

## WVHIN PARTICIPATION AGREEMENT FOR HEALTH PLANS

West Virginia Health Information Network, Inc.  
Health Information Exchange  
Participation Agreement

This Participation Agreement (this "Agreement") is made and entered into as of the Effective Date defined below, between the West Virginia Health Information Network, Inc. with a principal place of business located at 101 Washington Street East, Suite 124, Charleston, West Virginia 25301 ("WVHIN"), and the following Participating Organization:

Participating Organization: \_\_\_\_\_  
(Legal Name)

DBA Name (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Website (if applicable): \_\_\_\_\_

Designated Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Privacy and Security Officer: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

IN CONSIDERATION of the mutual conditions, promises, and covenants contained in this Agreement, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the WVHIN and the Participating Organization agree as follows:

1. Background. The WVHIN is a private West Virginia nonprofit corporation organized to become a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code. WVHIN operates a statewide, interoperable Health Information Exchange (“HIE”) serving West Virginia, and is the entity created to carry on these activities pursuant to the mandate of West Virginia House Bill 2459 for those periods on and after January 1, 2018. As a HIE, WVHIN provides for the secure exchange of Protected Health Information (“PHI”) to improve the quality, efficiency, and cost-effectiveness of health care delivery in West Virginia, all in accordance with this Agreement, the Terms and Conditions contained in the respective attachments to this Agreement, and the WVHIN’s Policies and Procedures, all of which are incorporated by reference herein in their entirety.

2. Terms and Conditions. The term of this Agreement shall start on the Effective Date. The Effective Date shall be the last date on which either the WVHIN or the Participant signs this Agreement. This Agreement shall continue in effect until terminated as described in the Terms and Conditions contained in this Agreement.

3. Participating Organization Activity. A Participating Organization shall be enrolled in the HIE, subject to this Agreement and its corresponding attachments and any addenda as may be applicable. A Participating Organization may disclose, exchange, and use PHI only for a Permissible Purpose through the Health Information Exchange. For Health Plans, the only Permissible Purposes are for Payment and Limited Health Care Operations. A Participating Organization may disclose, exchange, and use PHI through the HIE’s Query-Retrieve Service and its Encounter Notification Service. A Participating Organization may also disclose, exchange, and use PHI through a subscription to WVDirect, which is a secure electronic messaging platform operated as a separate service from the HIE available to the Participating Organization upon request.

4. Full Agreement. This Agreement includes and incorporates by reference the following Attachments:

- 4.1 Attachment A/HP [Terms and Conditions];
- 4.2 Attachment B/HP [Glossary];
- 4.3 Attachment C/HP [Business Associate Agreement];
- 4.4 Attachment D/HP [Fee Schedule];
- 4.5 Any project addenda attached to this Agreement and signed by the WVHIN and Participant; and
- 4.6 WVHIN Policies and Procedures found at: [www.wvhin.org](http://www.wvhin.org)

By signing this Agreement, the undersigned represents that he or she has received and read this Agreement, and its corresponding attachments, as well as the WVHIN’s Policies and Procedures, and that he or she is authorized to sign this Agreement on behalf of the identified Participant.

**WEST VIRGINIA HEALTH INFORMATION NETWORK, Inc.**

\_\_\_\_\_  
*Signature of Authorized Representative*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**PARTICIPATING ORGANIZATION**

\_\_\_\_\_  
*Signature of Authorized Representative*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**Return completed Participation Agreement to:**

WVHIN  
101 Washington St E      **OR**      info@wvhin.org      **OR**      Fax: 681-265-3898  
Suite 124  
Charleston, WV 25301

For questions regarding this form, please contact the WVHIN at  
304.558.4503 or [info@wvhin.org](mailto:info@wvhin.org)

**ATTACHMENT A / HEALTH PLANS  
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 conform to the WVHIN's then-current specifications and that all hardware 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. Participant operates a Health Plan, 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 Participant's or its Authorized Users' use of the HIE and its software, Participant will be advised of those conditions through the WVHIN Policies and Procedures, which conditions will be binding on Participant and its Authorized Users. As additional software is developed by or for the WVHIN's HIE, it shall become subject to this Agreement upon written notice to the Participant, and such notice shall constitute an amendment 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 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. For Health Plans, the only Permissible Purposes are for Payment and Limited Health Care Operations (as those terms are further defined in the WVHIN's Glossary, Policies, and Procedures). The HIE shall include the functionality to electronically file a specific request, or Query, under its Query-Retrieve Service to obtain from another Participant or a Data Supplier in real-time the PHI of a Patient for a Permissible Purpose. The WVHIN shall also provide its Encounter Notification Service by which a Participant may automatically receive PHI about a Patient encounter that has occurred with another Participant. As part of its HIE, the WVHIN shall maintain a Master Patient Index to permanently record any Patient's decision to Opt-Out of the WVHIN. In addition, the Central Data Services will have the capability to match Patients for the purposes of responding to Inquiries and other related functions. 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, drawn from each Participant's system and structured in a manner that, through metadata, allows 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 necessary for the HIE and to allow Participant and 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 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, in no case less than is required under the Business Associate Agreement (Attachment C) and under other applicable laws.

(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 providing 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 Designated 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 shall be implemented electronically, and shall be 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 Plan shall provide and maintain any and all workstations, internet connections and browser, and other hardware, firmware, and software necessary to effectively and reliably connect to the WVHIN's web-based HIE. 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. The WVHIN may establish Policies and Procedures for Health Plans to connect to the WVHIN to exchange PHI as a Participant.

(b) The Participant and its Authorized Users shall access the HIE to make an Query for PHI from another Participant or Data Supplier only for the Permissible Purposes of Payment and Limited Health Care Operations. 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. For purposes of this Agreement, Participant shall also be prohibited from using the HIE in order to access and use PHI to evaluate the quality of services or other operational efficiencies or effectiveness of any Health Care Provider; provided, however, the Participant may use the PHI for purposes of government-related



quality programs such as Healthcare Effectiveness Data and Information Set (HEDIS) and CMS's Five Star Quality Rating System (Stars) and when a Health Care Provider has contracted with Participant for quality rating purposes.

