AHIE PARTICIPATION AND DATA USE AND RECIPROCAL SUPPORT AGREEMENT

This AHIE Participation and Data Use and Reciprocal Support Agreement ("DURSA" or "Participation Agreement") is made and entered into by and between the Health Information Exchange ("AHIE") for the State of Alabama, and the undersigned (hereinafter referred to as "Participant") as of the Effective Date.

WITNESSETH:

WHEREAS, Participant seeks to participate in AHIE, a multi-partner electronic health information exchange organization formed for the purpose of improving the quality, safety, and efficiency of health care in Alabama;

WHEREAS, One Health Record (or AHIE) provides an interoperable Health Information Exchange that links health care community participants and provides for the exchange of electronic data in accordance with certain standards and applicable law;

WHEREAS, the purpose of AHIE is to facilitate the electronic exchange of protected health information ("PHI") among Participants for Permitted Purposes;

WHEREAS, Participant, pursuant to the terms of this Participation Agreement and the AHIE Policy Manual incorporated by reference herein, will make individuals' PHI accessible to other Participants in AHIE;

WHEREAS, Participant desires to enter into this Participation Agreement with AHIE to participate in and have access to AHIE's state level Core Services and technology platform;

WHEREAS the Parties desire to comply with all applicable state and federal laws intended to protect the privacy and electronic security of PHI of individuals whose data may be transmitted by or on behalf of one or more of these Parties;

WHEREAS, as a condition of participation in One Health Record, all Participants must enter into this Participation Agreement for the purposes of electronic data exchange and have agreed to do so;

WHEREAS, as a condition of participation in One Health Record, all Participants have agreed to abide by the AHIE Policy Manual, as amended from time to time;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Participant agrees as follows:

1. DEFINITIONS

The definitions set forth in the AHIE Policy Manual, as amended from time to time, shall apply to the terms used in this Participation Agreement.

2. GRANT OF RIGHTS

2.1 Grant by AHIE.

AHIE grants to each Participant, and each Participant shall be deemed to have accepted, a non-exclusive, personal, nontransferable, limited right to have access to and to use the System for the purposes of complying with the obligations described in this Section 2, subject to the Participant's full compliance with this Participation Agreement and the AHIE Policy Manual. AHIE retains all other rights to AHIE and all the components thereof. No Participant shall obtain any rights to AHIE except for the limited rights to use the System expressly granted by this Participation Agreement and the AHIE Policy Manual.

2.2 Provision of Health Data.

The Participant shall participate in and maintain its connection to the AHIE record locator service ("RLS")-based, peer-to-peer network and provide through the System the information, including PHI as required for the role based access controls as set forth in Section 4 of this Participation Agreement.

2.3 Measures to Assure Accuracy of Data.

Each Participant shall, in accordance with the AHIE Policy Manual, use reasonable and appropriate efforts to assure that all data it provides to the System is accurate, reasonably complete, and provided in a timely manner.

2.4 License.

Subject to Section 2.5 (Limitations on Use of PHI) below, the Participant grants to AHIE a perpetual, non-exclusive, royalty-free right and license (i) to license and/or otherwise permit other Participants to access through AHIE and use all PHI provided by the Participant in accordance with this Participation Agreement and the AHIE Policy Manual, and (ii) to use such PHI to carry out the duties of AHIE under this Participation Agreement and the AHIE Policy Manual, including without limitation System administration, testing, problem identification and resolution, management of the System, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as the Governing Authority determines is necessary and appropriate to comply with and carry out AHIE obligations under all applicable federal and state laws and regulations.

SPECIFIC FOR LABS: For laboratory Participants, subject to Section 2.5 (Limitations on Use of PHI) below, the Participant expressly agrees to permit and allow OneHealthRecord to capture PHI and other data as it is delivered to a requester through the AHIE.

2.5 Limitations on Use of PHI.

Notwithstanding Section 2.4 (License) above, PHI provided by a Participant to AHIE may only be accessed, used, or disclosed by other Participants for Permitted Purposes. Each Participant shall require that its users only use AHIE for Permitted Purposes.

