

**ATTACHMENT A / HEALTH CARE PROVIDER  
TERMS AND CONDITIONS FOR  
PARTICIPATING ORGANIZATION**

1. Health Information Exchange.

(a) Host. The WVHIN shall either directly, or through a contract with a third party Business Associate Subcontractor, host all equipment, software, and services necessary for the operation and maintenance of the HIE. The WVHIN shall either directly, or through a contract with a third party Business Associate Subcontractor, be responsible for management, administration, upkeep, and repair of the HIE. The WVHIN shall require its third party contractors/Business Associate Subcontractors to comply with the applicable terms and conditions of this Agreement, the WVHIN's Policies and Procedures, and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, 45 C.F.R. Parts 160 and 164, as may be amended, and any other regulations promulgated thereunder. For purposes of this Agreement, the WVHIN's primary third party Business Associate Subcontractor is the Chesapeake Regional Information System For Our Patients, Inc. ("CRISP").

(b) Participant's Hardware and Software. The Participant shall be responsible for procuring all hardware, equipment, and software necessary for it to effectively and reliably access, use, and submit data through the HIE and participate in any of the WVHIN's services. The Participant shall ensure that its hardware, equipment, and software used to interface with the HIE are properly and securely configured. The WVHIN shall not be responsible for any costs incurred by a Participant to connect to the HIE. The WVHIN may change such specifications and configuration requirements as necessary from time-to-time. Any changes shall be effective thirty (30) days following adoption by the WVHIN, unless the WVHIN determines that an earlier effective date is required to address a legal requirement, an imminent concern related to the privacy or security of PHI, or an emergency situation. The WVHIN may also postpone the effective date of a change if it determines, in its sole discretion, that additional implementation time is required. The Participant shall be solely responsible for any expenses that it may need to incur in order to connect to, access, and use the HIE or any of the WVHIN's services.

(c) Registration of Participant Type. The Participant operates as a Health Care Provider, which has the same meaning as the term is defined in 45 C.F.R. Part 160, as may be amended.

(d) Restrictions on Use of the HIE. The Participant agrees not to sublicense, assign, rent, sell, transfer, give, or otherwise distribute all or any part of the WVHIN's HIE, or its associated software, to any third party. The Participant agrees not to reverse engineer, disassemble, decompile, modify, alter, or attempt to learn the source code or structure of the WVHIN's HIE, or associated software, or any copy thereof, in whole or in part.

(e) Sublicense Grant. Subject to the conditions, promises, and

covenants contained in this Agreement, WVHIN grants to the Participant a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable sublicense to access and use and submit data through the WVHIN's internet-based HIE, and its associated software, by one or more Authorized Users designated by the Participant for the sole purpose of participating in this Exchange for a Permissible Purpose in accordance with the terms and conditions of this Agreement. This sublicense is revocable in accordance with the terms of any termination provision set forth in this Agreement. THE HIE, AND ITS ASSOCIATED SOFTWARE, SHALL NOT BE USED FOR ANY OTHER PURPOSE WHATSOEVER, AND SHALL NOT BE COPIED OR INCORPORATED INTO ANY OTHER COMPUTER PROGRAM, HARDWARE, SOFTWARE, FIRMWARE, OR PRODUCT. The Participant acknowledges that the software has been licensed to the WVHIN by CRISP, and that the rights granted under this Agreement are subject in every respect to the WVHIN's grant of license from CRISP and to CRISP's agreement with the CRISP's Licensor(s). In the event CRISP or a CRISP Licensor imposes conditions applicable to the Participant's or its Authorized Users' use of the HIE and its software, the Participant will be advised of those conditions through the WVHIN Policies and Procedures, which conditions will be binding on the Participant and its Authorized Users. As additional software is developed by or for the WVHIN's HIE, it shall become subject to this Agreement. This subsection (e) applies only to software that is provided by the WVHIN to the Participant and not to any other software that the Participant may use in providing Treatment to its Patients or for the Participant's Health Care Operations or Payment procedures.

## 2. Responsibilities of the WVHIN.

(a) The WVHIN shall make its HIE available to the Participant and its Authorized Users only for the Permissible Purposes authorized and approved by the WVHIN. Permissible Purposes shall be identified in the WVHIN's Policies and Procedures. The HIE shall include the functionality to electronically file a specific request, or Query, under its Query-Retrieve functionality, the PHI of a Patient for a Permissible Purpose. The HIE shall further make available a subscription-based Notification service to alert Participants of relevant events associated with their patients. All data, including PHI retrieved through the Query-Retrieve function, Notification service and other services is provided by Participants and Data Suppliers of the HIE for Permissible Purposes. As part of its HIE, the WVHIN shall maintain a Master Patient Index (MPI) to match Patients for the purposes of responding to Queries, sending Notifications and other related functions. In conjunction with the MPI, the Central Data Services will have the capability to permanently record any Patient's decision to Opt-Out of the WVHIN. In addition:

(i) WVHIN will provide, maintain and make available appropriate data hosting and the software and related services necessary for operation and maintenance of the Central Data Services, which will store all Participants' data, supplied by each Participant's system and structured in a manner that, through metadata, allows the Participant's data to be distinguished from, and separated from, the data of all other Participants in the Central Data Services;

(ii) WVHIN will provide for all appropriate and necessary software, maintenance, and hardware for the HIE and to allow the Participant and the Participant's Authorized Users to access and use the HIE via Internet connections; and

(iii) As to PHI that is subject to protections and restrictions under applicable law, WVHIN shall provide access to the HIE via a secured methodology, consistent with industry standards, which shall incorporate end user Authentication Information by the Participant's Authorized Users for access. WVHIN is responsible to ensure HIE security and shall operate the HIE in a manner that protects the confidentiality, integrity, availability, and security of PHI. WVHIN will ensure encryption of PHI through the use of generally accepted industry standards and methods under applicable law.

