any other Exhibit conflict with those of this Agreement, this Agreement shall prevail.
- b. **Definitions.** Capitalized terms that are not defined in this Agreement shall have the meanings described in the Terms (Exhibit 2.a.) and BAA (Exhibit 2.e.).
- c. **Notices.** Notices and other communications between the Parties shall be in writing and made: (a) by overnight delivery service; or (b) by e-mail or facsimile transmission. Notice is deemed given on the date of e-mail or facsimile or one day after delivery to the overnight service. If a sending Party receives notice that an e-mail message was not delivered, that Party shall deliver the notice by overnight delivery service or by facsimile.

For Participant:

[Participant Name]

Attn: _____

Email: _____

For MX: As set forth in the Terms.

The Parties hereby execute and enter into this Agreement.

Manifest MedEx

Participant

By: _____
Title: _____

By: _____
Title: _____

Exhibit 1

Participant Affiliates

[Optional for when several different entities are subject to this Agreement]

Exhibit 2.b

SERVICE DESCRIPTION

MX will provide to Participant the following services (“**Tech Services**”):

- Web-based query portal that enables Participant to look up and access an individual patient’s health information. This includes eHealth Exchange services.
- A notification service that alerts Participant when a Patient of Participant is: (i) seen in the emergency department of Participant or an NP Participant; or (ii) admitted to or discharged from the hospital of Participant or an NP Participant. Notifications will be based on the subscription files submitted by Participant.
- Reporting and analytic services that support Participant in analyzing the healthcare needs of Participant’s patients.

A. Training

Each Participant must designate a training coordinator (“**Training POC**”) before Participant begins to use the System. The Training POC will be responsible for training Participant’s Authorized Users on the use of the System, and on compliance with the Policies and Agreement. MX and its HIO affiliates will provide web-based and/or in-person training to Training POCs and Administrator POCs, and will provide training resources and materials that Training POCs can use to train Authorized Users. Any training requested by Participant in addition to MX’s standard training will be negotiated by the Parties and memorialized in a separate statement of work.

B. Support

Participant must provide a single point of contact (“**Administrator POC**”) for Tech Services before Participant begins to use the System. Administrator POCs will be responsible for: the management of Authorized Users (e.g., setting up Authorized User accounts, assigning roles and providing security credentials to Authorized Users); ensuring that Authorized Users have reviewed and agree to comply with the Policies and the Agreement prior to obtaining access to the System; and providing Level 1 help-desk support to Authorized Users, including re-setting passwords.

MX will support Participant’s performance of the above responsibilities by MX offering support for Administrator POCs, accessed through the web and/or email during Monday through Friday, 8:00 AM to 5:00 PM PST, excluding MX holidays posted on the MX website.

C. Availability and Network Monitoring

Services will be monitored 24x7x365 by MX vendors. MX and its vendors will maintain hosted services agreements that guarantee at least 99.8% uptime per calendar month, not including scheduled downtime. In the event of unexpected downtime, MX will provide notifications to Participant via e-mail or other electronic method such as the MX landing page.