3. RESPONSIBILITIES OF AHIE

3.1 AHIE shall provide the overall guidance for the operation of AHIE and the System, including its security and privacy and its technical components. AHIE shall have the following responsibilities and perform the following functions:

a. Audit, in accordance with the policies and procedures set forth in the AHIE Policy Manual, and in circumstances such as, but are not limited to, receipt of notice of a violation or suspected violation of this Participation Agreement and/or the AHIE Policy Manual; receipt of a complaint from an individual or the individual's representative regarding access, use, or disclosure of that individual's PHI, or at random as needed to ensure compliance.

b. Develop and implement the technical components for the operation of the AHIE.

c. AHIE will make One Health Record available to Participants for Permitted Purposes.

d. Report and investigate unauthorized uses and security incidents within the System.

e. Maintain the functionality of the System and the services it provides in accordance with the AHIE Policy Manual, and provide such service, security, and other updates as AHIE determines are appropriate from time to time.

f. Provide training information and materials to each Participant regarding the Participant's and its Authorized Users' rights and obligations under its Participation Agreement and the access and use of the System and its services, including such user manuals and other resources AHIE determines appropriate to support the System and its services, including without limitation training for new or additional Authorized Users when added by the Participant.

g. AHIE may offer and may provide enhanced support services to assist Participant in the installation, implementation, and maintenance of the software and use of One Health Record beyond what the AHIE is obligated under this Participation Agreement and may establish a fee for these enhanced support services. This is an optional service, and Participant may accept or reject these services.

4. RESPONSIBILITIES OF PARTICIPANT

The Participant shall comply with the AHIE Policy Manual, as amended from time to time by the Governing Authority, and shall have the following responsibilities and perform the following functions:

4.1 Fully comply with all applicable state and federal laws and regulations.

4.2 Provide to AHIE with all information reasonably requested and needed by One Health Record to discharge its duties under this Participation Agreement or Applicable Law.

4.3 Each Participant shall have policies and procedures in place that govern its Authorized Users' ability to access information through One Health Record and ensure that its Authorized Users who must access the System as part of their job responsibilities execute individual User Agreements prior to accessing the System.

4.4 Terminate Authorized User system identifications and passcodes at the time of termination of employment or other business relationships with the Participants.

4.5 Monitor compliance with individual Authorized User login and passcode use and strictly enforce a prohibition on any sharing of an Authorized User's login and passcode.

4.6 Terminate or suspend individual Authorized User login and/or passcodes when a violation of internal policies and procedures has occurred or when a violation of the use of AHIE, per this Participation Agreement or the AHIE Policy Manual, as identified by AHIE staff.

4.7 Permit patients to opt out of having their PHI exchanged through AHIE.

4.8 Each Participant shall be responsible for ensuring that any requirements under applicable state or federal law, including but not limited to, obtaining consent and authorization for the disclosure of sensitive data, if required, have been met before making that data available for exchange through AHIE.

4.9 Maintain full compliance with the AHIE Policy Manual.

4.10 Participant and Participant Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from or in any way related to the use of One Health Record or the data made available thereby. No Participant or Participant User shall have any recourse against, and each hereby waives any claims against the AHIE for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of One Health Record and/or the data made available thereby.

4.11 Cooperate with all requests for audits initiated by AHIE or its agents by providing all requested information.

4.12 Maintain Business Associate Agreements which comply with HIPAA rules and the AHIE Policy Manual.

4.13 Provide appropriate and adequate training to all of the Participant's personnel, including without limitation Authorized Users, regarding the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of PHI, including without limitation requirements imposed under HIPAA.

4.14 Comply with the standards for the confidentiality, security, and use of patient health information, including without limitation protected health information described in HIPAA, as provided in the AHIE Policy Manual.

4.15 Report to AHIE any access, use, or disclosure of PHI in violation of this Participation Agreement, including the AHIE Policy Manual.

4.16 Each Participant shall be responsible for maintaining a secure environment that supports the operation and continued development of One Health Record. Participants shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Participation Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of PHI.

