

ATTACHMENT A1
TERMS AND CONDITIONS FOR
PARTICIPATING ORGANIZATION-FULL SERVICE

1. Health Information Exchange.

(a) Host. The WVHIN shall either directly, or through a contract with a third party Business Associate, host all equipment, software, and services necessary for the operation and maintenance of the Health Information Exchange. The WVHIN shall either directly, or through a contract with a third party Business Associate, be responsible for management, administration, upkeep, and repair of the Health Information Exchange. The WVHIN shall require its third party contractors/Business Associates 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, and any regulations promulgated thereunder.

(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 Health Information Exchange and participate in its services. The Participant shall ensure that its hardware, equipment, and software conform to the WVHIN's then-current specifications and Interoperability Guide, and that all hardware and software used to interface with the Health Information Exchange are properly and securely configured. The WVHIN shall not be responsible for any costs incurred by a Participant to connect to the Health Information Exchange. 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 Protected Health Information, 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 Health Information Exchange.

(c) Registration of Participant Type. Participant is registered as a Full Service Participant (herein after referred to as a "Full Service Participant" or "Participant").

(d) Restrictions on Use of the Health Information Exchange. The Full Service Participant agrees not to sublicense, assign, rent, sell, transfer, give, or otherwise distribute all or any part of the WVHIN's Health Information Exchange, or its associated software, to any third party. The Full Service Participant agrees not to reverse engineer, disassemble, decompile, modify, alter, or attempt to learn the source code or structure of the WVHIN's Health Information Exchange, 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 Full Service Participant a limited, non-exclusive, non-transferable, non-assignable, sublicense to access and use and submit data

through the WVHIN's internet-based Health Information Exchange, and its associated software, by one or more Authorized Users designated by the Full Service Participant for the sole purpose of participating in this Exchange in accordance with the terms and conditions of this Agreement. THE HEALTH INFORMATION EXCHANGE, 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 Full Service Participant acknowledges that the software may have been licensed to the WVHIN by third parties, and that the rights granted under this Agreement are subject in every respect to the WVHIN's grant of license from such third parties. As additional software is developed by or for the WVHIN's Health Information Exchange, it shall become subject to this Agreement upon written notice to the Full Service 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 Full Service Participant and not to any other software that the Full Service Participant may use in providing Treatment to its Patients or for the Full Service Participant's Health Care Operations or Payment procedures.

2. Responsibilities of the WVHIN.

(a) The WVHIN shall make its Health Information Exchange available to the Full Service Participant and its Authorized Users only for the Permissible Purposes authorized and approved by the WVHIN. These Permissible Purposes are specified in the WVHIN's Policies and Procedures, and may include Treatment, Emergency Treatment, Public Health Reporting, or any other purpose specifically authorized by federal and state laws and regulations and approved by the WVHIN. The Health Information Exchange shall include the functionality to electronically file a specific request, or Inquiry, to obtain from another Participant in real-time the Protected Health Information of a Patient for a Permissible Purpose. As part of its Health Information Exchange, the WVHIN shall maintain a Master Patient Index to permanently record any Patient's decision to Opt-Out of the WVHIN. In addition, a Record Locator Service shall be established by the WVHIN to match Patients for the purposes of responding to Inquiries and other related functions.

(b) The WVHIN shall use its best efforts to make its Health Information Exchange available to the Full Service Participant twenty-four (24) hours per day, seven (7) days per week; provided however, the Health Information Exchange'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 Health Information Exchange's on-line availability. The Full Service Participant shall be solely responsible for providing or securing Protected Health Information through other means during any periods when the Health Information Exchange is not available.

(c) During the term of this Agreement, the WVHIN shall provide limited support services to assist the Full Service Participant in the installation, implementation, and use of the Health Information Exchange, and its associated software. The Fee Schedule for these services is set forth in Attachment E. The WVHIN, or its designated agent, shall establish a Help Desk that shall be available twelve (12) hours per day, five (5) days per week to assist the Full

Service Participant in its use of the Health Information Exchange, as well as a toll-free phone number made available twenty-four (24) hours per day, three hundred sixty-five (365) days per year for reporting operational issues with the Health Information Exchange.

(d) The WVHIN shall establish Policies and Procedures to govern the WVHIN's and the Full Service Participant's activity on the Health Information Exchange, as well as the privacy and security of Protected Health Information being exchanged thereunder. These Policies and Procedures shall also govern the activities of all Authorized Users of the Full Service Participant. These Policies and Procedures shall be available on the WVHIN's website at 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 Full Service Participant's Site Administrator 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 Protected Health Information, 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 Protected Health Information made available by the Full Service Participant to assist in the operation of the Health Information Exchange, 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, and any regulations promulgated thereunder. The WVHIN may Deidentify Protected Health Information, and may use or disclose such Deidentified data for any public health or research purpose approved by the WVHIN.