D. Data Contributions

1. Provider Participants will contribute Patient Data in accordance with the following overall schedule and over a secure connection configured by MX and Participant (unless alternatives are otherwise mutually agreed upon). MX will set forth guidelines (“**Data Submission Guidelines**”) for Participant to use in submitting Patient Data to MX. Participant will use reasonable efforts to provide Patient Data to MX consistent with the Data Submission Guidelines. Participant will provide the following Patient Data to MX:
 - a. Admit, discharge and transfer data (“**ADT messages**”), or a list of current patients seen at a practice (“**Patient Roster**”) if ADT data cannot be provided, within 6 months of the Effective Date.
 - If the Participant is unable to send ADT data to MX, the Participant will be placed in a continuous 6-month follow-up cycle so that the Participant is reminded to send ADT data to MX when the capability is available.
 - Patient Rosters need to be sent to MX on a monthly basis, at a minimum.
 - b. Lab data from national reference labs and transcribed radiology, by signing an authorization form allowing labs to send the Participant’s lab data to MX, within 12 months of the Effective Date.
 - c. CCDAs (care summaries) within 6 months of the Effective Date.
 - d. If the Participant is unable to send CCDAs to MX, the Participant will be placed in a continuous 6-month follow-up cycle so that the Participant is reminded to send CCDAs to MX when the capability is available.
2. Health Plan and IPA Participants will contribute Patient Data in accordance with the following overall schedule and over a secure connection configured by MX and Participant (unless alternatives are otherwise mutually agreed upon):
 - a. Eligibility files for health plan enrollees (that define the identities of lives covered by the health plan), within six months of the Effective Date.
 - b. Claims data for health plan enrollees in either X12 or CSV, within 12 months of the Effective Date.
3. Participant must refrain from sending sensitive health information (e.g., substance abuse treatment information or self-pay information) that may be restricted from disclosure by local, state, district, and federal law. Participants are responsible for

complying with applicable laws and for filtering any information that should not be provided or disclosed to MX.

E. Participant Data Access Policies

As detailed in the Policies, the Participant shall develop, maintain and comply with written requirements that govern Participant's and Authorized Users' access to Systems and use of protected health information. Those written requirements must be consistent with the Agreement, and shall be provided to MX upon request.

Exhibit 2.c.

Fees

[HOSPITALS and HEALTH SYSTEMS]

1. **Definitions.** The following definition applies to this Exhibit. Defined terms in this Exhibit that are not set forth below shall have the meaning given to them in the Agreement.

“Annual Net Patient Revenue” means the combined net patient revenue earned in the State of California by Participant and its affiliated entities, as identified in the Agreement, during its prior fiscal year.

2. **Subscription Fees.** Participant shall pay fees (“**Subscription Fees**”) to MX in accordance with the following:

(a) Commencing on the Go-Live-Date, Participant shall pay to MX a quarterly Subscription Fee, which is calculated as follows:

(i) Determine the Annual Net Patient Revenue, then

(ii) Determine which Payment Tier in the following table applies to Participant based on the Participant’s total Annual Net Patient Revenue, and divide the designated Annual Subscription Fee from the table by four (4). The resulting quotient is the Participant’s quarterly Subscription Fee.

Annual Net Patient Revenue “Payment Tier”	Annual Subscription Fee
>\$1 Billion	\$100,000
\$750 Million to \$1 Billion	\$75,000
\$500 Million to \$750 Million	\$50,000
\$250 Million to \$500 Million	\$30,000
\$100 Million to \$250 Million	\$20,000
Less than \$100 Million	\$10,000

(b) Participant shall pay all amounts due to MX within thirty (30) days of receipt of MX’s invoice.

3. **Pro-Rated Subscription Fees.**

(a) *Following Go-Live Date.* If Participant’s Go-Live Date occurs during a Calendar Quarter, Participant shall pay pro-rated Subscription Fees for that Calendar Quarter equal to: (i) Participant’s Subscription Fees (calculated pursuant to Section 2 of this **Exhibit 2.c**), multiplied by (ii) the number of days from the Go-Live Date to the end of that Calendar Quarter, and divided by (iii) the total number of days in that Calendar Quarter.

(b) Upon Termination. If Participant terminates the Agreement with or without cause or if MX terminates the Agreement, then Participant shall owe to MX all Subscription Fees accrued up to and through the termination date. If the termination date occurs during a Calendar Quarter, Participant shall pay pro-rated Subscription Fees which shall equal: (i) Participant's Subscription Fees (calculated pursuant to Section 2 of this **Exhibit 2.c**), multiplied by (ii) the number of days from the beginning of that Calendar Quarter through the termination date, and divided by (iii) the total number of days in that Calendar Quarter.

(c) Participant shall pay all amounts due to MX within thirty (30) days of receipt of MX's invoice.