4.17 Each Participant shall ensure that it employs security controls that meet applicable industry or Federal standards so that any transmissions will not introduce any viruses, worms, unauthorized cookies, Trojans, malicious software, or other program, routine, sub-routine, or data designed to disrupt the proper operation of a System or any part thereof or any hardware or software used by a Participant in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause a System or any part thereof or any hardware, software or data used by a Participant in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable. In the absence of applicable industry standards, each Participant shall use all commercially reasonable efforts to comply with the requirements of this Article.

5. AUTHORIZED USERS

5.1. User Agreements.

Every Participant must execute a User Agreement with each Authorized User that Participant will allow to utilize AHIE in accordance with this Participation Agreement prior to allowing the Authorized User to access the System.

5.2 Identification of Authorized Users.

Each Participant shall maintain a list identifying all the Participant's Authorized Users and the unique system identification for each. The Participant shall update such list whenever an Authorized User is added or removed by reason of termination of employment or otherwise. Participant shall provide AHIE with a copy of this list upon request.

5.3 Certification of Authorized Users.

Participant shall endure, and by granting access to AHIE thereby certifies to AHIE, that an Authorized User:

a. Has completed a training program conducted by Participant;

b. Will be permitted by Participant to use the System and its services only as reasonably necessary for the performance of Participant's activities in accordance with the role based access controls under which Participant is registered with AHIE;

c. Has agreed not to disclose to any other person any passwords and/or other security measures issued to the Authorized User;

d. Has acknowledged in writing that his or her failure to comply with this Participation Agreement and the AHIE Policy Manual may result in the withdrawal of privileges to use the System and its services and may constitute cause for other actions by Participant.

5.4 No Use by Other than Authorized Users.
Participant shall restrict access to the System and, if applicable, use of its services, only to Authorized Users in accordance with this section. AHIE is not responsible for unauthorized access to Participant's transmission facilities or equipment by individuals or entities using the AHIE System or for unauthorized access to, or alteration, theft, or destruction of Participant's data files, programs, procedures, or information through the AHIE System, whether by accident, fraudulent means or devices, or any other method. Participant is solely responsible for validating the accuracy of all output and reports and protecting Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. Participant waives any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files.

5.5 Responsibility for Conduct of Participant and Authorized Users.
Participant shall be solely responsible for any damage caused in whole, or in part, by its actions, including but not limited to damage to a computer system, loss of data, and any damage to the OHR System caused by Participant, an Authorized User of Participant, or any person using a user ID assigned to Participant or a member of Participant's workforce. Participant agrees that it shall defend, indemnify, save and hold harmless AHIE from and against any and all lawsuits, demands for arbitration, and/or any other claims whatsoever styled, arising out of or relating to Participant's use of the AHIE System.

6. TERM OF AGREEMENT

The initial term of this Participation Agreement shall commence on the effective date of this Participation Agreement and terminate on December 31 of that same year. Upon the expiration of the initial term, this Participation Agreement shall automatically renew for successive one-year terms unless terminated pursuant to this Article.

7. BUSINESS ASSOCIATE AGREEMENT

Participant and AHIE agree to enter into and be bound by the terms, conditions, and obligations of the Business Associate Agreement executed concurrently with this Participation Agreement.

8. FEES

Fees for participation in AHIE will be set by the AHIE Governing Authority. Participant agrees to and shall pay AHIE its first annual fee concurrently upon execution of this

Participation Agreement. Thereafter, fees are due annually on the renewal date of this Participation Agreement. The Governing Authority may modify the Fee Schedule as necessary to ensure the ongoing sustainability of AHIE and fair cost allocation among all Participants. If Participant chooses to renew this Participation Agreement at the end of the term, as discussed above in Section 6, Participant agrees that the renewed Participation Agreement will incorporate the Fee Schedule in effect for all Participants as of the renewal date.

FOR ADMH and ADPH Only: These fees are not applicable to the state agencies, Alabama Department of Mental Health and Alabama Department of Public Health, as of the date of this agreement.