(f) The WVHIN shall establish standard forms and protocols to assist the Full Service 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 Full Service Participant and its Authorized Users.

(g) The WVHIN shall provide notice to the Full Service Participant of any identified compliance issue related to the Full Service Participant's or any of its Authorized User's access of data through the Health Information Exchange, including but not limited to any Breach of Unsecured Protected Health Information affecting the Full Service 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, and any regulations promulgated thereunder such as the HIPAA Privacy Rules and the HIPAA Security Rules.

3. Responsibilities of the Full Service Participant.

(a) Any Full Service Participant that is a Health Care Provider 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

Health Information Exchange. The Full Service 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 Protected Health Information, and shall comply with the Security Addendum set forth in Attachment D. The WVHIN may establish Policies and Procedures for Health Plans and Health Care Clearinghouses to connect to the WVHIN to exchange Protected Health Information as a Full Service Participant.

(b) The Full Service Participant and its Authorized Users shall access the Health Information Exchange to make an Inquiry for Protected Health Information from another Participant only for a Permissible Purpose. The Full Service Participant and its Authorized Users must use the Protected Health Information disclosed only for the Permissible Purpose identified in its Inquiry.

(c) Any Full Service Participant shall make available Protected Health Information to the WVHIN's Health Information Exchange. It is the intention of the parties that the scope of this disclosure shall be the maximum amount available to be disclosed, subject only to the mutual agreement of the parties to this Agreement.

(d) The Full Service Participant shall designate a Site Administrator, 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 Site Administrator 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 WVHIN shall issue Authentication Information directly to a Full Service Participant's Site Administrator, and to any of his or her designees. Should the Full Service Participant's Site Administrator, or his or her designees, be changed, such change shall immediately be communicated to the WVHIN in order to allow for the disabling of the applicable Authentication Information. No Site Administrator or designee shall be permitted to disclose or transfer Authentication Information to another individual.

(e) Except for Treatment or Emergency Treatment, the Full Service Participant and its Authorized Users, when accessing the Health Information Exchange, shall request only the Minimum Necessary amount of Protected Health Information needed to accomplish the intended purpose of the disclosure.

(f) Sensitive Health Information is a type of Protected Health Information 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 Full Service 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 Health Information Exchange. Both the WVHIN and its other Participants shall rely upon the determination made by the Full Service Participant or a Data Supplier as to whether a Patient's Sensitive Health Information is blocked from use and disclosure through the Health Information Exchange.

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

(h) The Full Service 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, and any regulations promulgated thereunder such as the HIPAA Privacy Rules and the HIPAA Security Rules.

4. Identification of Authorized Users; Use of the Health Information Exchange.

(a) The Full Service Participant shall, through its Site Administrator, strictly control access to the WVHIN's Health Information Exchange by the Full Service Participant's Workforce through the establishment of a role-based access system. This role-based access system shall limit access within a Full Service Participant to those Workforce members with a need to know. Authorized Users shall include only those members of the Full Service Participant's Workforce who:

(i) require access to the Health Information Exchange to facilitate the use or disclosure of Protected Health Information 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 Health Information Exchange that is provided or approved by the WVHIN.

(b) The Full Service Participant's Site Administrator shall designate, maintain, and certify the official list of Authorized User's to the WVHIN. Any Workforce changes that require a change in Authorized User status shall be communicated immediately and electronically to the Health Information Exchange by the Site Administrator. The Full Service Participant shall be wholly responsible for maintaining an appropriate and current list of its Authorized Users.

(c) The Full Service Participant's Site Administrator shall ensure that each Authorized User designated by the Full Service Participant establishes Authentication Information sufficient to allow the Authorized User access to the WVHIN's Health Information Exchange. Such Authentication Information shall meet the minimum requirements established by the WVHIN, and shall otherwise be unique to each Authorized User. The Full Service Participant's Site Administrator shall immediately disable any Authorized User who is no longer authorized by the Full Service Participant to access and use the Health Information Exchange by immediately terminating such Authorized User's access thereto. The Full Service Participant's Site Administrator 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 Health Information Exchange. The Full Service 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 Health Information Exchange 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, and any regulations promulgated thereunder. The Full Service 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 Health Information Exchange, an Authorized User shall be required to enter his or her Authentication Information.