(b) The WVHIN shall use its best efforts to make its HIE available to the Participant twenty-four (24) hours per day, seven (7) days per week; provided however, the HIE's availability may be temporarily suspended for regular maintenance or unscheduled interruptions. The WVHIN shall use its best efforts to provide reasonable notice of any such suspension or interruption, and to restore the HIE's on-line availability. The Participant shall be solely responsible for obtaining or securing PHI through other means during any periods when the HIE is not available.

(c) During the term of this Agreement, the WVHIN may provide limited support services to assist the Participant in the installation, implementation, and use of the HIE, and its associated software. The WVHIN, or its designated Business Associate Subcontractor, shall establish a Help Desk that shall be available twenty-four (24) hours per day, seven (7) days per week to assist the Participant in its use of the HIE.

(d) The WVHIN shall establish Policies and Procedures to govern the WVHIN's and the Participant's activity on the HIE, as well as the privacy and security of PHI being exchanged thereunder. These Policies and Procedures shall also govern the activities of all Authorized Users of the Participant. These Policies and Procedures shall be available on the WVHIN's website at [www.wvhin.org](http://www.wvhin.org), and are hereby incorporated by reference in their entirety herein. The WVHIN may amend these Policies and Procedures from time to time at its discretion and shall post all revisions to its website. The Participant's Point of Contact shall be notified in writing of such changes. Any changes shall be effective thirty (30) days following adoption by the WVHIN, unless the WVHIN determines that an earlier effective date is required to address a legal requirement, an imminent concern related to the privacy or security of PHI, or an emergency situation. The WVHIN may also postpone the effective date of a change if it determines, in its sole discretion, that additional implementation time is required.

(e) The WVHIN may access PHI made available by the Participant to assist in the operation of the HIE, for testing and performance verification, and for investigations relating to compliance with this Agreement and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, 45 C.F.R. Parts 160 and 164, as may be amended, and other any regulations promulgated thereunder.

(f) The WVHIN may establish standard forms and protocols to assist the Participant in complying with the aforementioned Policies and Procedures. The forms and protocols may be implemented electronically, and designed to function in a manner that is both intuitive and user-friendly for both the Participant and its Authorized Users.

(g) The WVHIN shall provide notice to the Participant of any identified compliance issue related to the Participant's or any of its Authorized User's access of data through the HIE, including but not limited to any Breach of Unsecured PHI affecting the Participant.

(h) The WVHIN shall comply with this Agreement, the WVHIN's Policies and Procedures, and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, 45 C.F.R. Parts 160 and 164, as may be amended, and any other regulations promulgated thereunder such as the HIPAA Privacy Rules and the HIPAA Security Rules.

(i) Nothing in this Agreement shall convey any ownership rights to the data provided by the Participant to the WVHIN. Any and all data provided by the Participant shall remain the sole property of the Participant and may be accessed and used by the WVHIN and its other Participants strictly in accordance with this Agreement; provided, that any other Participants that access and use data in accordance with the terms of this Agreement may retain and incorporate such data into their electronic health record systems.

### 3. Responsibilities of the Participant.

(a) Any Participant that is a Health Care Provider shall provide, configure and maintain any and all workstations, internet connections and browser, and other hardware, firmware, and software necessary to reliably and securely connect to the WVHIN's web-based HIE. The Participant shall ensure measures are in place to prevent the transmission and receipt of malware. The Participant shall maintain appropriate administrative, physical, and technical safeguards with respect to its internal systems to maintain the privacy, security, integrity, and accuracy of its PHI.

(b) The Participant and its Authorized Users shall access the HIE to make a Query for PHI only for Permissible Purposes. The Participant and its Authorized Users must use the PHI disclosed only for these Permissible Purposes. Use of any WVHIN services for unauthorized commercial purposes, marketing, or email spamming is strictly prohibited. A Participant must monitor the use of these services by its Authorized Users for appropriate use. The various provisions of this Agreement shall govern the provision and use of these services, as applicable.

(c) Any Participant shall make available PHI to the HIE, including Personal Demographic Information, to enable the Query-Retrieve functionality, the Notification functionality, and other Optional Services provided by the WVHIN.

(d) The Participant agrees and consents to the disclosure of its PHI or

Personal Demographic Information to other Participants of the HIE as may be necessary to utilize the WVHIN's various services, as well as to the HIE as may be necessary to assist in the operation of the HIE, for testing and performance verification, and for investigations relating to compliance with this Agreement and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, 45 C.F.R. Parts 160 and 164, as may be amended, and other any regulations promulgated thereunder.

