_____ MANIFEST MEDEX

PARTICIPATION AGREEMENT

WEBPAGE MODEL

(02/28/2018)

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 <u>Exhibit 2.c.</u>, 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 <u>Exhibit 2.d.</u>, as amended from time to time pursuant to this Agreement.

e. The *HIPAA Business Associate Agreement ("BAA")* attached as <u>Exhibit 2.e.</u>, 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.

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 any other part of this Agreement (including the Policies), the BAA shall prevail. If the Policies conflict with any other part of this Agreement (except the BAA), the Policies shall prevail. If the terms of any other Exhibit conflict with those of this Participation Agreement and Exhibit 2.a, this Participation Agreement and Exhibit 2.a 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.

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The Parties hereby execute and enter into this Agreement.

Manifest MedEx   **Participant**

By: _____   **By:** _____
Title: _____   **Title:** _____

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Exhibit 1

Participant Affiliates

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

Exhibit 2.a.

Terms and Conditions

of the

Participation Agreement

(including Definitions)

(02/28/2018)

Article 1

MX's Functions and Duties

1.1   System, Services and Training. MX shall provide to Participant the System and Services set forth in **Exhibit 2.b.**.

1.2   MX's Policies. MX shall develop and maintain the Policies.

1.3   HITRUST. MX will use commercially reasonable efforts to obtain HITRUST CSF Certification as soon as reasonably possible and thereafter shall maintain such Certification in accordance with HITRUST standards.

Article 2
Participant's Rights and Duties

2.1   Contribution of Data.   Participant shall contribute Patient Data to MX as required by the Service Description (Exhibit 2.b.), the Policies (Exhibit 2.d.) and these Terms and Conditions (Exhibit 2.a., referred to as the "**Terms**").

2.2   Restricted Use, Security and Access. Participant shall restrict access to and use of the System to Participant and its Authorized Users. Participant shall implement security measures with respect to the System and safeguard Patient Data as required by the Agreement. Participant shall not inhibit an NP Participant's access to the System or Patient Data.

Article 3
Mutual Duties; Relationship between the Parties

3.1   Compliance with Law and Safety. Each Party and its Personnel shall perform their duties and exercise their rights under the Agreement in compliance with Law. Each Party and its Personnel shall always consider Patient safety in taking any action under the Agreement.

3.2   Policies and DSG. MX and Participant and their Personnel shall each comply with the Policies and the DSG, both of which are incorporated into and are part of the Agreement.

3.3   Committees. MX may establish committees from time to time (such as a Participants Advisory Committee and/or a Policy Committee) and may request Participants to serve on any such committees.

3.4   Prevent Unauthorized Use. Participant shall: (i) only allow Authorized Users to access or use the System and the passwords and/or the user names applicable to the System; and (ii) make reasonable efforts to prevent all Persons (other than Authorized Users) from accessing and/or using the System. Participant shall notify MX promptly of any unauthorized access or use of the System of which Participant becomes aware.

3.5   Training. Participant shall, to the reasonable satisfaction of MX, educate and train its Authorized Users regarding the requirements of the Agreement, including the Policies and privacy and security protocols.

Article 4
Fees

4.1   Fees. Participant shall pay to MX those amounts set forth in its Participation Agreement with MX.

4.2   Change to Subscription Fees. MX must give Participant at least ninety (90) days' prior written notice of any increase in subscription fees (the **"Fee Notice"**); and (b) in the event of an increase in fees, Participant may terminate the Agreement pursuant to Section 11.2.

4.3   Implementation Fees. In addition to Subscription Fees, Participant shall pay any fees to implement Participant into the System (the **"Implementation Fees"**).

4.4   Payment Timing. Participant shall pay all Fees within thirty (30) days following the date on which MX or its agent sends an invoice to Participant for that Fee.

4.5   Late Charges. Fees not paid to MX in a timely manner as required by the Agreement are subject to interest at the rate of one and one-half percent (1½%) per month or the highest amount permitted by Law, whichever is lower. Interest shall be calculated from the date the invoice was sent.

4.6   Taxes. All Fees will be paid exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes now in force or enacted in the future. Participant shall pay any tax (excluding taxes on MX's net income) that MX may be required to collect or pay due to the sale or delivery of items and services provided to Participant pursuant to the Agreement. MX will not deliver the System or Services to Participant in tangible form. Notwithstanding the foregoing: (a) the Parties do not anticipate that any sales or use taxes will be payable with respect to the Services or other deliverables provided hereunder (except for any taxes that become payable as the result of any change in applicable Law); and (b) if possible, MX shall not deliver tangible copies of any software or other deliverables in a manner that would cause taxes to become payable.

4.7   Other Expenses. Participant is solely responsible for all charges and expenses Participant incurs to access and use the System.