(f) The Full Service 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, and any regulations promulgated thereunder. Further, the Full Service Participant shall be responsible for all acts and omissions of its Authorized Users and all other individuals who may access the WVHIN's Health Information Exchange through the Full Service 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 misuse of his or her Authentication Information, any repeated and ongoing abuse of the WVHIN's Policies and Procedures, or fraudulent activity.

5. Reliance Upon Authorized User Certifications. In making a disclosure to a Full Service Participant or an Authorized User of a Full Service Participant through the Health Information Exchange, the WVHIN may rely upon the certification of the Full Service Participant or Authorized User submitting the Inquiry that:

(a) the Full Service Participant or Authorized User is seeking access to Protected Health Information for a Permissible Purpose; and

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

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

(a) the identity of the Full Service Participant or Authorized User (or at least the Authentication Information that was utilized by an individual) that accessed the Protected Health Information;

- (b) the identity of the Patient whose Protected Health Information was accessed;
- (c) the location and Internet Protocol address from which the Protected Health Information was accessed, if available;
- (d) the specific Protected Health Information accessed; and,
- (e) the date and time that the Protected Health Information was accessed.

The WVHIN shall maintain a record of all audit logs for a period of at least six (6) years. Upon request, the WVHIN shall share with the Full Service Participant's Site Administrator any audit log maintained by the WVHIN documenting access to the WVHIN Full Service Participant or its Authorized Users, or documenting access to Protected Health Information maintained by any Participant through the Health Information Exchange.

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 Health Information Exchange. Once a Patient has Opted-Out of the Health Information Exchange, his or her Protected Health Information shall not be made available in response to a Participant's Inquiry.

(b) The WVHIN shall establish a process by which Patients may Opt-Out through his or her Full Service Participant, and may establish an on-line process for Opting-Out electronically by computer. 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 Health Information Exchange, as well as the potential benefits and risks of participation by the Patient. The Full Service Participant shall provide every Patient with a copy of the Patient Notice in writing, and if necessary, in any other format (orally, foreign language presentation, etc.) designed to ensure that its contents are communicated to and understood by the Patient. The Patient Notice shall be provided during the first Patient encounter after the Full Service Participant enrolls in the Health Information Exchange. The Full Service 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 Full Service Participant upon request. The Full Service Participant is encouraged to provide the Patient Notice prior to the Full Service Participant's enrollment in the Health Information Exchange, and to permanently record the delivery of the Patient Notice in the Patient's medical record. A Patient shall be considered an active participant in the Health Information Exchange until and unless that Patient Opts-Out. A patient becomes an active participant for all purposes after a Participating Organization discloses his or her Protected Health Information to the Health Information Exchange.

(c) Regardless of whether a Patient decides to Opt-Out of the WVHIN's Health Information Exchange, the Full Service Participant shall provide Personal Demographic Information to the WVHIN for each of its Patients upon enrollment. This 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 Full Service Participants in obtaining access to a Patient's Protected Health Information 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 immediately and electronically communicated by the Full Service Participant to the Health Information Exchange to ensure compliance with the Patient's Consent decision. If available, a Patient may utilize an on-line process to Opt-Out electronically by computer without the assistance of the Full Service Participant.

(e) A Patient may revoke his or her decision to Opt-Out at any time either through his or her Full Service Participant, or electronically by computer.

8. Accuracy and Retention of Data. The Full Service Participant shall be solely responsible for maintaining reasonable quality control procedures for the accuracy, completeness, and quality of the Protected Health Information that it makes available to the WVHIN. The WVHIN assumes no responsibility for the accuracy, completeness, and quality of the Full Service Participant's Protected Health Information. Moreover, the WVHIN shall not be responsible for inspecting the content of any exchange of Protected Health Information, or for recording the content of any such exchange. The Full Service Participant shall be solely responsible for including any Protected Health Information received through the WVHIN's Health Information Exchange in its own Designated Record Set for the Patient, if desired. The Health Information Exchange is not required to return to a Full Service Participant any Protected Health Information exchanged through the Health Information Exchange with any Participant.

9. Other Exchanges. The WVHIN may establish arrangements with other Health Information Exchanges located or operating inside or outside the State of West Virginia to allow access and use or disclosure of Protected Health Information that would otherwise be permissible under the terms and conditions of this Agreement, as well as under the terms of a Data Use and Reciprocal Support Agreement consistent with national standards, in compliance with applicable federal and state laws, and executed by the WVHIN and the other Health Information Exchange in question. Any Full Service Participant that operates a facility outside of the State of West Virginia, and that links its out-of-state facility 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 Full Service Participant and its Authorized Users on the proper use of the Health Information Exchange at the request of the Full Service Participant. The Fee Schedule for these services is set forth in Attachment E.