(e) The Participant shall designate a Point of Contact, who shall serve as the principal contact with the WVHIN under this Agreement, and who shall perform such other duties and responsibilities as outlined elsewhere herein. A Point of Contact may delegate his or her duties and responsibilities under this Agreement to one or more other individuals working under his or her direct supervision. The Point of Contact will validate the Authorized Users at the Participant who can receive information from the HIE necessary to access services. Should the Participant's Point of Contact, or his or her designees, be changed, such change shall immediately be communicated to the WVHIN in order to allow for the disabling of the applicable Authentication Information. No Point of Contact or designee shall be permitted to disclose or transfer Authentication Information to another individual.

(f) Except for Treatment or Emergency Treatment of its Patients, the Participant and its Authorized Users, when accessing the HIE, shall comply with the Minimum Necessary requirements under the HIPAA Privacy Rules.

(g) Sensitive Health Information is a type of PHI that contains specialized legal protections under West Virginia state and/or federal laws. Its use and disclosure may require a Patient's written authorization for certain Permissible Purposes; however, the use and disclosure of Sensitive Health Information for certain other Permissible Purposes, such as Treatment or Emergency Treatment, may not require a Patient's written authorization. The Participant shall be solely responsible for making any determination as to whether a Patient's Sensitive Health Information is blocked from use and disclosure through the HIE. The WVHIN, CRISP, and other WVHIN Participants shall rely upon the determination made by the Participant or a Data Supplier as to whether a Patient's Sensitive Health Information is blocked from use and disclosure through the HIE.

(h) The Participant shall, within twenty-four (24) hours of discovery, report any misuse of Authentication Information, false positive match of a Patient, Breach of Unsecured PHI, or other compliance issue arising under this Agreement or under federal or state laws to the WVHIN for investigation. The Participant shall cooperate with the WVHIN in its investigation and corrective action.

(i) Each disclosure and each receipt and use of PHI by the Participant and its Authorized Users shall constitute a certification by the Participant and each of its Authorized Users that they are complying with this Agreement and applicable law. Nothing in this Agreement shall require a disclosure of PHI that is contrary to applicable law.

(j) The Participant and its Authorized Users shall comply with this Agreement, the WVHIN's Policies and Procedures, and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, 45 C.F.R. Parts 160 and 164, as may be amended, and any other regulations promulgated thereunder such as the HIPAA Privacy Rules and the HIPAA Security Rules.

4. Identification of Authorized Users; Use of the HIE.

(a) The Participant shall, through its Point of Contact, strictly control access to the HIE by the Participant's Workforce through the establishment of a role-based access system. This role-based access system shall limit access within a Participant to those Workforce members with a need to know. Authorized Users shall include only those members of the Participant's Workforce who:

(i) require access to the HIE to facilitate the use or disclosure of PHI for a Permissible Purpose as part of their job responsibilities; and

(ii) have completed a training program designed to inform the Authorized User about the functionality and Permissible Purposes of the HIE that is provided or approved by the WVHIN.

(b) The Participant's Point of Contact shall designate, maintain, and certify the official list of Authorized Users to the WVHIN. Any Workforce changes that require a change in Authorized User status shall be communicated immediately to the HIE by the Point of Contact. The Participant shall be wholly responsible for maintaining an appropriate and current list of its Authorized Users and their roles, and for validating the list on a regular basis as required by the HIE.

(c) The WVHIN shall ensure that each Authorized User designated by the Participant's Point of Contact establishes Authentication Information sufficient to allow the Authorized User access to the HIE. In the case where the HIE is integrated into the Participant's electronic health record, the Participant's Point of Contact shall hold this responsibility. Such Authentication Information shall meet the minimum requirements established by the WVHIN, and shall otherwise be unique to each Authorized User. The Participant's Point of Contact shall immediately follow designated procedures to disable any Authorized User who is no longer authorized by the Participant to access and use the HIE and to ensure prompt termination of such Authorized User's access thereto. The Participant's Point of Contact shall also immediately amend the status of any Authorized User whose job responsibilities have changed in a manner that affects the Authorized User's role-based access to the HIE. The Participant shall be responsible for any act or omission arising out of its failure to disable or modify access of any of its Authorized Users in accordance with this Agreement.

(d) Authorized Users may access and use the HIE only in accordance with the terms and conditions of this Agreement, the WVHIN's Policies and Procedures, and all applicable provisions of federal and state law, including HIPAA, the HITECH Act,

45 C.F.R. Parts 160 and 164, as may be amended, and any other regulations promulgated thereunder. The Participant shall implement internal policies and procedures to require and ensure compliance by Authorized Users with the requirements of this Agreement.

(e) Prior to each access or use of the HIE, an Authorized User shall be required to enter his or her Authentication Information.

(f) The Participant shall have written policies and procedures for the Participant's Authorized Users' appropriate access to and use of the HIE and/or any portal provided in connection therewith, which will include policies and procedures relating to uses and disclosures of PHI transmitted through the HIE ("Access Policies"). These policies and procedures shall comply with applicable law and shall be consistent with this Agreement. In addition, the Participant will have policies and procedures which require Authorized Users to limit their uses and disclosures of WVHIN's Proprietary Information through the Participant's system and/or any portal provided in connection with the HIE or in connection with WVDirect, which shall be consistent with the provisions of Section 12 of this Agreement as to Proprietary Information received pursuant to the Agreement ("Confidentiality Policies"). The Participant acknowledges that Access Policies and Confidentiality Policies will differ among Participants. The WVHIN is not responsible for auditing or monitoring the Participant's, or its Authorized Users' Access Policies or Confidentiality Policies.