(c) Upon the mutual agreement of the WVHIN and Participant, Participant may agree and consent to the disclosure of identified PHI and Personal Demographic Information to the HIE that other Participants may access for a Permissible Purpose, and that the HIE may access 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 any other regulations promulgated thereunder.

(d) The Participant shall designate a Designated 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 Designated 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 Designated Contact will validate the Authorized Users at the Participant who can receive information from the HIE necessary to access services. Should the Participant's Designated Contact, or his or her designees, be changed, such change shall immediately be communicated to the WVHIN.

(e) The Participant and its Authorized Users, when accessing the HIE, shall request only the Minimum Necessary amount of PHI needed to accomplish the intended Permissible Purpose of the disclosure.

(f) 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.

(g) 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.

(h) Each disclosure and each receipt and use of PHI by Participant and



its Authorized Users shall constitute a certification by 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.

(i) 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 Designated Contact, strictly control access to the WVHIN's 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 of the HIE that is provided or approved by the WVHIN.

(b) The Participant's Designated 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 and electronically to the HIE by the Designated Contact. The Participant shall be wholly responsible for maintaining an appropriate and current list of its Authorized Users.

(c) The Participant's Designated Contact shall ensure that each Authorized User designated by the Participant establishes Authentication Information sufficient to allow the Authorized User access to the WVHIN's HIE. Such Authentication Information shall meet the minimum requirements established by the WVHIN, and shall otherwise be unique to each Authorized User. The Participant's Designated 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 to ensure prompt termination of such Authorized User's access thereto. The Participant's Designated 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 WVHIN's HIE, an Authorized User shall be required to enter his or her Authentication Information.

(f) Participant shall have written policies and procedures for 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, Participant will have policies and procedures which require Authorized Users to limit their uses and disclosures of WVHIN's Proprietary Information through Participant's system and/or any portal provided in connection with the HIE or in connection with the WVDirect Services, which shall be consistent with the provisions of Section 12 of this Agreement as to Proprietary Information received pursuant to the Agreement ("Confidentiality Policies"). Participant acknowledges that Access Policies and Confidentiality Policies will differ among Participants. WVHIN is not responsible for auditing or monitoring Participants', 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 WVHIN's 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) 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. 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 Designated Contact any audit log maintained by the WVHIN documenting access to the WVHIN by 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 make a decision 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 Encounter Notification Service.

(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 WVHIN's 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. After the Participant enrolls in the HIE, the Patient Notice shall be generated and sent to a Patient electronically or by U.S. Mail at the time the Patient's name and address first appear on the membership file that is sent to the WVHIN by the Participant. The Participant and the WVHIN may agree to alternate delivery methods to the Patient by mutual written agreement. The Participant may provide the Patient with an electronic version of the Patient Notice 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 from the Participant upon request. The Participant is encouraged to provide the Patient Notice prior to the Participant's enrollment in the HIE, and to permanently record the delivery of the Patient Notice in the Patient's Payment records. 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 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 communicated by the Patient to the HIE to ensure compliance with the Patient's Consent decision. If available, a Patient may utilize an on-line process to Opt-Out electronically.

(e) A Patient may revoke his or her decision to Opt-Out at any time by contacting the WVHIN, or electronically by computer.

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. Moreover, the WVHIN shall not be responsible for inspecting the content of any exchange of PHI, or for recording the content of any such exchange. 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. The WVHIN may establish arrangements with other HIEs 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, as well as under the terms of a Data Use and Reciprocal Support Agreement ("DURSA") consistent with national standards, in compliance with applicable federal and state laws, and executed by the WVHIN and the other HIE in question. In the event of any inconsistency between the terms of this Agreement and any DURSA executed by the WVHIN, the terms of the DURSA 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. All fees or payments required from the Participant to the WVHIN are set forth in the Fee Schedules contained in Attachment D. All fees shall be paid in full to the WVHIN on or before the dates indicated on the Fee Schedule. 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 schedule in Attachment D 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 Propriety 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 Designated Contacts, other contacts 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 Designated Contacts, other contacts of Participants, WVHIN Board of Directors' members, or WVHIN Committee members to participate in CRISP Committees as the agent of WVHIN.

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

### 14. Disclaimer of Warranties.

(a) EXCEPT AS OTHERWISE PROVIDED HEREIN, ALL SERVICES PROVIDED IN CONNECTION WITH THE HIE, THE WVDIRECT SERVICE, 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, 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 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 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, 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 PARTICIPANT AND ITS AUTHORIZED USERS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM PARTICIPANT OR ITS AUTHORIZED USERS OR ELSEWHERE WILL CREATE ANY WARRANTY.

(c) WVHIN represents and warrants to Participant that WVHIN and CRISP shall perform their respective services related to the HIE and the WVDirect Service 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 has been advised of the possibility of such loss or damage. The WVHIN's cumulative liability to 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 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 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 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 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, Payment, Health Care Operations, 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) Participant shall be removed from the WVHIN Provider Directory, and from the WVDirect address book; 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 Designated 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 Street E, Suite 124 Charleston, West Virginia 25301
Telephone:	304-558-4503
Facsimile:	618-265-3898
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. The WVHIN shall offer as an optional service a secure direct messaging service called WVDirect that may be used to transmit and receive a Patient's PHI to and from other Direct subscribers. The Participant and its Authorized Users must use these services only for a Permissible Purpose. A Patient may not Opt-Out of WVDirect services since it is offered separate and distinct from the HIE

23. 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 Participant nor Participant 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.

## ATTACHMENT B / HEALTH PLAN GLOSSARY

**Authentication Information** -- means the method of authentication assigned to each Authorized User of the WVHIN by his or her Participating Organization in accordance with minimum WVHIN requirements. Authentication Information may be based upon information known only by and unique to an Authorized User, such as a password and username. The WVHIN may impose a second authentication factor that is based upon something that an Authorized User has, such as a smart card or token, or something unique to the Authorized User, such as an electronic signature or fingerprint.

