

## PARTICIPATION AGREEMENT

This Participation Agreement (“Agreement”) is entered into by and between Oregon Health Network (“OHN”), an Oregon non-profit corporation, and \_\_\_\_\_ (“Participant”), a \_\_\_\_\_ (describe) located at \_\_\_\_\_ and is made effective as of \_\_\_\_\_ (the “Effective Date”).

### I Recitals

OHN is a 501(c)(3) organization and will support and facilitate implementation of the Federal Communication Commission’s (FCC) Rural Health Care Pilot Program (RHCPP) project in Oregon.

Prior to entering into this Agreement and as a prerequisite hereto, Participant has received and reviewed the rules, regulations and requirements of the FCC and the RHCPP. The RHCPP provides support for up to 85 percent of the costs associated with the construction and operation of state or regional broadband health care networks.

Participant acknowledges that the FCC, through the Universal Service Administrative Company (USAC), also operates a rural health care subsidy program whereby eligible rural entities can receive subsidies from the FCC to pay for the cost difference between urban and rural rates for comparable services (the “Rural Subsidy”). Absent an amendment by Congress to the applicable legislation and based on the information OHN has received from USAC, OHN believes that the Rural Subsidy will continue to exist in its present form or in a similar form after the expiration of the Term (defined below). The Rural Subsidy may be available to the Participant if Participant renews this Agreement as provided in section 1.2 below.

Participant desires to participate in and receive the benefits of the RHCPP and OHN desires Participant to be a part of the RHCPP all on the terms and conditions specified below.

### II. Agreement

#### The parties agree as follows:

- 1.0 **Participant obligations.** At all times during the term of this Agreement Participant shall comply with the following obligations:
  - 1.1. Participate in the RHCPP for a period ending on May 21, 2014 (the “Term”). The Participant will contract with the telecommunications vendor that will provide the services to Participant’s location and enable access to the OHN network, follow RHCPP competitive procurement rules, pay all unsubsidized portions of their telecommunications costs and pay OHN the participation fees under this Agreement.
  - 1.2. Subject to sufficient subsidies being received through USAC and renewal of this Agreement with OHN, the Participant intends to renew this Agreement for five years after expiration of the Term, to competitively

procure telecommunication vendor services to maintain the Participant's connection to OHN's Network, participate in the regular USF program after the conclusion of the RHCPP, if applicable, and to pay all unsubsidized portions of their telecommunication costs.

- 1.3. The initial Annual Site Participation Fee will be billed upon receipt of the signed Participation Agreement. The initial Fee will be due within 30 days from the date the invoice is issued. Subsequent Participation Fee's will be billed on an annual basis according to OHN's Fiscal Year. All subsequent Fee's will be due within 30 from the date the invoice is issued.

**The Annual Site Participation Fee for your organization is \$ \_\_\_\_\_.**

- 1.4. Connect to the telecommunications network created through the RHCPP.
- 1.5. Comply with all patient privacy and data or information security regulations required under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or any other applicable state or federal regulation and take all steps legally required to protect the confidentiality and access to Participant (or its members, users, patients) information.
- 1.6. Use the RHCPP subsidy, if any, only for purposes allowed by the RHCPP.
- 1.7. Comply with all USAC and FCC requirements, including without limitation all audits or other requests for information from either entity. Participant will comply with the results of any such audits including the return/refund of any funds that are required to be returned as a result of being determined as an ineligible use of the subsidy.
- 1.8. Participate in good faith in OHN activities including without limitation timely providing accurate information as requested by OHN to complete any necessary applications or other forms in order to apply for and obtain subsidies applicable to Participant and timely responding to any additional information requests or questions of OHN.

## **2.0 OHN OBLIGATIONS**

- 2.1 Through contracts with third parties, maintain the OHN network at least through the duration of the RHCPP (through May 21, 2014), and thereafter for successive five year periods upon renewal by Participant.
- 2.2 Maintain technical and administrative contacts for participants in the event of participant technical or administrative questions for the duration of the RHCPP and any subsequent renewal terms as agreed to by the parties.
- 2.3 Contract with a third party vendor for purposes of having such vendor maintain the network operations center in a manner that permits monitoring network quality to ensure that network providers meet their agreed performance specifications.
- 2.4 Complete all required project paperwork for eligible participant sites to receive the subsidy, as applicable with Participant's cooperation and information as provided above.

2.5 To the extent that it has the resources to do so, OHN will work with participating organizations to develop services that will add value for network participants.

### 3.0 **INDEMNIFICATION; LIMITATION OF LIABILITY**

3.1 OHN shall indemnify and hold harmless Participant, its directors, officers, employees, agents, and corporate affiliates, from and against any and all claims, demands, or causes of action for any injuries, losses or violations of this Agreement (including all costs and reasonable attorneys' fees incurred in defending any such claim, demand or cause of action) arising out of the gross negligence or intentional misconduct of OHN, its representatives, agents or employees in the performance of obligations under this Agreement. It is understood and agreed that the indemnity in this Section 3.1 specifically excludes any claims arising out of or in connection with any vendor agreement entered into by Participant with any third party, or the services provided therein. It is further understood and agreed that this indemnity provision does not extend to third parties. In no event shall OHN's total liability exceed the amount of insurance maintained by OHN which actually provides coverage for the losses claimed under this Section 3.1.