(g) The Participant shall be responsible for ensuring that its Authorized Users comply with the terms of this Agreement, the WVHIN's Policies and Procedures, and all applicable provisions of federal and state law, including HIPAA, the HITECH Act, 45 C.F.R. Parts 160 and 164, as may be amended, and any other regulations promulgated thereunder. Further, the Participant shall be responsible for all acts and omissions of its Authorized Users and all other individuals who may access the HIE through the Participant or by use of any Authentication Information received or obtained by any Authorized User of the Participating Organization. The WVHIN reserves the right to terminate the Authorized User status of any individual for good cause, including, but not limited to, misuse of his or her Authentication Information, any repeated and ongoing abuse of the applicable requirements of this Agreement or of WVHIN's Policies and Procedures, or fraudulent activity.

5. Reliance Upon Authorized User Certifications. In making a disclosure to a Participant or an Authorized User of a Participant through the HIE, the WVHIN may rely upon the certification of the Participant or Authorized User submitting the Query that:

(a) the Participant or Authorized User is seeking access to PHI for a Permissible Purpose; and

(b) except for Treatment or Emergency Treatment, the Participant or Authorized User has sought only the Minimum Necessary amount of PHI needed to accomplish the intended purpose of the disclosure.

6. Maintenance of Audit Logs. The WVHIN shall maintain an audit log which records any Participant, Authorized User, or other entity or individual who obtains access to PHI through the WVHIN's HIE portal. This audit log shall include, at the minimum:

- (a) the identity of the Participant or Authorized User (or at least the Authentication Information that was utilized by an individual) that accessed the PHI;
- (b) the identity of the Patient whose PHI was accessed;
- (c) the location and Internet Protocol address from which the PHI was accessed, if available;
- (d) the specific PHI accessed; and,
- (e) the date and time that the PHI was accessed.

The WVHIN shall maintain a record of all audit logs for a period of at least seven (7) years. Upon request, the WVHIN shall share with the Participant's Point of Contact any audit log maintained by the WVHIN documenting access to the WVHIN by the Participant or its Authorized Users.

7. Opt-Out Provisions.

(a) No affirmative action needs to be taken by a Patient who Consents to his or her participation in the WVHIN. The WVHIN shall establish a reasonable and meaningful Consent process by which Patients may decide to affirmatively Opt-Out of the HIE. Once a Patient has Opted-Out of the HIE, his or her PHI shall not be made available in response to a Participant's Query or for purposes of the Notification functionality.

(b) The WVHIN shall establish a process by which Patients may Opt-Out of the HIE. To assist in this process, the WVHIN shall develop a Patient Notice designed to inform and educate Patients about the function of the HIE, as well as the potential benefits and risks of participation by the Patient. The Participant shall provide every Patient with a copy of the Patient Notice in writing, and if necessary, in any other format (orally, foreign language presentation, etc.) designed to ensure that its contents are communicated to and understood by the Patient. The Patient Notice shall be provided during the first Patient encounter after the Participant enrolls in the HIE. Alternatively, language substantially consistent with the Patient Notice may be included in the Participant's Notice of Privacy Practices (NPP), so long as the NPP is distributed in accordance with HIPAA and Patients are made aware of significant changes to their rights and obligations with respect to the WVHIN in a manner designed to effectively communicate such changes. The Participant may provide the Patient with an electronic version of the Patient Notice or NPP if the Patient has specifically agreed to electronic notice as permitted by the HIPAA Privacy Rules; provided, that the Patient retains the right to obtain a paper copy of the Patient Notice or NPP from the Participant upon request. The Participant is encouraged to provide the Patient Notice or NPP prior to the



Participant's enrollment in the HIE, and to permanently record the delivery of the Patient Notice or NPP in the Patient's medical record. A Patient shall be considered an active participant in the HIE until and unless that Patient Opt-Out. A patient becomes an active participant for all purposes after a Participating Organization discloses his or her PHI or Personal Demographic Information to the HIE.

(c) Any Patient's Personal Demographic Information shall be securely maintained by the WVHIN in its Master Patient Index in order to permanently record the Patient's Consent decision, and to assist other Participants in obtaining access to a Patient's PHI for a Permissible Purpose in accordance with the WVHIN's Policies and Procedures.

(d) All decisions made by Patients to Opt-Out of the WVHIN shall be recorded within one business day of request receipt. A Patient may utilize an on-line process to Opt-Out electronically (preferred method); may submit a paper form by mailing, emailing, or faxing; or may telephone a toll-free number.

(e) A Patient may revoke his or her decision to Opt-Out at any time by contacting the WVHIN or electronically by utilizing an on-line process.

8. Accuracy and Retention of Data. The Participant shall be solely responsible for maintaining reasonable quality control procedures for the accuracy, completeness, integrity, and quality of the PHI that it makes available to the WVHIN. The WVHIN assumes no responsibility for the accuracy, completeness, integrity, and quality of the Participant's PHI. The Participant shall be solely responsible for including any PHI received through the WVHIN's HIE in its own Designated Record Set for the Patient, if desired. The HIE is not required to return to a Participant any PHI accessed through the HIE from any Participant.