**Authorized User** -- means a member of the Workforce of a Participating Organization who has been designated by that Participating Organization and approved by the WVHIN to access the WVHIN's Health Information Exchange pursuant to the concept of role-based access control. An Authorized User may also be a Patient who has registered for access to the WVHIN's Patient Portal on the WVHIN to obtain direct access to his or her PHI from a cooperating Participating Organization; a member of the WVHIN's Workforce; or a member of the Workforce of a Business Associate of the WVHIN.

**Business Associate** -- means a person or entity that performs a function, activity, or service to a Health Care Provider, Health Plan, Health Care Clearinghouse, or another Business Associate involving the disclosure of Protected Health Information or Personal Demographic Information to the Business Associate. The WVHIN is a Business Associate to each of its Participating Organizations. Subcontractors and vendors to the WVHIN may be Business Associates of the WVHIN. The term "Business Associate" has the same meaning as the term is defined in 45 C.F.R. Part 160, as may be amended.

**Business Associate Agreement** -- means a contract between a Covered Entity under HIPAA and a Business Associate, or between a pair of Business Associates, which obligates the Business Associate to maintain the privacy and security of Protected Health Information in accordance with the requirements of 45 C.F.R. Part 164, as may be amended.

**Breach** -- means the acquisition, access, use, or disclosure of a Patient's Unsecured Protected Health Information by an unauthorized person or entity in a manner not permitted under the HIPAA privacy rules, and in a manner that otherwise satisfies all other requirements imposed by the rules governing Breach notification for Unsecured Protected Health Information in 45 C.F.R. Part 164, as may be amended.

**Central Data Services** -- means a single database that is provided and maintained by CRISP and associated with each Participant's system, which will hold a copy of all data, including Protected Health Information of each Participant which is available through the Health Information Exchange. The Central Data Services shall contain metadata which will allow each Participant to have control over its own data in the Central Data Services and effectively retain custody and control of the its own data maintained in the Central Data Services as specified in Section 2(a)(i) of the Terms and Conditions

(Attachment A/HP).

**Clinical Messaging** -- means the exchange of Protected Health Information from one Participating Organization to another through the WVHIN in the form of test results or other clinical information. Test results can be generated by clinical laboratories, imaging providers, and other like providers. Other clinical information may consist of discharge summaries, consultation reports, and Patient referral data. For purposes of the WVHIN's Health Information Exchange, Clinical Messaging is a point-to-point transaction.

**Consent** -- means the decision of a Patient to participate in the WVHIN's Health Information Exchange. No affirmative action is required from a Patient to establish his or her Consent. A Patient shall be deemed to have given his or her Consent to participate until and unless the Patient affirmatively Opts-Out of the Health Information Exchange.

**Covered Entity** -- means a Health Care Provider, a practitioner licensed under the provisions of Chapter 30 of the West Virginia Code or some equivalent law of another state, a Health Care Clearinghouse, or a Health Plan that transmits any Protected Health Information in electronic form. The term "Covered Entity" has the same meaning as the term is defined in 45 C.F.R. Part 160, as may be amended.

**Data Supplier** -- means any organization approved by the WVHIN that has entered into a Data Supplier Agreement and who discloses and otherwise makes available Protected Health Information for access through the Health Information Exchange for a Permissible Purpose.

**Deidentify or Deidentification** -- means the process of rendering Protected Health Information into a form that does not identify a Patient, and there is no reasonable basis to believe that the information can be used to identify a Patient. In order to Deidentify Protected Health Information properly, the requirements of 45 C.F.R. Part 164, as may be amended, shall be fully satisfied.

**Designated Contact** -- means a member of the Workforce of a Participating Organization, who may grant and terminate Authorized User status, and who may perform other administrative functions within or on behalf of his or her Participating Organization. A Participating Organization may designate more than one Designated Contact.

**Designated Record Set** -- means any grouping of medical or billing records maintained by a Covered Entity and used to make Treatment or Payment decisions about a Patient. A Designated Record Set shall have the same meaning as such term is defined in 45 C.F.R. Part 164, Subpart E, as may be amended.

**Emergency Treatment** -- means a condition which poses an immediate threat to the health of a Patient (for example, death or serious impairment to one or more bodily systems, organs, or parts), and which requires immediate medical intervention.

**Encryption** -- means a technology or methodology approved by the United States



Secretary of Health and Human Services that can render Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals or entities.

**Encounter Notification Service or ENS** -- means the transmission of Protected Health Information about a Patient encounter that has occurred with a Participant, and that such Protected Health Information is automatically sent to another Participant who has requested that the Health Information Exchange provide the information without a Query.

**Health Care Clearinghouse** -- means any entity, including a billing service, repricing company, or other similar organization that processes health information in a nonstandard format into standard data elements or a standard transaction, or vice versa. The term "Health Care Clearinghouse" has the same meaning as the term is defined in 45 C.F.R. Part 160, as may be amended.

**Health Care Provider** -- means a provider of medical or health services, and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. The term "Health Care Provider" has the same meaning as the term is defined in 45 C.F.R. Part 160, as may be amended.

**Health Plan** -- means an individual or group plan that provides, or pays the cost of medical or health services. The term "Health Plan" has the same meaning as the term is defined in 45 C.F.R. Part 160, as may be amended.

**Health Care Operations** -- means any of those activities identified in the definition of Health Care Operations set forth in the federal regulations at 45 C.F.R. §164.501 as may be amended.

**Health Information Exchange or HIE** -- means a system for the electronic transfer of Protected Health Information between Participating Organizations for a permissible purpose based upon the requirements of federal and state law. A Health Information Exchange shall seek to achieve interoperability between and among its Participating Organizations.