11. Fees. All fees or Payments required from the Full Service Participant to the WVHIN are set forth in the Fee Schedules contained in Attachment E. 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 Full Service Participant's access to the Health Information Exchange. 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 E once each calendar year by providing written notice to the Full Service 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"). Each party agrees to hold all Proprietary Information of the other party 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, Protected Health Information shall not be Proprietary Information that is subject to the restrictions contained in this Section 12.

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

13. Steering Committee. The WVHIN shall establish and maintain a Steering Committee consisting of the various Site Administrators and contacts of all Participants. The WVHIN shall hold regular meetings of the Steering Committee. The Steering Committee shall

review, consider, and provide advice to the WVHIN with respect to all aspects of the Health Information Exchange, including, but not limited to:

- (a) technical, administrative, privacy, and security matters;
- (b) matters related to evolving legal requirements and best practices for Health Information Exchange; and
- (c) Health Information Exchange service availability and diversification.

14. Warranties. The WVHIN shall use its best efforts to develop, maintain, and manage the operation of the Health Information Exchange and to correctly exchange Protected Health Information between Participants on a timely basis. THE HEALTH INFORMATION EXCHANGE, AND ITS ASSOCIATED SOFTWARE, IS MADE AVAILABLE “AS IS”. THE WVHIN MAKES NO REPRESENTATION OR WARRANTY THAT THE PROTECTED HEALTH INFORMATION DELIVERED TO A PARTICIPANT SHALL BE TIMELY, CORRECT, OR COMPLETE. THE WVHIN MAKES NO WARRANTY OR REPRESENTATION REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION TECHNOLOGY SYSTEM OR SOFTWARE USED FOR THE HEALTH INFORMATION EXCHANGE. NO WARRANTY OR OTHER ASSURANCE, EITHER EXPRESS, IMPLIED, OR STATUTORY, IS GIVEN BY THE WVHIN WITH RESPECT TO THE HEALTH INFORMATION EXCHANGE, ITS SOFTWARE, ITS OPERATION, OR ANY OTHER MATTER, INCLUDING, WITHOUT LIMITATION (AND THE WVHIN SPECIFICALLY DISCLAIMS) ALL WARRANTIES OF TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

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 Health Information Exchange utilizing any Authentication Information issued to any Authorized User designated by that party.

(c) In no event shall the WVHIN be liable to the Full Service 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.

16. Incomplete Medical Record. Each Participant acknowledges that the Protected

Health Information used, accessed, or disclosed to Participants may not include the Patient's full and complete medical record or history. The Protected Health Information exchanged will only include that data which is the subject of the Inquiry and available for exchange among Participants in the Health Information Exchange.

17. Not a Medical Service. WVHIN's Health Information Exchange 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, if a Health Care Provider, is solely responsible for confirming the accuracy of all Protected Health Information, and, to the extent applicable, for making all clinical, medical, health care, diagnostic, therapeutic, or other decisions affecting Patients. Specifically:

(a) the Health Information Exchange 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 Health Information Exchange; and

(b) the Full Service Participant may give whatever weight it and its Authorized Users deem appropriate to the information received from the Health Information Exchange.

18. Term and Termination.

(a) The term of this Agreement shall commence on the Effective Date and shall continue until this Agreement is terminated by a party under subsections (b), (c), or (d) below.

(b) Either the WVHIN or the Full Service Participant may terminate this Agreement at any time without cause upon ninety (90) days advance written notice to the other.

(c) Either the WVHIN or the Full Service 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 Full Service 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

Health Information Exchange for the Full Service Participant and its Authorized Users, and the Full Service Participant and its Authorized Users shall stop accessing the Health Information Exchange; and

(ii) 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 22(c) through 22(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 Full Service 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 Full Service 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 Full Service Participant for purposes of this Agreement shall be its Site Administrator 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: _____
Address: 100 Dee Drive
Charleston, West Virginia 25311
Telephone: _____
Facsimile: _____
Email: _____

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 Full Service Participant's access to and use of Protected Health Information under the Health Information Exchange shall not occur until such date(s) as the WVHIN determines that the Full Service Participant's connectivity to the Health Information Exchange has become functional and operational. The WVHIN shall provide the Full Service Participant with written notice at such time as the Health Information Exchange becomes functional and operational with respect to the Full Service Participant.

22. Miscellaneous.

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

(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.

(l) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