9. Other Exchanges and Networks. The WVHIN may establish arrangements with other HIEs, and with other national, regional, and proprietary networks, located or operating inside or outside the State of West Virginia, to allow access and use or disclosure of PHI that would otherwise be permissible under the terms and conditions of this Agreement, under any similar agreement with CRISP, under the terms of a Data Use and Reciprocal Support Agreement ("DURSA") consistent with national standards, as well as under the terms of other similar agreements consistent with national standards, all in compliance with applicable federal and state laws, and executed by the WVHIN and the other HIEs and/or networks in question (collectively, "the Interagency Agreements"). In the event of any inconsistency between the terms of this Agreement and any Interagency Agreement executed by the WVHIN, the terms of the Interagency Agreement shall apply. Any Participant that operates outside of the State of West Virginia, and that links its out-of-state operation directly to the WVHIN, shall be solely responsible for complying with all applicable laws and regulations of such other state.

10. Training. The WVHIN may from time to time provide group-training sessions for the Participant and its Authorized Users on the proper use of the HIE at the

request of the Participant. The WVHIN may charge a mutually agreed fee for such training purposes.

11. Fees. Fees or payments required from the Participant to the WVHIN are set forth in the Fee Schedules contained in Attachment D, and also set forth in Attachment E through Attachment G for Optional Services to which the Participant may elect to subscribe. All fees shall be paid in full to the WVHIN on or before the due date indicated on invoices. Failure to pay fees within sixty (60) days from their due date may result in termination of the Participant's access to the HIE. If access is terminated due to non-payment, a reconnection fee shall be assessed. All fees shall be exclusive of all federal, state, or local taxes now in force or enacted in the future that the WVHIN may be required to collect and pay. The WVHIN may update its Fee Schedules in Attachment D, and in Attachment E through Attachment G for Optional Services, once each calendar year by providing written notice to the Participant.

12. Proprietary Information.

(a) During the term of this Agreement the parties may, but shall not be required to, share information which may represent proprietary trade secrets of the disclosing party, and which may include, but not be limited to, business plans, product applications, studies, reports, methods, processes, software designs, and other technical and business information which by its nature is deemed confidential (hereinafter referred to as "Proprietary Information"). In the case of the WVHIN, the term "Proprietary Information" shall include the proprietary trade secrets or other confidential or proprietary information of CRISP. Each party agrees to hold all Proprietary Information disclosed to it under this Agreement in trust and confidence and shall not disclose or use such Proprietary Information except for the purposes of carrying out its obligations under this Agreement, or as otherwise required by law. This Agreement shall not restrict the disclosure or use of Proprietary Information that is:

(i) already known to the recipient as evidenced by the records of the recipient; or

(ii) obtained without restriction as to further disclosure from a source other than the other party, which source is under no obligation (written or otherwise) of confidentiality to the party claiming the information to be its Proprietary Information; or

(iii) generally available to the public when received, or thereafter becomes generally available to the public through no fault of the recipient.

(b) As used in this Agreement, PHI shall not be Proprietary Information that is subject to the restrictions contained in this Section 12.

(c) The parties agree that a material violation of this Section 12 shall cause the disclosing party substantial and continuing damage, the value of which shall

be difficult or impossible to ascertain, and other irreparable harm for which the payment of damages alone shall be inadequate. Therefore, in addition to any other remedy that the disclosing party may have under this Agreement, at law, or in equity, for any threatened or actual material violation of this Section 12, the disclosing party shall be entitled, after notifying the receiving party in writing of the threatened or actual violation, to seek both temporary and permanent injunctive relief without the need to post bond.

### 13. WVHIN Committees.

(a) The WVHIN shall establish and maintain various Committees consisting of the various Point of Contacts, or Workforce members of Participants, WVHIN Board of Directors' members, or subject matter experts. The WVHIN shall hold regular meetings of these Committees. The Committees shall review, consider, and provide advice to the WVHIN with respect to all aspects of the HIE, including, but not limited to:

- (i) technical, administrative, privacy, and security matters;
- (ii) matters related to evolving legal requirements and best practices for HIE; and
- (iii) HIE data use, clinical solutions, service availability, and diversification.

(b) The WVHIN shall also participate in various committees of CRISP, and may appoint one or more Point of Contacts, Workforce members of Participants, WVHIN Board of Directors' members, or WVHIN Committee members to participate in CRISP Committees as the agent of WVHIN.

(c) The Participant agrees that the WVHIN's Clinical and Data Use Committee may from time-to-time consider non-mandatory disclosures of PHI for public health activities otherwise authorized by law pursuant to 45 C.F.R. §164.512(b), as may be amended ("Public Health Use Case"). The Clinical and Data Use Committee may determine, in its sole discretion, to approve the disclosure of PHI for such a Public Health Use Case. The scope of any such disclosure shall contain the minimum amount of PHI authorized by law for the approved public health activity. The Participant's Point of Contact shall be notified in writing of such approval and the initiation date of any disclosure for such a Public Health Use Case, which shall begin no sooner than thirty (30) days following the date of this notice. By entering into this Agreement, the Participant authorizes the disclosure of any PHI contributed by it to the HIE for an approved Public Health Use Case, and no further approval, consent, or authorization from the Participant shall be required. If the Participant disagrees with the proposed disclosure for an approved Public Health Use Case, it may terminate this Agreement upon written notice to the WVHIN at any time prior to the initiation date specified in the notice, and no PHI provided by the Participant shall be disclosed by the WVHIN after such termination for the approved Public Health Use Case.