**HIPAA** -- means the Health Insurance Portability and Accountability Act of 1996, as may be amended, and its implementing rules promulgated in Title 42 C.F.R., Part II, and 45 C.F.R. Parts 160, 162, and 164, as may be amended.

**HIPAA Privacy Rules** -- means those privacy rules described in 45 C.F.R. Part 164, Subpart E, as modified and enlarged by the Health Information Technology for Economic and Clinical Health (HITECH) Act and any other subsequent amendments to the Rules.

**HIPAA Security Rules** -- means those security rules described in 45 C.F.R. Part 164, Subpart C, as modified and enlarged by the HITECH Act and any other subsequent amendments to the Rules.

**HITECH Act** -- means the Health Information Technology for Economic and Clinical Health Act of 2009, as may be amended, and its implementing rules promulgated at 45 C.F.R. Parts 160, 162, and 164, as may be amended.

**Licensed Practitioner** -- means an individual licensed to provide health care items or services by a West Virginia board identified in Chapter 30 of the West Virginia Code, as may be amended, or by an equivalent board of another state.

**Limited Health Care Operations** -- means any of those activities identified in paragraphs (1) and (2) of the definition of Health Care Operations set forth in the federal regulations at 45 C.F.R. §164.501, as may be amended, including but not limited to, quality assessment and improvement activities, case management and care coordination, and reviewing the competence of Licensed Practitioners.

**Master Patient Index** -- means the index wherein Personal Demographic Information of Patients is securely maintained by the WVHIN to record their decision to Opt-Out of the Health Information Exchange. For those Patients who have not elected to Opt-Out, the Master Patient Index shall be used to match such Patients with any inquiries seeking the exchange of PHI for a permissible purpose. The WVHIN shall maintain Personal Demographic Information regarding all potential Patients in this Master Patient Index, even if the decision is made to Opt-Out, in order to minimize the possibility of improperly matching Patients.

**Mental Health Information** -- means any information obtained in the course of Treatment or evaluation of any Patient suffering from a mental or behavioral disorder, including but not limited to, diagnosis and Treatment information, and any information that would specifically identify a Patient as receiving mental health services. The term "Mental Health Information" has the same meaning as the term "confidential information" is defined in West Virginia Code Chapter 27, Article 3, as may be amended.

**Minimum Necessary** -- means that when requesting, using, or disclosing Protected Health Information for a permissible purpose other than Treatment or Emergency Treatment, a Covered Entity or a Business Associate shall limit Protected Health Information to the minimum amount needed to accomplish the intended purpose of the request, use, or disclosure. The term "Minimum Necessary" has the same meaning as the term is defined in 45 C.F.R. Part 164, Subpart E, as may be amended.

**Out-Of-Pocket Goods and Services** -- means any goods and services for which the Participating Organization has been paid out-of-pocket in full by the Patient, and the Patient has requested the Participating Organization to restrict the disclosure of said goods and services to an insurance company, Group Health Plan, or other third party payor for Payment or Health Care Operations. The term "Out-Of-Pocket Goods and Services" has the same meaning as such term is defined in the HITECH Act, as may be amended.

**Opt-Out** -- means a process under which any Patient who does not want to Consent to the use and disclosure of his/her Protected Health Information with other Participating Organizations pursuant to the WVHIN's Health Information Exchange may affirmatively express his/her decision not to participate.

**Participant or Participating Organization** -- means any Health Care Provider, Licensed Practitioner, public health agency, Health Care Clearinghouse, Health Plan, or other organization approved by the WVHIN that establishes a contractual relationship with the WVHIN in accordance with a Participation Agreement or Subscription Agreement. A Participant or Participating Organization must be a Covered Entity under HIPAA, a public health agency, an entity engaging in Payment activities that agrees to comply with the HIPAA Security Rule, or a Business Associate of a Covered Entity. Multiple covered entities operating as a single organized health care arrangement under 45 C.F.R. Part 160, as may be amended, may constitute a single Participant upon approval of the WVHIN.

**Patient** -- means the individual whose Personal Demographic Information or Protected Health Information is subject to electronic storage and transfer by the Health Information Exchange. The term "Patient" includes a personal representative who has the authority to consent or authorize the disclosure of a Patient's Protected Health Information pursuant to 45 C.F.R. § 164.502(g) and any other applicable state or federal law. A Patient may also register a Patient Portal with the WVHIN through a cooperating Participating Organization.

**Patient Notice** -- means a written notice prepared and approved by the WVHIN and supplied to its Participating Organizations for distribution to Patients. The Patient Notice shall be provided to all Patients during their first visit or encounter with a Participating Organization after it enrolls in the WVHIN, and where possible, before the date of anticipated enrollment. The Participating Organization may provide the Patient with an electronic version of the Patient Notice 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 from the Participating Organization upon request. This Patient Notice shall explain the function of the WVHIN; the permissible purposes for which a Patient's Protected Health Information may be shared with other Participating Organizations through the WVHIN; the types of Protected Health Information which may be shared with other Participating Organizations; the need for the Patient's authorization to share certain categories of Sensitive Health Information; the potential benefits and risks of participation in the WVHIN; and the fact that a Patient's participation in the WVHIN is voluntary and subject to a Patient's right to Opt-Out.

**Patient Restricted Information** -- means any Protected Health Information that is subject to a use or disclosure restriction impacting a Permissible Purpose, and that has been specifically requested by a Patient and agreed to by a Participating Organization or Data Supplier pursuant to 45 C.F.R. Part 164. It could also include a Patient's request for restriction to a use or disclosure of Protected Health Information permissible under state law.

**Payment** -- means any activity undertaken to obtain or provide reimbursement for the provision of health care items or services to a Patient. Payment also includes activities arising out of billing and collection, obtaining premiums for Health Plan coverage, determining eligibility for coverage, coordinating benefits with other Health Plans, performing Health Plan risk adjustment, reviewing medical necessity, providing precertification or preauthorization of services, and other similar transactions. The term "Payment" has the same meaning as such term is defined in 45 C.F.R. Part 164, as may be amended.