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Article 5
Privacy and Security

5.1   Business Associate Agreement (BAA). By executing the Agreement, MX and Participant are executing the BAA and agreeing to comply with the BAA.

5.2   Notification of Breach of Privacy or Security. Each Party shall notify the other of any suspected or actual Breach of Privacy or Security.

Article 6
Confidential Information

6.1   Nondisclosure. If a Party comes into possession of Confidential Information of or regarding the other Party, MX Vendor, a Party's vendor or an NP Participant, the Party shall: (a) keep and maintain in strict confidence all such Confidential Information; (b) not use, reproduce, distribute or disclose that Confidential Information except as permitted by the Agreement; and (c) prevent the Party's Personnel from making any use, reproduction, distribution, or disclosure of the Confidential Information that is not allowed by the Agreement.

6.2   Equitable Remedies. All Confidential Information represents a unique intellectual property of the Person who owns that Confidential Information (the **"Disclosing Person"**). The Disclosing Person will be entitled to equitable relief and any other remedies available by Law.

6.3   Notice of Disclosure. A Party may disclose Confidential Information if that Party is legally compelled to make that disclosure; provided that the Party promptly provides the other Party with notice thereof by the earlier of: five (5) calendar days after receiving the request to disclose from a Person, or three (3) business days before that disclosure will be made by the Party.

6.4   Media Releases. Notwithstanding any other provision of the Agreement, MX may publicly identify Participant as a participant in MX and may include the name, address, logo, and a brief description of Participant on its website or in any other materials developed by MX. Participant grants MX a royalty free license to use Participant's name and logo for the foregoing.

Article 7
Representations and Warranties

7.1   Exclusion from Government Programs. Each Party represents and warrants that it and its Personnel have not: (a) been listed by any federal or state agency as excluded, debarred, suspended or otherwise ineligible to participate in federal and/or state programs; or (b) been convicted of any crime relating to any federal and/or state reimbursement program.

7.2   Limited Warranties. Except as otherwise specified in the Agreement: (a) Participant's access to the System, use of the Services, and receipt of Patient Data from MX are provided "as is" and "as available"; and (b) MX does not make any representation or warranty of any kind regarding the System or Services, expressed or implied, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement, except those specifically stated in the Agreement.

Article 8
Data: Ownership, Use, License and Quality

8.1   MX Use of Data.   Subject to the limitations on use of Healthcare Data set forth in the Policies, Participant grants to MX a fully-paid, non-exclusive, non-transferable, royalty-free right and license: (a) to license and/or otherwise permit Persons to access through the System and/or to receive from the System all Healthcare Data provided by Participant; (b) to use Healthcare Data provided by Participant to perform any activities MX is allowed to perform under the Agreement (including the Policies); and (c) to use Healthcare Data provided by Participant to carry out MX's duties under the Agreement, including system administration, testing and audits, provision of services, problem identification and resolution and management of the System. MX's rights under this Article shall continue for as long as MX holds or controls Participant's Healthcare Data.

8.2   Participant Access to System. MX grants to Participant, and Participant accepts, a non-exclusive, personal, nontransferable, limited right to access and use the System under the terms and conditions set forth in the Agreement. Participant's right is conditioned on Participant fully complying with the Agreement. Participant does not have any other right to access the System unless otherwise expressly granted by the Agreement or a separate arrangement that complies with Section 8.3.1.

8.3   Participant Use of Data. When accessing or using Patient Data pursuant to the Agreement, Participant and Authorized Users may access and/or use Patient Data to perform any activities Participant is allowed to perform under the Agreement (including the Policies).

        8.3.1   Participant and Authorized Users may also access Patient Data when Participant is acting as a Business Associate of another Covered Entity, provided that: all documentation of that relationship is completed to MX's satisfaction: Participant complies with that documentation; and the arrangement complies with Law.

        8.3.2   Notwithstanding any other provision of the Agreement, if Participant or an Authorized User accesses any Patient Data that it is not permitted to access under the Agreement at the time of that access, then Participant: (i) will be in breach of the Agreement, (ii) will not have or obtain any right to that Patient Data, and (iii) must immediately return or destroy that Patient Data.

8.4   Participant's Data Analysis. As between MX and Participant, MX does not have any IP Rights in or to any analysis or derivatives of Participant's Patient Data.

8.5   Trademarks. Participant and its Personnel shall: (i) maintain MX's and MX Vendor's trademarks, service marks, and copyright legends; and (ii) not violate MX's and/or MX Vendor's trademarks, service marks, copyright legends and/or any other intellectual property rights. Participant will be liable for the acts of third party service providers engaged by Participant who violate these proprietary rights or applicable Law.