14. Disclaimer of Warranties.

(a) EXCEPT AS OTHERWISE PROVIDED HEREIN, ALL SERVICES PROVIDED IN CONNECTION WITH THE HIE, THE WVDIRECT SERVICE, THE WV e-DIRECTIVE REGISTRY, AND ALL PHI PROVIDED THROUGH THE HIE AND THESE SERVICES, RESPECTIVELY, ARE PROVIDED “AS IS,” AND “AS AVAILABLE,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WVHIN, CRISP, AND THEIR BUSINESS ASSOCIATE SUBCONTRACTORS EACH DISCLAIM ANY WARRANTY OR WARRANTIES, EXPRESS OR IMPLIED (OTHER THAN THE WARRANTIES INCLUDED HEREIN), INCLUDING, BUT NOT LIMITED TO: (i) MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (ii) THAT THE HIE, THE WVDIRECT SERVICE, THE WV e-DIRECTIVE REGISTRY, AND ALL PHI PROVIDED THROUGH THE HIE AND THESE SERVICES, RESPECTIVELY, WILL PERFORM IN A MANNER THAT IS, OR WILL BE, ERROR-FREE; (iii) THAT THE AVAILABILITY OF THE HIE AND THE OTHER SERVICES WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR INTERRUPTIONS WILL BE CORRECTED; AND/OR (iv) THAT THE HIE AND THE OTHER SERVICES WILL ENABLE THE PARTICIPANT TO COMPLY WITH ANY GOVERNMENTAL OR THIRD PARTY AGREEMENTS OR TO QUALIFY FOR ANY GOVERNMENTAL OR THIRD PARTY INCENTIVES RELATED TO ELECTRONIC HEALTH CARE RECORDS, INCLUDING BUT NOT LIMITED TO “MEANINGFUL USE” OR ANY SUCCESSOR PROGRAMS UNDER FEDERAL LAW. THE FOREGOING IS FOR THE BENEFIT OF WVHIN, CRISP, AND ANY OF THEIR THIRD PARTY BUSINESS ASSOCIATE SUBCONTRACTORS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM WVHIN, CRISP, OR ELSEWHERE WILL CREATE ANY WARRANTY UNLESS EXPRESSLY INCLUDED IN THIS AGREEMENT.

(b) THE PHI PROVIDED BY THE PARTICIPANT THROUGH THE HIE AND THE WVDIRECT SERVICE ARE PROVIDED “AS IS,” AND “AS AVAILABLE,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PARTICIPANT AND ITS AUTHORIZED USERS EACH DISCLAIM ANY WARRANTY OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: (i) MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (ii) THAT THE DATA OR THE HEALTH DATA PROVIDED THROUGH THE HIE OR THE WVDIRECT SERVICE WILL BE ACCURATE OR ERROR-FREE; (iii) THAT THE AVAILABILITY OF THE PHI WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR INTERRUPTIONS WILL BE CORRECTED; AND/OR (iv) THAT THE PHI WILL ENABLE A PARTICIPANT TO COMPLY WITH ANY GOVERNMENTAL OR THIRD PARTY AGREEMENTS. THE FOREGOING IS FOR THE BENEFIT OF THE PARTICIPANT AND ITS AUTHORIZED USERS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE PARTICIPANT OR ITS AUTHORIZED USERS OR ELSEWHERE WILL CREATE ANY WARRANTY.

(c) WVHIN represents and warrants to the Participant that WVHIN and CRISP shall perform their respective services related to the HIE and WVDirect hereunder in a commercially reasonable manner and in accordance with industry practices and

standards generally applicable to such services; provided however, that where this Agreement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance.

15. Limitation of Liability.

(a) This Agreement shall not impose any responsibility or liability of any kind upon one party for the acts or omissions of the other.

(b) Each party shall be solely responsible for its own acts and omissions, as well as the acts and omissions of its own Authorized Users. This includes the acts and omissions of any individuals who access or use the HIE utilizing any Authentication Information issued to any Authorized User designated by that party.

(c) In no event shall the WVHIN be liable to the Participant, whether in contract, warranty, tort (including negligence), product liability, strict liability, or under any other legal theory arising out of or in connection with the performance or non-performance of either party under this Agreement for lost profits or revenues; loss or interruption of use or business; delayed, omitted, lost, erroneous, or damaged data, information, reports, or documentation; any other economic loss; or for any indirect, special, incidental, consequential, or punitive damages. This limitation of liability shall apply whether or not the WVHIN or the Participant has been advised of the possibility of such loss or damage. The WVHIN's total cumulative liability to the Participant from all causes of action and theories of liability shall be limited to, and will not exceed, the coverage limits of any applicable insurance policy or policies maintained by the WVHIN; provided however, that the WVHIN's total cumulative liability to the Participant for any causes of action or theories of liability not covered by its insurance policy or policies will not exceed the total amount of the Participant's fees paid up to the date of the act or omission leading to the loss.

(d) Nothing in this Section 15 shall be construed to (i) limit the WVHIN's or CRISP's ability to contractually allocate liability as between the WVHIN, CRISP, and their various Business Associate Subcontractors, or (ii) waive any rights or defenses available under applicable law in any action that may arise in connection with the Agreement.

16. Incomplete Medical Record. Each Participant acknowledges that the PHI used, accessed, or disclosed to Participants may not include the Patient's full and complete medical record or history. The PHI exchanged will only include that data which is the subject of the Query or the Notification, and available for exchange among Participants in the HIE.