**Permissible Purpose** -- means, for a Health Care Provider, the access and use of PHI for Treatment, Emergency Treatment, Payment, Limited Health Care Operations, and Public Health Reporting purposes. For a Health Plan, it means the access and use of PHI for Payment and Limited Health Care Operations purposes.

**Personal Demographic Information** -- means information which may be used to individually identify a Patient, but which excludes any and all clinical or health-related information. Personal demographic information may include, but not be limited to, the Patient's name, address, Social Security number, date of birth, telephone number, and driver's license number.

**Protected Health Information or PHI** -- means any information that relates to the past, present, or future physical or mental health or condition of a Patient, the provision of health care items or services to the Patient, and the past, present, or future Payment for the provision of health care items or services to a Patient. Protected Health Information also must personally identify a Patient or provide a reasonable basis to believe that the information can be used to identify a Patient. The term "Protected Health Information" shall include electronic Protected Health Information and each shall have the meaning as defined in 45 C.F.R. Part 160, as may be amended.

**Public Health Reporting** -- means the exchange of Protected Health Information through the WVHIN to a federal or state agency for the reporting and surveillance of specified health conditions as required or authorized by law, and for the reporting of immunization data. Such reporting shall contain the minimum amount of Protected Health Information or Personal Demographic Information as is required or authorized for the reporting purpose.

**Psychotherapy Notes** -- means notes recorded by a mental Health Care Provider documenting or analyzing the contents of a conversation by a Patient during a private, group, or family counseling session, and that are separated from the rest of the Patient's medical record. Psychotherapy notes shall have the same meaning as such term is defined in 45 C.F.R. Part 164, as may be amended.

**Qualified Service Organization** -- means an entity, such as the WVHIN, which provides services to a Health Care Provider that operates a program subject to 42.C.F.R. Part 2, as may be amended, and which has entered into a written agreement with said

program that satisfies the requirements of 42 C.F.R. §2.11, as may be amended.

**Query** -- means a request directed by a Participating Organization to the WVHIN for the disclosure of a Patient's Protected Health Information for a permissible purpose. Query involves the potential exchange of PHI between multiple Participating Organizations, and is the action used to access the WVHIN's Query-Retrieve Service.

**Query-Retrieve** -- means a service involving the transmission of Protected Health Information about a Patient in response to an Query submitted by a Participating Organization for a Permissible Purpose.

**Sensitive Health Information** -- means the subset of Protected Health Information involving Drug or Alcohol Abuse Information, Psychotherapy Notes, Out-Of-Pocket Goods and Services, Patient Restricted Information, or any other goods and services subject to heightened privacy and confidentiality requirements under federal and state laws or regulations and specifically approved by the WVHIN.

**Substance Use Disorder Information** -- means information related to the Treatment and care of a Patient suffering from a cluster of cognitive, behavioral, and physiological symptoms of substance use despite significant substance-related problems such as impaired control, social impairment, risky use, and pharmacological tolerance and withdrawal as defined in 42 C.F.R. Part 2, as may be amended. Substance Use Disorder Information also includes any information that would specifically identify a Patient as receiving Substance Use Disorder Treatment and care. Substance Use Disorder Information, for purposes of this rule, shall arise only in connection with care and Treatment provided in a federally assisted program as defined in 42 C.F.R. Part 2, as may be amended.

**Substance Use Monitoring Program** -- means a service involving the transmission of Protected Health Information about a Patient's prescriptions for controlled substances derived from the Controlled Substance Monitoring Program for schedule II, III, and IV drugs established by the West Virginia Board of Pharmacy pursuant to Chapter 60A, Article 9 of the West Virginia Code.

**Treatment** -- means the provision of health care items or services to a Patient, including direct Patient care as well as consultation, coordination, management, or Patient referral between or from one Participating Organization to another. The term "Treatment" shall have the same meaning as the term is defined in 45 C.F.R. Part 164, as may be amended. Unless stated otherwise, Treatment shall be limited to the provision of health care items or services to the Patient who is the subject of the information (except in the case of mother/infant).

**Unsecured Protected Health Information or Unsecured PHI** -- means Protected Health Information that has not been rendered unusable, unreadable, or indecipherable by unauthorized individuals or entities through the use of Encryption or other federally-approved technology. The term "Unsecured Protected Health Information" has the same

meaning as such term is defined in 45 C.F.R. Part 164, as may be amended.

**WV e-Directive Registry** -- means a service by which Participating Organizations or Covered Entities may access and use Patient advance directive forms, Physicians Orders for Scope of Treatment (POST) forms, and do not resuscitate cards. A Covered Entity, or entity approved by the WVHIN, that seeks access to these documents must complete the WV e-Directive Registry Subscription Agreement.

**WVDirect** -- means a service that offers a secure messaging platform to transmit Protected Health Information and other data to other Direct subscribers via electronic mail. WVDirect's secure messaging platform is offered as a separate and distinct service from the Health Information Exchange. A Covered Entity, or other entity approved by the WVHIN, that seeks to utilize the WVDirect service must complete the WVDirect Subscription Agreement.

**West Virginia Health Information Network or WVHIN** -- means the private West Virginia nonprofit corporation which has as one of its purposes to develop an interoperable Health Information Exchange in West Virginia. The WVHIN also offers services that are separate and distinct from the Health Information Exchange, including WVDirect. The WVHIN is the entity created to carry on these activities pursuant to the mandate of West Virginia House Bill 2459 for those periods on and after January 1, 2018.

**Workforce** -- means employees, contractors, volunteers, trainees, or other persons whose conduct, in the performance of work for a Participating Organization, is under the direct control of such Participating Organization, whether or not they are paid by the Participating Organization. The term "Workforce" has the same meaning as the term is defined in 45 C.F.R. Part 160, as may be amended.