8.6   Timely Provision of Data. Participant shall provide its Patient Data to MX regularly and promptly after receiving the Patient Data from Participant's source(s). Participant shall maintain

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its connection to the System and facilitate access to the Patient Data as required by the Policies and Services Description.

8.7   Data Quality. Participant shall use reasonable and appropriate efforts to ensure that all Healthcare Data provided by Participant and/or Personnel to MX is accurate with respect to each Patient. Each Party shall use reasonable and appropriate efforts to assure that its Personnel do not alter or corrupt the Patient Data received by or transmitted from that Party. Participant and its Authorized Users shall use reasonable professional judgment in its use of the Healthcare Data and its application of the Healthcare Data to make clinical decisions.

8.8   Notice of Data Inaccuracy. Each Party shall promptly notify the other Party of any known inaccuracy in the Patient Data provided to the other Party through the System.

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Article 9
Liability and Indemnity

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9.1   Liability and Limitations of Liability.   Each Party shall be liable to the other Party for Damages caused by the first Party's breach of the Agreement, subject to the following limitations:

     9.1.1   Consequential Damages. Except as otherwise specified in this Section, in no event shall either Party be liable to the other Party for any special, indirect, incidental, consequential, punitive, or exemplary damages, including loss of profits or revenues, whether a Claim for that liability or Damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if the Party was appraised of the possibility or likelihood of those damages occurring.

     9.1.2   Cap. The aggregate personal liability of each Party (including, in the aggregate, its officers, directors and Personnel) to the other Party under this Agreement will be limited to the greater of: (i) the aggregate insurance policy limits then available to the Party with respect to such Claim, and (ii) one million ($1,000,000) dollars. ($500,000 for physician practices)

     9.1.3   Exclusions. Notwithstanding anything to the contrary in the Agreement, the limitations of liability in Section 9.1.1 and 9.1.2 shall not apply to any: regulatory fines or penalties; or Claims or Damages arising out of or relating to either Party's grossly negligent or willful breach of the Agreement.

9.2   MX Liability. Notwithstanding any other provision, MX has no responsibility for and will not be liable to Participant for: (a) the accuracy, completeness, currency, content or delivery of Healthcare Data; (b) any decision or action taken or not taken by Participant or any other Person involving patient care, utilization management, or quality management that is in any way related to the use of the System, Services, or Healthcare Data; (c) any impairment of the privacy, security, confidentiality, integrity, availability of, and/or restructured use of any Healthcare Data resulting from the acts or omissions of Participant, any Other HIO or NP Participant; (d) unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft, or destruction of the participant's data files, programs, procedures, or information through the System, whether by

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accident, fraudulent means or devices, or any other method; and (e) any Damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunctions, or the use of third-party software. Participant and its Personnel shall have no recourse against, and each does waive any claims against, MX for any loss, damage, claim, or cost relating to or resulting from its own use of the System, Healthcare Data and/or the Services.

9.3   Participant Liability. The Participant is solely responsible for any and all acts or omissions taken or made in reliance on the System, Healthcare Data and/or other information received from MX, including inaccurate or incomplete information.

9.4   Indemnification. Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party and its Personnel (the "**Indemnified Party**") from and against any and all third-party Claims (and all Damages arising from or relating to those Claims) arising from: (a) the acts or omissions of the Indemnifying Party related to the Agreement, including the Indemnifying Party's failure to comply with any obligation or satisfy any representation or warranty under the Agreement; and/or (b) a Breach of Privacy or Security arising out of the Indemnifying Party's acts or omissions.

9.5   Rules for Indemnification.

    9.5.1   If a legal action is brought against the Indemnified Party, the Indemnifying Party shall, at its sole cost and expense, defend the Indemnified Party after the Indemnified Party demands indemnification by written notice given to the Indemnifying Party. Upon receipt of that notice, the Indemnifying Party will have control of that litigation but may not settle that litigation without the express consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed. An Indemnified Party may also engage counsel at its own cost in connection with any Claim brought against it.

    9.5.2   To the extent that the Indemnifying Party and Indemnified Party each have liability for Damages claimed by an Indemnified Party under the Agreement, the Damages will be allocated between them based on their proportionate share of fault for the Damages.

Article 10
Insurance

10.1   Insurance.

    10.1.1 MX Insurance Requirements. During the Term, MX shall obtain and maintain the following insurance coverage or self-insure in the following amounts:

        (a)   Commercial general liability insurance in the amount of at least five million dollars ($5,000,000) per occurrence and at least ten million dollars ($10,000,000) in the annual aggregate;

        (b)   Comprehensive professional liability (errors and omissions) insurance covering the liability for financial loss due to error, omission or negligence of MX in

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the amount of at least five million dollars ($5,000,000) per occurrence and at least ten million dollars ($10,000,000) in the annual aggregate; and

        (c)   Network security liability insurance and privacy liability insurance in the amount of at least ten million dollars ($10,000,000) per occurrence and at least ten million dollars ($10,000,000) in the annual aggregate.