9. SOFTWARE, HARDWARE AND EQUIPMENT

9.1 AHIE owns, and will obtain in the future, all the software necessary to operate One Health Record. Participant agrees that all such ownership rights shall remain with AHIE. Upon termination or expiration of this Participation Agreement, all such software owned by AHIE shall be returned to AHIE in good condition, reasonable wear and tear excepted.

9.2 Each Participant shall be responsible for procuring all hardware, equipment, and software necessary for it to access the System, use its services (including the software), and provide to AHIE all information required to be provided by Participant ("Participant's Required Hardware and Software"). Each Participant's Required Hardware and Software shall conform to AHIE's specifications as set forth in the AHIE Interoperability Services Guide in the AHIE Policy Manual. AHIE may change such specifications as necessary with the prior approval of the Governing Authority. The Governing Authority must specify the time period in which the change must be implemented; however, Participant shall always have at least sixty (60) days to implement any such change. As part of Participant's obligation to provide Participant's Required Hardware and Software, Participant shall be responsible for ensuring that all Participant's computers to be used to interface with the System are properly configured, including but not limited to the operating system, web browser, and Internet connectivity.

9.3 AHIE grants to each Participant a non-exclusive, personal, nontransferable, limited license to use the software for access to or use of the System.

9.4 Participant shall not, without AHIE's prior written consent, copy any of the software.

9.5 Participant shall not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create the software or the System otherwise, or to create any derivative works from the software or the System.

9.6 The software includes certain third-party software, hardware, and services, which may be subject to separate licenses or subscription or other agreements or may require that Participant enter into such agreements with third-party vendors. Participant shall execute such agreements as may be required for the use of such software, hardware or services, and to comply with the terms of any applicable license or other agreement relating to third-party products included in software.

9.7 Participant shall use reasonable efforts to ensure that its connection to and use of the System, including without limitation the medium containing any data or other information provided to the System, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or "malware," viruses, worms, and Trojan Horses) which will disrupt the proper operation of the System or any part thereof or any hardware or software used by AHIE in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the System or any part thereof or any hardware, software or data used by AHIE or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable. AHIE must use similar reasonable efforts to ensure that it does not adversely impact Participant operations.

10. INTELLECTUAL PROPERTY

The Parties acknowledge and agree that any and all intellectual property rights, titles and interests in AHIE and the System are now and shall be in the future owned by AHIE and/or its partners or vendors.

11. LIABILITY

Neither party shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employee or agents, in connection with the performance of services pursuant to this Participation Agreement or the AHIE Policy Manual. In addition, the Parties are independent contractors and nothing in this Agreement shall be deemed to make them partners or joint venturers.

12. TERMINATION

12.1 A Participant may terminate its participation in AHIE by terminating this Participation Agreement, with or without cause, by giving OHR at least ten (10) business days prior written notice. Once proper notice is given, AHIE shall be empowered to revoke access to One Health Record as of the date of termination specified in the notice.

12.2 If either Party fails to perform as required by this Participation Agreement, the other Party may terminate this Participation Agreement by giving ten (10) days written notice of termination to the non-performing Party. Termination by AHIE must have the prior approval of the Governing Authority. AHIE shall retain rights to any and all necessary data relative to security and audit requirements.

12.3 Upon any termination of this Participation Agreement, Participant shall cease to be a Participant; neither Participant nor its Authorized Users shall have any rights to access or use the System.

12.4 The following provisions of this Participation Agreement shall survive any termination of this Participation Agreement: Section 10 (Intellectual Property); Section 11 (Liability), and specified provisions of the Business Associate Agreement.

12.5 Upon termination, Participant shall return all equipment, hardware and software applications belonging to AHIE. AHIE shall retain rights to any and all necessary data relative to security and audit requirements. This period can be shortened by agreement of the Parties which shall be in writing and signed by both Parties.

13. CHANGES TO THE AHIE POLICY MANUAL

13.1 The Governing Authority may amend, repeal, or replace the terms contained in the AHIE Policy Manual at any time and shall give Participants notice of those changes. Subject to Section 13.2 below, any such change to the AHIE Policy Manual shall automatically be incorporated by reference into this Participation Agreement and be legally binding upon AHIE and the Participant sixty (60) days following AHIE's notification to Participant of a change to the AHIE Policy Manual.