17. Not a Medical Service. WVHIN's HIE does not make clinical, medical, health care, or other decisions, and is not a substitute for the professional judgment and for the proper treatment of a Patient to the extent the Participant is a Health Care Provider. The Participant is solely responsible for confirming the accuracy of all PHI, and, to the

extent applicable, for making all clinical, medical, health care, diagnostic, therapeutic, or other decisions affecting Patients. Specifically:

(a) the HIE does not make final clinical or other decisions and is not a substitute for competent, properly trained, and knowledgeable staff who bring professional judgment and analysis to the information provided by the HIE; and

(b) the Participant may give whatever weight it and its Authorized Users deem appropriate to the information received from the HIE.

18. Term and Termination.

(a) The term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year, or until this Agreement is terminated by a party under subsections (b), (c), or (d) below. This Agreement shall automatically renew for additional periods of one (1) year each unless either party provides written notice at least sixty (60) days prior to the end of the then current term.

(b) Either the WVHIN or the Participant may terminate this Agreement at any time without cause upon sixty (60) days advance written notice to the other.

(c) Either the WVHIN or the Participant may terminate this Agreement immediately upon written notice to the other party if either party determines that its continued participation in this Agreement would cause it to violate any federal or state law or regulation applicable to it, or would place it at material risk of suffering any sanction, penalty, or liability. Likewise, either the WVHIN or the Participant may terminate this Agreement immediately upon written notice to the other if the other party ceases operations.

(d) In the event that either party is in material violation of the terms of this Agreement, and such material violation is not cured within thirty (30) days after receipt of written notice of such material violation from the other party, then the other party may terminate this Agreement immediately upon further written notice.

(e) Upon the termination of this Agreement for any reason:

(i) the WVHIN shall immediately cease providing access to the HIE for the Participant and its Authorized Users, and the Participant and its Authorized Users shall stop accessing the HIE;

(ii) the Participant shall be removed from the WVHIN Provider Directory and from the WVDirect Directory; and

(iii) the parties shall promptly comply with the requirements of their Business Associate Agreement contained in Attachment C.

(f) Upon termination of this Agreement for any reason, neither party shall have any further obligations hereunder except for obligations accruing prior to the effective date of termination, and except for obligations, promises, or covenants contained herein which by their terms extend beyond the term of this Agreement, including without limitation Sections 1, 4, 5, 6, 7, and 8 of the Agreement, Sections 12, 15, 18(e), 18(f), 18(g), 19, and 23(c) through 23(i) of these Terms and Conditions, and Attachment C.

(g) All accrued fees due and payable to the WVHIN as of the effective date of termination shall be paid by the Participant within sixty (60) days following said effective date. Conversely, if the Participant has prepaid any fees as of the effective date of termination, the Participant shall be paid a pro rata refund of such prepayment within sixty (60) days following said effective date. Each party shall return all Proprietary Information belonging to the other within sixty (60) days of the effective date of termination, or certify its destruction in writing to the other.

19. Electronic Transactions and Signatures. For any purpose under this Agreement, the parties agree that transactions conducted under this Agreement may be conducted by electronic means and such transactions shall be governed by the West Virginia Uniform Electronic Transactions Act, West Virginia Code § 39A-1-1 *et seq*.

20. Principal Contacts. The principal contact of the Participant for purposes of this Agreement shall be its Point of Contact identified on the Agreement cover page. The principal contact of the WVHIN for purposes of this Agreement is set forth below. All notices, requests, demands, or other communications required or permitted under this Agreement shall be in writing and addressed to these principal contacts.

**WVHIN:**

Name:	Executive Director
Address:	101 Washington St E, Ste 124 Charleston, West Virginia 25301
Telephone:	304-558-4503
Email:	<a href="mailto:info@wvhin.org">info@wvhin.org</a>

A party may, from time to time, by written notice to the other party, change its principal contact. Service may be accomplished by personal delivery, by electronic mail with return electronic mail acknowledging receipt, by courier with tracking capability, or by certified or registered United States mail, return receipt requested. All such communications shall be sent to the known addresses of the other party. Neither party shall refuse delivery of any notice hereunder.

21. Operational Date(s). Notwithstanding any other provision of this Agreement to the contrary, the Participant's access to and use of PHI under the HIE shall not occur until such date(s) as the WVHIN determines that the Participant's connectivity to the HIE has become functional and operational. The WVHIN shall provide the Participant with written notice at such time as the HIE becomes functional and operational

with respect to the Participant.

22. WVDirect Services.

(a) The WVHIN shall offer a secure, point-to-point messaging platform to transmit PHI and other data to other Direct subscribers. Secure messaging may be integrated into the Participants electronic health record at the point of care with WVHIN or its third party provider serving as the Participants Health Information Services Provider (HISP), or may be accessed through a secure messaging website. The WVDirect secure messaging platform is offered as a separate and distinct service from the HIE.