    10.1.2 <u>Participant and Business Associate Insurance Requirements</u>. During the Term, Participant and any Business Associate of Participant that accesses the System shall each obtain and maintain the following insurance coverage or self-insure in the following amounts:

        (a)   Commercial general liability insurance in the amount commonly carried by a Person of the same commercial size and in the same line of business as Participant, but in any event at least one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the annual aggregate; and

        (b)   Comprehensive professional liability or errors and omissions (E&O) insurance of the type and in the amount commonly carried by a Person of the same commercial size and in the same line of business as Participant, but in any event at least one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) in the annual aggregate.

    10.1.3 <u>General Requirements</u>.

        (a)   If either Party purchases "claims made" insurance, all acts and omissions of that Party shall be, during the Term, "continually covered" (i.e., there must be insurance coverage commencing on the Effective Date and ending no earlier than three (3) years after termination of the Agreement; and that insurance must satisfy the liability coverage requirements set forth in this Article 10.

        (b)   Each Party shall purchase "tail insurance" if its coverage lapses, or "nose insurance" and/or "tail insurance" if that Party changes insurance carriers, even after termination of the Agreement.

        (c)   All insurance coverage required by this Article shall be provided under valid and enforceable policies issued by insurance companies legally authorized to do business in California.

        (d)   Upon request of a Party, the other Party shall provide certificates of insurance evidencing the coverage that the other Party is required to obtain and maintain.

Article 11
Term, Termination and Suspension

11.1 Term. The Agreement is effective on the Effective Date, and shall remain in effect until terminated as set forth below.

11.2 Termination by Participant. Participant may terminate the Agreement at any time, with or without cause, and without penalty, after delivering thirty (30) days' prior written notice to MX.

11.3 Termination by MX. MX may exercise any of the following termination rights.

      11.3.1 Privacy and Security. MX may in its sole discretion terminate the Agreement at any time if MX determines in its sole discretion that Participant's actions and/or continued participation in MX would, or is reasonably likely to, endanger the privacy or security of Patient Data or otherwise result in a breach of the Agreement that is reasonably likely to harm MX or an NP Participant. MX shall deliver notice of this termination to Participant at least twenty-four (24) hours prior to terminating Participant's access to the System, unless MX determines in its sole discretion that Participant's access must be terminated immediately in order to protect the privacy or security of the Patient Data, in which case MX may terminate access immediately without notice.

      11.3.2 Cessation. MX may terminate the Agreement after providing ninety (90) days' written notice to Participant that MX will discontinue its operations and/or its provision of the System and Services to participants.

      11.3.3 Uncured Breach. MX may terminate the Agreement if Participant breaches the Agreement and that breach continues uncured for a period of thirty (30) days after MX has delivered written notice of that breach to Participant. MX's notice of breach shall include a description of the breach.

      11.3.4 Termination for Bankruptcy or Dissolution. MX may terminate the Agreement if MX becomes bankrupt or insolvent, ceases to do business, or commences any dissolution, liquidation or wind up.

11.4 Failure to Comply with Law. Either Party may terminate the Agreement by providing thirty (30) days' written notice to the other Party that: (a) identifies the Law that is (or will be) violated by the Agreement; and (b) explains why the Agreement will not comply with Law. After a Party receives that notice, both Parties shall cooperate in good faith during the next thirty (30) days to amend the Agreement so that it complies with the identified Law. If the Parties do not execute a written amendment to the Agreement within the thirty (30) days, then either Party may terminate the Agreement by delivering a five (5) days' written termination notice to the other Party. If the Law is already in effect and violated by the Parties or the Agreement, then either Party may immediately suspend all or part of its performance under the Agreement that is illegal while the Parties attempt in good faith to modify the Agreement to cure that violation of Law.

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11.5   Effect of Termination on Patient Data. Upon any termination of the Agreement, Participant shall have no continued right to receive or duty to provide Patient Data, or to receive the Services. Upon any termination, the Parties will comply with the provisions of the BAA as it pertains to PHI. If Participant has provided Patient Data to MX, the Parties acknowledge and agree that such Patient Data has been merged with MX's and/or NP Participant's data and, accordingly, it is infeasible to destroy, delete or return that Patient Data. MX shall protect such Patient Data as it protects all other Patient Data in its possession. To the extent that either Party possesses Patient Data from the other Party, each Party shall protect that Patient Data as it protects all other Patient Data in its possession, but is not required to destroy, delete or return that Patient Data upon termination.