**ATTACHMENT D / HEALTH PLANS  
FEE SCHEDULE**

1. Participation Fees

Annual Fees that cover your WVHIN participation are calculated at the rate of \$.06 per-member, per-month. Participant shall certify the number of its West Virginia covered persons on a monthly basis in writing or electronically to the WVHIN.

Fee Type	# of Members	PMPM	Total
Monthly West Virginia		\$	

2. Payment Terms

The WVHIN will invoice participant in monthly installments, according to the annual participation fee schedule described in Section 1 of this Attachment D. Payment is due within sixty (60) days of receipt of invoice.

3. Late Payment Fees

Participant is subject to late charges in the amount of 1.5% of the outstanding amount for payment received fifteen (15) days beyond the net sixty (60) terms, plus an additional 1% of outstanding amounts per month past due.

4. Changes to Fee Schedule

Any modification to the approach or calculation used in developing the participation Fee Schedule will be subject to the provisions of Section 11 of Attachment A of this Agreement. Any change to the approach or calculation used will be first approved by the WVHIN Board of Directors.



## **ATTACHMENT C / HEALTH PLAN BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into between West Virginia Health Information Network, Inc. (“Business Associate”) and Participant (“Covered Entity”) and is effective as set forth in Section 6(a) below.

### **RECITALS**

WHEREAS, Business Associate provides services to Covered Entity in accordance with a Participation Agreement (“Participation Agreement”).

WHEREAS, under the Participation Agreement, Covered Entity may disclose information to Business Associate which constitutes Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996, as amended by the relevant portions of the Health Information Technology for Economic and Clinical Health (“HITECH”) Act (collectively, “HIPAA”).

WHEREAS, the purpose of this Agreement is to satisfy the requirements of HIPAA that Business Associate provide satisfactory written assurances to Covered Entity that it will comply with the applicable requirements of HIPAA.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. Definitions. Unless otherwise defined in this Agreement, including the definitions stated in the Recitals, which are incorporated into this Section 1 by reference, capitalized terms have the meaning ascribed to them under HIPAA or in the Glossary contained at Attachment B for purposes of this Business Associate Agreement.

(a) Guidance. “Guidance” shall mean official guidance of the Secretary as specified in the HITECH Act and any other official guidance or interpretation of HIPAA by a federal governmental agency with jurisdiction.

(b) “HIPAA Regulations” or “Regulations”. References to “HIPAA Regulations” or “Regulations” shall mean the Privacy Rule and the Security Standards, as amended by Regulations commonly referred to as the HITECH Modifications to the HIPAA Privacy, Security Enforcement and Breach Notification Regulations.

(c) Protected Health Information or PHI and ePHI. “Protected Health Information” and “PHI” shall have the same meaning as the term is defined in the Glossary contained at Attachment B and shall include electronic Protected Health Information or ePHI. Specific references to “ePHI” shall be deemed to refer only to PHI in electronic form. All references to PHI or ePHI in this Agreement shall refer only to PHI or ePHI of Covered Entity created, received, maintained or transmitted by Business Associate under

the Participation Agreement unless specifically stated otherwise. Protected Health Information includes Genetic Information.

(d) Security Incident. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(e) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

(f) Subcontractor. "Subcontractor" shall mean a person or entity to which Business Associate delegates a function, activity or service involving access to PHI or ePHI of Covered Entity, other than as a member of Business Associate's Workforce.

## 2. Obligations and Activities of Business Associate as to Protected Health Information.

(a) Business Associate agrees to not Use or further Disclose Protected Health Information other than as permitted or required by the Participation Agreement, this Agreement, or as Required by Law and to otherwise comply with the provisions of the Privacy Rule and the Security Rule applicable to Business Associate. This includes the restrictions on the Sale of PHI and on its Use for Marketing provided in the HIPAA Regulations. The restrictions on the Secondary Use of Data contained in the Terms and Conditions of the Participation Agreement are also specifically incorporated into this Agreement.

(b) Business Associate agrees to use appropriate safeguards to prevent Use or Disclosure of Protected Health Information other than as provided for in Section 2(a) above. If and to the extent Protected Health Information disclosed to, accessed, used, maintained, held, or created by Business Associate is ePHI, Business Associate will comply with the applicable provisions of the Security Standards, by providing Administrative, Physical, and Technical Safeguards for all ePHI and by developing Policies and Procedures implementing those Safeguards.

(c) Business Associate agrees to promptly report to Covered Entity any Use or Disclosure of the Protected Health Information not provided for in the Participation Agreement and/or this Agreement. Business Associate agrees to report to Covered Entity any Breach within five (5) business days of the first day the Breach is known, or reasonably should have been known, to the Business Associate, including for this purpose known to any employee, officer, or other agent of the Business Associate (other than the individual committing the Breach) ("Breach Notice"). The Breach Notice will include the date of the Breach and the date of discovery of the Breach and, to the extent known to Business Associate at the time in the exercise of reasonable diligence, identification of each Individual whose Unsecured PHI was, or is reasonably believed by the Business Associate to have been, subject to the Breach, and the nature of the PHI that was subject to the Breach and other information required for notification of Individuals

of the Breach (collectively, "Breach Information"). Business Associate will notify Covered Entity in writing of any additional Breach Information not included in the Breach Notice or of the circumstances that prevent Business Associate from obtaining such information not later than ten (10) days after the Breach Notice was sent by Business Associate. Business Associate will cooperate with Covered Entity in the further investigation of the Breach, as reasonably required or as requested by Covered Entity. The steps required of Business Associate under this Section 2(c) shall be at Business Associate's expense. If Business Associate believes that the facts related to a Breach justify the application of any statutory exceptions specified at Section 13400 of the HITECH Act and to the regulatory exclusions specified at 45 C.F.R. §164.402, Business Associate shall describe those facts in the Breach Notice and the parties shall thereafter discuss the possible application of an exception or an exclusion, provided that any final decision on the availability of an exclusion or exception will be that of the Covered Entity.