3.2 Participant shall indemnify and hold harmless OHN, its directors, officers, employees, agents, corporate affiliates, and any other contractors of OHN or Oregon Association of Hospitals Research and Education Foundation (OREF), as applicable based on OREF's involvement with OHN, from and against any and all claims, demands, or causes of action for any injuries, losses or violations of patient privacy or confidentiality rights, whether imposed by State or Federal law, rule or regulation, (including all costs and reasonable attorneys' fees incurred in defending any such claim, demand or cause of action) arising out of the gross negligence or intentional misconduct of Participant, its representatives, agents or employees in the performance of obligations under this Agreement.

3.3 Notwithstanding the indemnity in Section 3.1 above, Participant understands and agrees that OHN does not maintain, use or provide computer systems, data servers or other technical facilities and that all such systems used or needed in connection with this Agreement will be provided by Participant or third parties contracting directly with Participant. As such, Participant agrees that OHN shall have no responsibility or liability for maintaining or failing to comply with any privacy, confidentiality or data security laws and regulations, State or Federal (including without limitation HIPAA). Further, Participant agrees that OHN does not and has no responsibility or liability for providing network or telecommunication systems, infrastructure, hardware or software used by or available to Participant in connection with the RHCPP. OHN does not guarantee that the OHN network will be available at any or all times used or accessed by Participant or available at a particular access band width, Participant will look solely to other parties for any guarantees regarding the OHN network and also for any claims, demands or actions related to the matters set out in this Section 3.3 and agrees to indemnify and hold OHN harmless from any and all claims arising from the foregoing. This section shall survive termination of this Agreement.

**3.4 Indirect, Incidental and Consequential Damages.** OHN (INCLUDING ITS OFFICERS, DIRECTORS AND THIRD PARTY VENDORS HIRED BY OHN TO COMPLETE THE OHN OBLIGATIONS SPECIFIED IN SECTION 2) SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF DATA, LOSS OF PERSONAL PROPERTY OR PERSONAL INJURY) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY EVEN IF OHN WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

**3.5 Damages Caused by Third Parties.** OHN SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY ANY THIRD PARTY.

**3.6 Limitation of Liability.** OHN's total liability for direct damages arising out of this Agreement or the performance of services by OHN (including any vendor in contract with OHN to provide the Services) whether based in contract, tort, or other legal theory, shall not exceed the greater of the amount received by OHN under this Agreement or the amount of insurance which actually covers the loss or damage sustained.

#### **4.0 TERMINATION**

Any party may terminate this Agreement without cause upon 60 calendar days prior written notice to the other party. Any party may terminate this Agreement for failure of another party to cure a material breach within 30 calendar days of receiving written notice of the breach and an opportunity to cure. Termination of this Agreement shall not relieve any party of the obligations arising under this Agreement prior to termination. Termination by Participant prior to expiration of the pilot program is subject to any requirements and conditions of the FCC or USAC.

#### **5.0 ASSIGNMENT**

In no event shall any party assign any of its rights, powers, duties, or obligations under this Agreement without receipt of the prior written consent of the other parties, and any attempt to do so shall be void.

#### **6.0 SEVERABILITY**

If any term, covenant, condition or provision hereof is illegal, or the application thereof to any person or in any circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, condition or provision to persons or in circumstances other than those with respect to which it is held invalid or unenforceable, shall not be affected thereby, and such term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### **7.0 GOVERNING LAW**

This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Oregon.

#### **8.0 ENFORCEABILITY**

This Agreement shall be enforceable only by the parties hereto and their successors. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights.

#### **9.0 CONSTRUCTION**

If any language is stricken or deleted from this Agreement, such language shall be deemed never to have appeared herein and no other connotation shall be drawn therefrom. The paragraph headings used herein are for convenience only and shall not be used in the construction or interpretation of this Agreement.

#### **10.0 NOTICE**

Any notice, offer, demand or communication required or permitted to be given under any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or sent by registered mail, postage and charges prepaid, return receipt requested, to the party in the name of the individual whose signature appears on this Agreement or his or her successor. Parties to this Agreement change its address for purposes of this Agreement by giving the other party notice thereof.

#### **11.0 COMPLETE AGREEMENT**

This Agreement supersedes all prior and contemporaneous agreements and understandings, whether oral or written, relating to the subject hereof between the parties and, including all rules and regulations<sup>1</sup> referenced herein, contains the entire and complete agreement of the parties.

#### **12.0 AMENDMENTS**

This agreement cannot be changed, modified or discharged orally, but only by an agreement in writing, signed by an authorized representative of the parties.

#### **13.0 AUTHORITY**

Each person signing this Agreement hereby represents that he or she is authorized to enter into this Agreement on behalf of the party for which he or she is signing.

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<sup>1</sup> The citation to the FCC order is: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-198A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-198A1.pdf)

**IN WITNESS WHEREOF**, the parties have executed this Agreement this

\_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_ (Participant)

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**OHN**

NAME: Kim A. Lamb

TITLE: Executive Director

SIGNATURE: \_\_\_\_\_