11.6   Suspended Access to Data. If MX determines in its sole discretion that Participant's continued access to the System would, or is reasonably likely to, endanger the privacy or security of Patient Data, MX may suspend Participant's access to the System (but may still provide read-only access if reasonably necessary for Patient safety). Participant's suspension under this Section may continue until either: (a) MX terminates the Agreement in accordance with this Article; or (b) the privacy or security problem has been cured to MX's satisfaction in its sole discretion. During this suspension, Participant shall work diligently to cure to the satisfaction of MX any problem(s) with its privacy or security.

11.7   Suspension Due to Fees. If Participant fails to pay undisputed amounts of Fees within sixty (60) days after the date of invoice, MX may suspend Participant's access to the System after delivering notice of MX's intent to suspend access at least ten (10) days prior to the suspension. Participant's access to the System shall be restored upon payment of all delinquent undisputed Fees and any late charges assessed pursuant to the Agreement.

Article 12
Miscellaneous Provisions

12.1   Applicable Law. The Agreement, and disputes regarding it, shall be governed by and interpreted in accordance with the laws of the State of California (the **"State"**), but ignoring any choice or conflict of law rules that would cause the laws of another jurisdiction to apply.

12.2   Amendment and Material Service Change.

     12.2.1 Amendment. Any modification or amendment to the Agreement must be in writing and signed by the Parties, except that the Policies, DSG, Terms, Fee Schedule and Material Service Changes may be modified as set forth in the Agreement.

     12.2.2 Material Service Change. MX may in its sole discretion implement a Material Service Change after providing at least ninety (90) days prior written notice of the change to Participant. Following a Material Service Change not acceptable to Participant, Participant may terminate the Agreement pursuant to Section 11.2. If Participant has pre-paid to MX any Subscription Fees that have not yet been earned by MX as of the date of termination, MX shall repay to Participant those unearned Fees.

     12.2.3 Policies and DSG Revision. MX may in its sole discretion modify or otherwise revise the Policies and/or DSG after providing at least ninety (90) days prior written notice of

any material revision to Participant before the material revision is effective. If the Policy and/or DSG revision is not acceptable to Participant, Participant may terminate the Agreement pursuant to Section 11.2.

       12.2.4 <u>Fee Revision.</u> MX may in its sole discretion modify or otherwise revise the Subscription Fee after providing at least ninety (90) days prior written notice of that revision to Participant before the new fee is effective. If the Subscription Fee revision is not acceptable to Participant, Participant may terminate the Agreement pursuant to Section 11.2.

       12.2.5 <u>Prepayment.</u> If Participant has pre-paid to MX any Subscription Fees that have not yet been earned by MX as of the date of termination, MX shall repay to Participant those unearned Fees.

       12.2.6 <u>Required Revision.</u> Notwithstanding any other provision in the Agreement, if a revision to the Policies, Terms and/or DSG is required, in the reasonable judgment of MX, to be made for the continued technological functioning of the HIE or for compliance with Law, MX may unilaterally implement that revision and may shorten any requirement for prior notice set forth in the Agreement to that time period which MX reasonably determines appropriate under the circumstances.

12.3   <u>Assignment.</u> Neither Party may assign the Agreement or any of the Party's rights, interests, duties or obligations under the Agreement, by operation of law or otherwise, without the prior written consent of the other Party, which consent may be given, conditioned or withheld in the other Party's sole discretion, except that (a) either Party may assign the Agreement in whole or in part to an affiliate or to a successor in interest, and (b) consent shall not be necessary in the context of an acquisition, merger or change of control involving either Party. Any attempted assignment or transfer in violation of the foregoing will be null and void.

12.4   <u>Attorney Fees.</u> Except as otherwise specified in the Agreement, the non-prevailing Party in any arbitration, appeal or other legal proceeding pertaining to the Agreement shall pay to the prevailing Party all of the substantially prevailing Party's reasonable fees and costs incurred in the dispute resolution, arbitration or proceeding, including attorneys' fees, arbitration costs and the costs of experts and consultants. The substantially prevailing Party shall be the Party who prevails relative to the other Party, as determined by the arbitrator or a court of competent jurisdiction, whether or not the arbitration or proceeding proceeds to final judgment or award.

12.5   <u>Availability of Records.</u> For four (4) years after any termination of the Agreement, the Secretary, the Comptroller General of the United States ("**Comptroller General**") and/or their designee will have access to all books and records of MX directly pertaining to the subject matter of the Agreement, in accordance with the criteria developed by the U.S. Department of Health and Human Services as provided in Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. §1395x(v)(1)(A), *et seq.* ("**ORB**"). During that four years, upon request of the Secretary, the Comptroller General and/or their designee, MX shall make available (at reasonable times) the Agreement and all books, documents and records of MX that are necessary to verify the nature and extent of the costs of Services provided by MX under the Agreement. Notwithstanding the foregoing, access to MX's books, records and documents will be discontinued and become null and void upon a finding by a court or quasi-judicial body of competent jurisdiction that the

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Agreement is outside the scope of the regulatory or statutory definition of those agreements included within the purview of Section 952 of ORB or the rules and regulations promulgated thereunder.