4. **Temporary Fee Holiday.** Notwithstanding any other provision of this Exhibit, Participant shall not owe or pay Subscription Fees to MX from the Effective Date through June 30, 2018 if:

(i) Participant complies at all times with the data contribution requirements set forth in this Agreement, including timely set up of data feeds consistent with Data Submission Guidelines for ADTs, ORUs and RDEs, and the provision of data necessary for MX's notification services to Participants;

(ii) Participant complies at all times with the Policies; and

(iii) Within thirty days of the Effective Date, Participant identifies one of its Personnel who will serve as the primary point of contact for MX and as the person responsible for training all Participant End Users. Within forty-five days of the Effective Date, the primary contact person shall attend at least one MX training session, and shall similarly train all Participant End Users by June 30, 2018.

5. **Implementation Fees.**

(a) Amount. Participant shall pay the following fees ("**Implementation Fees**") to MX in exchange for implementation services performed by MX:

(i) Twenty-thousand dollars (\$20,000) for a Standard Implementation that connects Participant to the System and enables Participant to access the System and contribute data.

(ii) Participant and MX must agree to the amount of any Implementation Fees for a Complex Implementation prior to MX's performance of those services.

(b) Billing. Implementation Fees will be billed at the initiation of Onboarding Services, and are due to MX within thirty (30) days of receipt of MX's invoice.

(c) Definitions. The following definitions apply to this Exhibit. Defined terms in this Exhibit that are not set forth below shall have the meaning given to them in the Agreement.

(i) **“Onboarding Services”** means VPN and other connectivity services, channel/feed development and configuration, mapping, patient or provider attribution, routing configuration, technical testing, project management, business analysis and other activities that enable Participant’s contribution of data or access to the System.

(ii) **“Standard Implementation”** means Onboarding Services for standard *HL7 ADT, ORU, RDE, CCD, X12, and/or custom CSV data feeds* that do not exceed 180 hours of MX staff time to implement.

(iii) **“Complex Implementation”** means Onboarding Services to implement data feeds that: (1) are not listed in the definition of a Standard Implementation; or (2) require Onboarding Services that exceed 180 hours of MX staff time to complete. Only those hours exceeding 180 hours will be treated as a Complex Implementation if MX’s services pertain to the feeds listed in the definition of a Standard Implementation.

Exhibit 2.c.

Fees

[PHYSICIANS and AMBULATORY CARE PROVIDERS]

1. **Subscription Fees.** Participant shall not pay any regular subscription fees (“**Subscription Fees**”) to use the System.

2. **Implementation Fees.**

(a) **Amount.**

(i) Participant shall not pay fees (“**Implementation Fees**”) to MX for a Standard Implementation performed by MX.

(ii) Participant and MX must agree to the amount of any Implementation Fees for a Complex Implementation prior to MX’s performance of those services.

(b) **Billing.** Any Implementation Fees owed by Participant will be billed at the initiation of Onboarding Services, and are due to MX within thirty (30) days of receipt of MX’s invoice.

(c) **Definitions.** The following definitions apply to this Exhibit. Defined terms in this Exhibit that are not set forth below shall have the meaning given to them in the Agreement.

(i) “**Onboarding Services**” means VPN and other connectivity services, channel/feed development and configuration, mapping, patient or provider attribution, routing configuration, technical testing, project management, business analysis and other activities that enable Participant’s contribution of data or access to the System.

(ii) “**Standard Implementation**” means Onboarding Services for standard *HL7 ADT, ORU, RDE, CCD, X12, and/or custom CSV data feeds* that do not exceed 180 hours of MX staff time to implement.

(iii) “**Complex Implementation**” means Onboarding Services to implement data feeds that: (1) are not listed in the definition of a Standard Implementation; or (2) require Onboarding Services that exceed 180 hours of MX staff time to complete. Only those hours exceeding 180 hours will be treated as a Complex Implementation if MX’s services pertain to the feeds listed in the definition of a Standard Implementation.

Exhibit 2.e

HIPAA Business Associate Agreement (“BAA”)