(d) The parties agree that this Section 2(d). satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required, except on request as stated below. For purposes of this Agreement, such Unsuccessful Security Incidents include, without limitation, activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service and any combination of the above, so long as no such Unsuccessful Security Incident results in unauthorized access, use, disclosure, modification or destruction of electronic PHI or interference with information system operations related to the ePHI, provided that, upon written request from Covered Entity, Business Associate will provide a log or similar documentation of Unsuccessful Security Incidents for the period of time reasonably specified in Covered Entity's request. Successful Security Incidents will be reported to Covered Entity within five (5) business days of the date the Successful Security Incident is, or in the exercise of reasonable efforts should have been known, to Business Associate. If the Successful Security Incident constitutes a Breach, the parties will proceed as required under this Agreement as to a Breach.

(e) Business Associate agrees to use reasonable efforts to mitigate, at its expense, any harmful effect that is known to Business Associate to result from a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of the Participation Agreement and/or this Agreement, including without limitation a Breach. Business Associate will coordinate any mitigation efforts with Covered Entity.

(f) Business Associate agrees to ensure that any Subcontractor agrees, in a form meeting the requirements of 45 C.F.R. § 164.314, to substantially the same restrictions and obligations that apply through this Agreement to Business Associate with respect to Protected Health Information, including those obligations relating to ePHI. Upon Business Associate's knowledge of a pattern of activity or practice of a Subcontractor in violation of the requirements of the foregoing agreement, Business Associate will provide notice and an opportunity, not longer than a reasonable time

consistent with the nature of the breach and the terms of the Service Agreement with the Subcontractor, for the Subcontractor to end the violation. Business Associate will terminate the agreement with that Subcontractor if the Subcontractor does not end the violation within the time specified by the Business Associate.

(g) To the extent Business Associate maintains a Designated Record Set for the Covered Entity, Business Associate will make available, within a reasonable amount of time of receipt of a written request, Protected Health Information in the Designated Record Set in accordance with the requirements of HIPAA, including information, if any, maintained in an Electronic Designated Record Set. Business Associate will report any request for Access that it receives directly from an Individual to Covered Entity within five (5) business days of receipt. Covered Entity will determine any appropriate limitations on such Access and the parties will determine a reasonable method for providing such Access, including, if appropriate, Transmission to a Third Party.

(h) To the extent Business Associate maintains a Designated Record Set for the Covered Entity, Business Associate agrees to make an Amendment, within a reasonable amount of time of receipt of a written request, to Protected Health Information in the Designated Record Set in accordance with the requirements of HIPAA. Business Associate will report any request for an Amendment that it receives directly from an Individual to Covered Entity within five (5) business days of receipt. The Covered Entity will determine and provide to Business Associate the appropriate substance of any such Amendment.

(i) Business Associate agrees to maintain and make available on written request information required to provide an Accounting of its Disclosures of Protected Health Information required for the Covered Entity to respond to a request by an Individual in accordance with the requirements of HIPAA. At such time as final Regulations or Guidance as to Accounting for Disclosures for purposes of Treatment, Payment and Health Care Operations ("TPO Accounting") are published, Business Associate will provide an amendment to this Agreement under Section 7 e. to specify the extent and manner in which TPO Accounting Information will be recorded and provided, to be effective as of the date upon which compliance with TPO Accounting Regulations or Guidance is required by Covered Entity.

(j) Subject to receiving notice as described in Section 4(b), Business Associate agrees to abide by any restriction on the Use or Disclosure of PHI agreed to by Covered Entity, provided that, in the event of an agreement of Covered Entity required by HIPAA not to disclose an item or service paid for entirely out-of-pocket by an Individual to a Health Plan for Payment or Health Care Operations purposes unless such Disclosure is Required by Law, the parties agree that such information shall be treated by Covered Entity as Data subject to Special Restrictions under the Participation Agreement and will not be made available to Business Associate.

(k) Upon request, Business Associate will make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information

received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA.

(l) To the extent that Business Associate will carry out an obligation of Covered Entity under the Security and Privacy provisions set out in Subpart E of 45 CFR Part 164, Business Associate will perform such obligations in compliance with the provisions of such Subpart that apply to the Covered Entity as to such obligations.

3. Permitted Uses and Disclosures of Protected Health Information by Business Associate. Business Associate may Use or Disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Participation Agreement, provided that such Use or Disclosure would not violate the Privacy Rule if done by the Covered Entity. In addition:

(a) Except as otherwise limited in this Agreement, Business Associate may Use or Disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out legal responsibilities of Business Associate, provided that in the event of Disclosures, the Disclosure is Required by Law or Business Associate obtains reasonable assurances, in a form substantially similar to a Business Associate Agreement, from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and that the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(b) Business Associate may Use Protected Health Information to provide Data Aggregation services to Covered Entity to the extent provided for in the Participation Agreement.

(c) Business Associate agrees that it will not De-identify any PHI to which it has access under the Participation Agreement except as for a purpose permitted under the Participation Agreement, and subject to any approvals required for such use under the Participation Agreement or permitted under this Agreement. Without limiting the generality of the foregoing, and regardless of what may be permitted under Applicable Law, Business Associate will not manipulate, aggregate, integrate, compile, merge, reorganize, regenerate such PHI, even if De-identified, or derive from such PHI, even if De-identified, any list, compilation, abstraction, or other information to use for a business purpose of Business Associate that is unrelated to the services Business Associate provides under the Participation Agreement ("Secondary Use") or allow access to the PHI or any derivation of it to a third party (even if related to Business Associate) for a Secondary Use.

4. Obligations of Covered Entity to Inform Business Associate of Privacy Practices and Individual Restrictions.

(a) Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with HIPAA as well as any changes to such Notice of Privacy Practices, to the extent that a provision of the Notice will affect Business Associate's Use or Disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any Restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to in accordance with the Privacy Rule, to the extent that such restriction will affect Business Associate's Use or Disclosure of Protected Health Information. In order to allow Business Associate to comply with such agreed restriction, such notice will be provided at least fifteen (15) business days in advance of the date upon which compliance by the Business Associate is required under HIPAA.