(b) The Participant and its Authorized Users may utilize WVDirect for any Permissible Purpose, and for any other legal purpose associated with the technical, operational or administrative management of health information systems and services. WVDirect may not be used for purposes that violate applicable law or the provisions of this Agreement, or other inappropriate uses including but not limited to:

(i) uses which are defamatory, deceptive, obscene, harassing, or otherwise inappropriate;

(ii) uses that violate or infringe upon the rights of any other person, such as unauthorized distribution of copyrighted material;

(iii) "spamming," sending unsolicited bulk email or other messages, or sending unsolicited advertising or similar conduct;

(iv) knowingly sending malware, or other harmful content;

(vii) impersonating another person or other misrepresentation of source; and

(viii) any action in violation of HIPAA or state laws relating to the privacy or security of a Patient's PHI.

(c) The Participant and its Authorized Users may not access or use PHI or any Proprietary Information of another party received via WVDirect to compare patient volumes, practice patterns, or make any other comparison, unless the Participant enters into a separate data sharing agreement with the other Participant that is the source of the PHI or Proprietary Information.

(d) The Participant and its Authorized Users shall be solely responsible for their use of WVDirect, for PHI or Proprietary Information sent or received via WVDirect, and for maintaining Patient medical records, as applicable, in accordance with applicable law. The Participant shall maintain appropriate administrative, physical, and technical safeguards with respect to its internal systems to maintain the privacy, security, integrity, and accuracy of its use of WVDirect. The Participant will encourage best practices for



patient privacy protections related to the use of WVDirect that complies with all applicable laws, including those accounts established for its Authorized Users. The Participant will promptly notify WVHIN if there is a breach of the security of its system that may in any way affect its WVDirect accounts.

(e) The Participant and its Authorized Users have the right to access and use WVDirect as specified in this Agreement. However, neither the Participant nor its Authorized Users acquire any ownership, license, sub-license or other rights in WVDirect or in its underlying technology under this Agreement, either to the extent owned, licensed, or provided by the WVHIN or owned, licensed, or provided by CRISP or its Direct Technology Provider.

(f) In addition, the Participant agrees to:

(i) Comply, and ensure that each Authorized User complies, with this Agreement;

(ii) Provide its own properly and securely configured web browsers and the workstations, desktops, laptops, other hardware, software, and applications as necessary for secure access;

(iii) Verify the identity of each Authorized User, including identity-proofing under accepted standards in the health care industry for individuals with access to PHI;

(iv) The Participant's Point of Contact shall notify the HIE immediately to remove access to WVDirect accounts established for Authorized Users no longer part of its Workforce;

(v) Permit its registration information to be audited for consistency with other information sources; and

(vi) Be solely responsible for its and its Authorized Users use, non-use, and interpretation of any messages it receives using WVDirect, and the accuracy of any messages it sends, including those messages containing PHI.

23. Optional Services. The WVHIN may from time-to-time offer certain Optional Services to which the Participant may elect to subscribe. These Optional Services shall be delineated in Attachment E through Attachment G, and shall be subject to all of the same terms and conditions as set forth in this Agreement, including its various Attachments, unless specifically stated otherwise in the relevant Attachment. These Optional Services may include one or more of the following:

(a) Care Management Organization Affiliation (Attachment E);

(b) Clinical Messaging (Attachment F);

(c) Substance Use Monitoring Program (Attachment G).

24. Miscellaneous.

(a) The WVHIN may refer to a Participant as a sublicensed Participant in its HIE in any advertising, publicity, or marketing materials. Similarly, the Participant may reference its sublicense as a Participant in the WVHIN's HIE in any advertising, publicity, or marketing materials.

(b) The terms and conditions of this Agreement may not be amended, waived, or modified, except as provided in this Agreement or by a writing signed by both parties.

(c) No failure or delay of either party to exercise any right or remedy under this Agreement shall operate as a waiver thereof. No single or partial exercise of any right or remedy by either party under this Agreement shall preclude any further or other exercise of the same or any other rights or remedies. No waiver of any right or remedy by either party under this Agreement shall be construed as a waiver with respect to any other rights or remedies.

(d) If any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby.

(e) Neither party shall be responsible or liable for failures or interruptions of communications facilities or equipment of third parties, labor strikes or slowdowns, shortages of resources or materials, natural disasters, world events, delay or disruption of shipment or delivery, trespass or interference of third parties, or similar events or circumstances outside its reasonable control.

(f) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of West Virginia. The parties consent to the exclusive jurisdiction of the Circuit Court of Kanawha County, West Virginia, to adjudicate any dispute, claim, or cause of action arising hereunder.

(g) This Agreement is binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties. Neither party may assign its rights, powers, duties, or obligations under this Agreement without the written consent of the other party.

(h) No person or entity (other than a party to this Agreement) shall have any claim, beneficial interest, or any other rights accruing by virtue of this Agreement. There shall be no third party beneficiaries to this Agreement. Neither the Participant nor the Authorized Users are third party beneficiaries to the agreement between WVHIN and CRISP or the agreements between CRISP and its Licensors, as referred in Section 1(e).

(i) Except to the extent otherwise provided herein, this Agreement sets forth the entire and only agreement among the parties relative to the subject matter hereof. Any representation, promise, or condition, whether oral or written, not incorporated herein shall not be binding on the parties unless specifically incorporated by reference herein adopted in accordance with the terms of this Agreement.

(j) The parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture between the parties. Neither party shall have any authority to bind or make commitments on behalf of the other party for any purpose, nor shall either party hold itself as having any such authority.

(k) In this Agreement, words of inclusion shall not be construed as terms of limitation so that references to "included" shall be regarded as nonexclusive illustrations or examples.