12.6   Federal Reporting Requirements. For four (4) years after any termination of the Agreement, MX shall maintain its books, documents and records showing the nature and extent of the cost of Services furnished under the Agreement in compliance with Section 1861(v)(1)(I) of the Social Security Act. If requested, MX shall grant access thereto to the Secretary, the Comptroller General and/or their designee.

12.7   Captions. Captions and headings shall have no effect in interpreting the Agreement.

12.8   Counterparts. The Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

12.9   Disputes. In the event of any Claim or disagreement related to the Agreement (a **"Dispute"**), the Parties shall:

12.9.1   Dispute Notice. A Party alleging a Dispute shall send written notice of the Dispute and the Party's position regarding the Dispute (the **"Dispute Notice"**) to the other Party and any other Person that the Party believes is involved in the Dispute. The Dispute Notice shall propose a time and place for all involved Persons to meet and confer regarding the dispute.

12.9.2   Meet and Confer. Within twenty (20) days of a Party sending a Dispute Notice, the Parties shall meet and confer in good faith regarding the Dispute. Other Persons interested in the Dispute shall be invited to the conference, but the conference shall be held at the earliest date on which the Parties can attend (regardless of the attendance of other interested Persons). The Meet and Confer shall be considered a settlement negotiation for the purpose of all Laws, including California Evidence Code § 1152.

12.9.3   Jurisdiction and Venue. All Disputes not resolved under this Section will be adjudicated in the state and federal courts located in San Francisco, California and each Party hereby consents to the personal jurisdiction of such courts.

12.9.4   Injunction. Notwithstanding anything to the contrary, any Party may immediately file suit in any court as that Party deems necessary to protect or enforce its IP Rights, Proprietary and Confidential Information or Patient Data.

12.10   Representation by Counsel; Interpretation. Each Party has been represented by counsel in connection with this Agreement, or has had an opportunity to be so represented. Both parties expressly waive any claim that ambiguities in this Agreement should be interpreted against the Party that initially drafted the language.

12.11   Entire Agreement. The Agreement is the entire understanding of the Parties regarding its subject matter, and supersedes all prior written or oral understandings, promises, representations and discussions between them with respect the subject matter of the Agreement.

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12.12   Exhibits. All exhibits and attachments to the Agreement are incorporated into the Agreement and are a part of the Agreement.

12.13   Force Majeure. Neither Party shall be liable for nonperformance or defective or late performance of any of a duty under the Agreement to the extent and for such periods of time as that nonperformance, defective performance or late performance is due to reasons outside of that Party's control; provided that the Party uses good faith efforts to perform its duties.

12.14   Independent Contractors. The Parties are and shall at all times be an independent contractor of the other, and not an employee, agent, partner of, or joint venture with the other. Except as specifically allowed by the Agreement, neither Party has any right or authority to assume or create any obligation of any kind, express or implied, on behalf of the other Party.

12.15   Severability. If any provision of the Agreement or the application of any provision, in whole or in part, is determined to be invalid, void, illegal or unenforceable by an arbitrator or a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such provision shall be severed from the Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of the Agreement.

12.16   Survival. Provisions of the Agreement shall survive any termination or expiration of the Agreement when evident by the context of the provision and/or when specifically identified as surviving.

12.17   Third-Party Beneficiary. No Person other than the Parties will have any right under or due to the Agreement, and no Person will be a third-party beneficiary of the Agreement.

12.18   Waiver. No delay or omission by a Party to exercise a right or power it has under the Agreement shall be construed as a waiver of that right or power. A waiver by any Party of any breach of the Agreement shall not be construed to be consent to, waiver of, or excuse for any subsequent or different breach. All waivers must be in writing and signed by the Parties.

12.19   Notice to MX.

        Manifest MedEx
        Attn: Chief Executive Officer
        6001 Shellmound St., Ste. 500
        Emeryville, CA 94608
        Email: legal@manifestmedex.org

Definitions Applicable to the Agreement

(Unless otherwise indicated, all Section references are to provisions in the Terms and Conditions.)

"Administrator" means one (1) or more individuals designated by Participant to: (a) designate Participant's Authorized Users; and (b) fulfill other responsibilities specified in the Agreement on behalf of Participant.

"Agreement" means the Participation Agreement signed by Participant and MX, including all documents incorporated into the Agreement by reference in the Agreement.