5. Permissible Requests or Disclosures; Minimum Necessary. Except as specifically provided in the Participation Agreement or this Agreement, Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except as provided in this Agreement for Business Associate's Data Aggregation, internal management and administration or legal responsibilities. Without limiting the generality of the foregoing, Covered Entity will provide, and Business Associate will request, no more than, the Minimum Necessary amount of PHI required for the performance of Business Associate's services under the Participation Agreement. As of the date upon which compliance is required with Guidance regarding Minimum Necessary Uses and Disclosures, Business Associate and Covered Entity will comply with such Guidance. To the extent that an amendment to this Agreement is required for such compliance, Business Associate will provide such an amendment in accordance with Section 7 e.

6. Term and Termination.

(a) Term. This Agreement is effective as of the Effective Date of Participation Agreement and replaces any prior Business Associate Agreement between the parties relating to the Participation Agreement. This Agreement shall terminate when the Participation Agreement terminates and all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy Protected Health Information, when protections are extended to such information, in accordance with the provisions of Section 6(c).

(b) Termination.

(i) Upon one party's knowledge of a material breach by the other party of this Agreement, the parties shall proceed under the termination for cause for material breach provisions of the Participation Agreement. Notwithstanding the foregoing, if there is no termination for cause for material breach provision in the Participation Agreement, then the non-breaching party shall provide the breaching party with written



notice of the material breach which describes the breach in reasonable detail and the breaching party shall have thirty (30) days from receipt of the notice to cure the breach to the reasonable satisfaction of the non-breaching party. If the breaching party has not done so within that period, the non-breaching party may terminate this Agreement for cause effective on further written notice to the breaching party;

(ii) Notwithstanding the foregoing, the non-breaching party may immediately terminate this Agreement if the breaching party has breached a material term of this Agreement and the non-breaching party reasonably determines that cure is not feasible.

(c) Effect of Termination.

(i) Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy (in a manner that renders the information Secure) all PHI received from, or accessed, maintained, used, disclosed and/or transmitted for or on behalf of, Covered Entity by Business Associate. If, or to the extent that, Business Associate reasonably determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and agrees to extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible until Business Associate returns or destroys the PHI.

(ii) Notwithstanding the foregoing, Covered Entity and Business Associate agree that, as provided in the Participation Agreement, Data (as defined in the Participation Agreement to include Protected Health Information) that has been provided to other Participants in accordance with the Participation Agreement is not subject to the foregoing requirements. In addition, Data of Participant that is incorporated into Business Associate's Health Information Exchange Master Patient Index and Registry, in accordance with and as defined in the Participation Agreement, may be retained by Business Associate for purpose of indexing and record location for records that were made available by Participant prior to termination, subject to extension of required protections under 6(c)(i).

(iii) To the extent the Participation Agreement specifically deals with the return or destruction of PHI following termination or expiration of the Participation Agreement, the provisions of the Participation Agreement shall govern, so long as such provisions are compliant with HIPAA.

7. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in HIPAA or the Privacy Rule, the Security Standards, or HIPAA Regulations or Guidance means the referenced material as in effect as of the Effective Date or as subsequently amended as supplemented or implemented.

(b) State Privacy or Security Laws. Business Associate will comply with privacy, data security and consumer notification of a breach of personal information laws of the State of West Virginia to the extent required under the Participation Agreement. In addition, Business Associate will comply with applicable state restrictions on storage or transmission of PHI by Business Associate, as known, or as reasonably should be known, to Business Associate.

(c) Permitted Charges. To the extent Business Associate takes any action, such as providing information to an Individual under Section 2(g), for which a charge or cost is allowed to be collected under HIPAA or West Virginia law, Business Associate may collect such charge or cost from the Individual or from the Covered Entity, as Business Associate determines appropriate in accordance with Business Associate's Policies and Procedures or after discussion with Covered Entity.

(d) Other Agreements for Services. To the extent that Business Associate provides services to Covered Entity under agreements other than the Participation Agreement, and such services involve Business Associate's access to, use, creation or maintenance of PHI of Covered Entity as a Business Associate under HIPAA ("Other Service Agreements"), unless the Other Service Agreement specifically provides otherwise or incorporates another form of Business Associate Agreement, the provisions of this Agreement shall apply to Business Associate under the Other Service Agreement and all references to Participation Agreement shall be deemed to refer to the Other Service Agreement.

(e) Amendment. In the event that either party believes that the provisions of this Agreement require amendment based on HIPAA, including but not limited to, Guidance or Regulations or other legislative or regulatory changes to the Privacy Rule or the Security Standards occurring after the Effective Date of this Agreement, that party may notify the other party in writing, including of the text and effective date of the proposed amendment ("Amendment Notice"). The parties shall promptly meet and discuss the proposed Amendment and either agree upon it or agree on other mutually acceptable changes to this Agreement responsive to the Amendment Notice. If the parties are unable to agree on the amendment or such changes, in writing, within thirty (30) days of receipt of the Amendment Notice by the other party, the party providing the Amendment Notice may terminate the Participation Agreement, without cost or penalty, effective on the date on which the proposed amendment was to be effective, as specified in the Amendment Notice. However, the foregoing process shall not apply in the event that Business Associate provides an Amendment Notice that has been approved by the WVHIN Board so long as Business Associate provides the Amendment Notice a reasonable time after the Regulatory Change is published in final form and the Amendment is effective as of the date compliance with the Regulatory Change is required by Covered Entity and Business Associate..

(f) Survival. The respective rights and obligations of the parties under this Agreement which require or contemplate compliance after termination of this Agreement shall survive the termination.

(g) Independent Contractor, Not Agent. For purposes of this Agreement and HIPAA, Business Associate will be deemed to be an independent contractor, and not an agent, of Covered Entity under applicable law, including federal common law.

(h) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both Business Associate and the Covered Entity to comply with the HIPAA, consistent with the Participation Agreement.