13.2 If Participant objects to a change, Participant may terminate this Participation Agreement by giving AHIE written notice thereof not more than sixty (60) days following AHIE's notice of the change. Notwithstanding any other provision of this Participation Agreement, such termination of the Participation Agreement shall be effective as of the date of AHIE's receipt of Participant's written notice of termination. AHIE shall retain rights to any and all necessary data relative to security and audit requirements.

14. ACCURACY OF DATA

Participant shall be solely responsible for ensuring the accuracy, completeness, and quality of Participant's data that it maintains and makes available through One Health Record. AHIE assumes no and shall have no responsibility for the accuracy, completeness, and/or quality of Participant's PHI.

15. ADDITIONAL PARTICIPANTS

The Parties expressly acknowledge that it is the intent of both Parties that other Participants join and participate in AHIE to facilitate the secure and confidential transmission of PHI among Participants in accordance with the terms of this Participation Agreement and the incorporated AHIE Policy Manual. Upon AHIE's acceptance of a new Participant, AHIE shall ensure that the new Participant executes and becomes bound by the Participation Agreement, the Business Associate Agreement and the AHIE Policy Manual, with the result that current Participants and the new Participant are all bound by an identical Participation Agreements. The new Participant shall not be granted the right to participate in AHIE until both the new Participant and AHIE execute the Participation Agreement.

16. NOTICE

Any and all notices or other communications required or permitted under this Participation Agreement shall be sufficient if given in writing and hand delivered or sent by United States Certified Mail, postage prepaid, return receipt requested or by overnight delivery service with confirmation of delivery, postage pre-paid, and properly addressed to:

AHIE or One Health Record:	**Participant:**
_____	_____
_____	_____
_____	_____
_____	_____

17. IMPOSSIBILITY

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Participation Agreement insofar as such inability arises from events which are beyond the reasonable control of a Party and which makes a Party's performance of its obligations under this Participation Agreement impossible or so impractical as to be considered impossible under the circumstances, such as but not limited to: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event. This Section shall not apply to obligations imposed under Applicable Law and regulations or obligations to pay money.

18. TRANSFER

No benefit or obligation of any Participant under this Participation Agreement may be assigned or transferred by the Participant, either voluntarily or by operation of law, without the prior written consent of AHIE, which AHIE may withhold in its sole discretion.

19. ENTIRE AGREEMENT

This Participation Agreement and the AHIE Policy Manual incorporated by reference herein constitute the entire understanding of the Parties, and there are no other written or oral understandings or promises between the Parties with respect to the subject matter of any of this Participation Agreement other than those contained or referenced herein. All modifications or amendments to this Participation Agreement shall be in writing and signed by all parties.

20. GOVERNING LAW

The validity, construction, interpretation, performance, or dispute arising from this Participation Agreement shall be governed by the laws of the State of Alabama. Venue for any action at law or in equity to interpret or enforce the terms and conditions of this Participation Agreement shall lie exclusively in the state or federal courts of Montgomery County, Alabama.

21. WAIVER

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

22. CAPTIONS

The captions and headings throughout this Participation Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify, or aid in the interpretation or construction of meaning of the provisions of this Participation Agreement.

23. LEGAL EFFECT

The rights and obligations of the parties under this Participation Agreement shall inure to the benefit of and shall be binding upon their respective heirs, executors, administrators, successors, and assigns of Participant. However, there shall be no third party beneficiaries of this Participation Agreement.

24. COUNTERPARTS

This Participation Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one and the same Participation Agreement.

IN WITNESS WHEREOF, the Parties have executed this Participation Agreement on this ____ day of _____, 20__, the Effective Date.

One Health Record (AHIE)

Signature: Gary D . Parker

Title: Director One Health Record

PARTICIPANT

Type Signature: _____

Title:_____

Email to One Health Record®

By typing your name here, you are signing this application electronically. You agree your electronic signature is the legal equivalent of your manual signature on this application.