"API" means application programming interface.

"Authorized User" means an individual: (i) designated and authorized by an Administrator, in accordance with the procedures set forth in the Agreement, to access and/or use the System and Services on behalf of a Participant; and (ii) who is permitted under applicable Law to access and/or use the System and Services.

"Breach of Privacy or Security" means any access, use, receipt or disclosure of Patient Data (including electronic PHI) that is not in compliance with Law.

"Business Associate" has the meaning ascribed in 45 C.F.R. § 160.103.

"Business Associate Agreement" ("BAA") means the business associate agreement that is executed by the Parties and attached to the Agreement.

"**Calendar Quarter**" means the three months following the first day of January, April, July and October.

"Claim" means any claim, action, suit, or proceeding pertaining to the Agreement to recover Damages, obtain specific performance and/or enjoin an action.

"CMIA" means the California Confidentiality of Medical Information Act, California Civil Code Section 56 *et seq*.

"Comptroller General" is defined in Section 12.5 (Availability of Records).

"Confidential Information" means (a) all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer 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, whether written or verbal, that are confidential in nature and pertains to or is related to the Agreement, (b) all Security Information and (c) the Vendor Proprietary Information; provided, however, that Confidential Information shall not include information that:

      (a)   is publicly known at the time of disclosure;

(b)   is already known or obtained by any other Party other than in the course of the other Party's performance pursuant to its "participation agreement", and without breach of any confidentiality, nondisclosure or other agreement by that other Party or in violation of applicable Law;

(c)   is independently developed by any other Party;

(d)   becomes known from an independent source having the right to disclose that information and without similar restrictions as to disclosure and use and without breach of these Agreement, or any other confidentiality or nondisclosure agreement by that other Party; or

(e)   is Patient Data.

"Covered Entity" has the meaning ascribed in 45 C.F.R. § 160.103.

"Damages" means any and all liability, losses, judgments, damages and costs, including reasonable attorneys' fees, court costs and arbitration fees.

"Data Contributor" means a Person that: is not a Participant or NP Participant; and provides Patient Data to MX.

"Data Provider" means Participant or any NP Participant that provides Patient Data to MX.

"Data Recipient" means Participant or any NP Participant that accesses Patient Data from the System.

"Data Submission Guidelines" means the guidelines for Participant to submit Patient Data to MX, as provided by MX to Participant from time to time.

"De-Identified Data" means data that satisfies the requirements of 45 C.F.R. § 164.514(b).

"Disclosing Person" is defined in Section 6.2 (Equitable Remedies).

"Dispute" is defined in Section 12.9 (Disputes).

"Dispute Notice" is defined in Section 12.9.1 (Dispute Notice).

"DSG" is the Data Submission Guidelines.

"Effective Date" is defined in the Preamble.

"Fees" means the Subscription Fees and the Implementation Fees.

"Fee Notice" is defined in Section 4.2 (Change to Subscription Fees).

"Go-Live Date" means earlier of: the date on which MX first notifies Participant that Participant has access to use the System, or the six-month anniversary of the Effective Date.

"Health Plan" means Participant or an NP Participant that either: (a) meets the definition of health plan in HIPAA; or (b) provides core health plan administrative services (at a minimum: medical claims processing services and provider network management services) to a health plan that meets the HIPAA definition.

"Healthcare Data" means Patient Data and/or De-Identified Data that is collected, created, maintained or disclosed by MX.

"Healthcare Provider" means Participant or an NP Participant that either: (a) meets the definition of provider in HIPAA; or (b) is a medical group (e.g., independent practice association) providing core administrative services to a provider that meets the HIPAA definition.

"HIE" is defined in Recital B of the Agreement.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended by HITECH, and the regulations promulgated thereunder at 45 C.F.R. Parts 160 and 164.

"HITECH" means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (commonly known as **"ARRA"**), Pub. L. No. 111-5 (February 17, 2009).

"Implementation Fees" is defined in **Exhibit 2.c.**, and is first referenced in Section 4.3 (Implementation Fees).

"IP Rights" means all present and future worldwide copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights, concepts, inventions, processes, techniques, algorithms, software (in source code and object code form) designs, schematics, drawings, formulae, improvements to any of the foregoing, and other intellectual property and proprietary rights, in whatever media or form.

"Law" means any federal or state law, statute, ordinance, rule, legally binding administrative interpretation, regulation, order, judgment, or decree that is applicable to a Party or to another Person identified in the Agreement.

"Longitudinal Patient Record" or **"LPR"** means a Patient's longitudinal patient record maintained by MX.

"Material Service Change" means either: (a) a material cessation or reduction in the functionality or interfaces of the System; or (b) a reduction in the level of Services provided by MX.

"MX Vendor" means a vendor with which MX has contracted with to provide technology in connection with providing Services.

"NP Participant" means a Person that has entered into a "participation agreement" with MX to act as a Data Provider and/or a Data Recipient, but is not a Party to the Agreement.

"NP Participant Liability Limits" means the limitations and exclusions of liability (e.g., liability caps and waivers of consequential or other types of damages) set forth in an NP Participation Agreement, and any exceptions to the foregoing set forth in the NP Participation Agreement.

"NP Participation Agreement" means an agreement between MX and an NP Participant that contains the terms of NP Participant's participation in the HIE.

"ORB" is defined in Section 12.5 (Availability of Records).

"Other HIO" means a health information organization that contracts with MX to share health data through their respective systems, or an organization that represents a community of payers and/or providers for purposes of exchanging Patient Data between them.

"Party" means Participant or MX.

"Patient Data" means health information that: (a) is created or received by a Healthcare Provider or Health Plan; (b) relates to: (i) past, present or future physical or mental health of a Patient, or (ii) the provision of health care to a Patient; (c) identifies the Patient, or there is a reasonable basis to believe the information can be used to identify the Patient (including Protected Health Information, as that term is defined in HIPAA, and Medical Information, as that term is defined in the CMIA); and (d) is made available to the System by a Data Provider or Data Contributor pursuant to the Agreement or an NP Participant's participation agreement.

"Patient" means each individual whose Patient Data is contributed to MX by a Data Provider or Data Contributor.

"Person" means an individual person, an entity or a governmental organization or agency, including health information exchanges, researchers, Participants, NP Participants and/or an individual(s) who does not participate in MX's HIE.

"Personnel" means a Person's employees, Authorized Users, accountants, attorneys, consultants, directors, agents, representatives, subcontractors and subcontractors' employees that provide, access, receive or use any part of the System or the Services.

"Policies" mean the privacy policies, security policies and/or procedural requirements adopted by MX and made available to Participant at, as amended by MX from time to time. The current version of the Policies can be found at http://www.manifestmedex.org/pdf/Policies.pdf.

"Protected Health Information" or **"PHI"** has the meaning ascribed in 45 C.F.R. § 164.103.

"Secretary" means the Secretary of the U.S. Department of Health and Human Services.

"Security Information" means the electronic or physical security profile, security assessment and security audit report of MX, Participant or an NP Participant.

"Service Level" means the level of "service availability" or "service performance" that MX is required to provide under **Exhibit 2.b.**. "Service Levels" means both the availability and performance service levels.

"Service Level Failure" means a failure by MX to meet a Service Level.

"Services" means all services provided by MX pursuant to the Agreement.

"State" is defined in Section 12.1 (Applicable Law).

"Subscription Fees" is defined in **Exhibit 2.c.**.

"System" means the HIE and its related technology that MX provides to Participant and NP Participants, as further described in the Policies.

"Tech Services" means those services identified as tech services in **Exhibit 2.b.**.

"Term" means the time between the Effective Date and any termination of the Agreement.

"Vendor Proprietary Information" means all software, solutions, services and API keys of MX Vendor to which Participant gains access by being a Party.

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. Participants will contribute Patient Data in accordance with the schedules described below 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 Participants to use in submitting Patient Data to MX. Participants will use reasonable efforts to provide Patient Data to MX consistent with the Data Submission Guidelines.

2. Hospital Participants will provide the following Patient Data to MX:

   a. Admit, discharge and transfer data ("**ADT messages"**), within 6 months of the Effective Date.
   b. Lab data (ORU messages), within 12 months of the Effective Date.
   c. Pharmacy data (RDE messages), within 12 months of the Effective Date.
   d. CCDAs (discharge summaries, transition of care documents), APIs and other data types deemed appropriate and of high value by the Parties. As other Patient Data become relevant to the HIE, the Parties will develop a timeline for contributing that Patient Data.

3. Physician and ambulatory practice Participants will provide the following Patient Data to MX:

   a. Admit, discharge and transfer data ("**ADT messages"**), or a **patient roster** if ADT data cannot be provided, within 6 months of the Effective Date. If the Participant provides a patient roster, it must be updated on a regular basis in compliance with MX Policies.
   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
   c. CCDAs (care summaries) within 12 months of the Effective Date. 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.

4. Health Plan and IPA Participants will provide the following Patient Data to MX:

   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.

5. 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 (revenues without subtracting expenses) 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 for the upcoming quarter, 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

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

4.   **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.

5.   **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.

6.   **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) $_____for a Standard CCDA Implementation that enables the Participant to contribute CCDAs to MX from a single EHR instance or another platform.

(iii)   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) <u>Definitions</u>. 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, CCDA, 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, CCDA, 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")