

Virginia Health Information Master Services Agreement

Updated on October 3, 2024

This Virginia Health Information (VHI) Master Services Agreement (“MSA”) entered into on the last date below and effective as of _____ (the “Effective Date”) by and between Virginia Health Information, a Virginia non-stock, non-member corporation (“VHI”) and _____, a _____ (“Participant”). (VHI and Participant may be referred to herein individually as “Party” and collectively as the “Parties.”)

RECITALS

WHEREAS, VHI was created in furtherance of legislation adopted by the 1993 Virginia General Assembly, which identified the need for a nonprofit organization to convene public and private stakeholders in Virginia’s healthcare system to address issues related to the quality and cost of healthcare services;

WHEREAS, certain Virginia Health Information Exchange (HIE) programs were formerly operated by ConnectVirginia, which was established by the Virginia Department of Health pursuant to the American Reinvestment and Recovery Act of 2009; these programs are now operated by VHI following a statutory merger of ConnectVirginia effective July 1, 2019;

WHEREAS, VHI operates multiple programs in support of its goal of advancing access, use and exchange of health information, including, but not limited to, the Emergency Department Care Coordination Program (legislatively renamed the Smartchart Network Program, effective January 1, 2024), the All-Payer Claims Database and the Public Health Reporting Pathway;

WHEREAS, Participant is an organization that creates, stores, uses, transacts, enables the exchange of or otherwise oversees and conducts, on its own behalf and/or on behalf of its users, access, use and/or exchange of electronic information that relates in some manner to the provision of healthcare services in the Commonwealth of Virginia; and

WHEREAS, Participant desires to engage in one or more of the VHI programs and/or services to support its users and understands that it must enter in this MSA as well as all applicable attachments and addenda (the “Program Addendum/Addenda”).

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

AGREEMENT

- 1. Definitions.** This MSA and the accompanying Program Addenda use a variety of defined terms. Defined terms are capitalized throughout this MSA and the Program Addenda. Certain terms are used in the MSA and have general applicability to Participant. A particular VHI Program may have additional definitions that are specific to the VHI Program and/or service addressed therein, and such definitions will be included in the applicable Program Addendum.
- 2. Incorporation of Recitals.** The recitals set forth above are hereby incorporated into this MSA in their entirety and will be given full force and effect as if they were set forth in the body of this MSA.

- 3. VHI Programs and Services.** VHI offers a variety of programs and services in support of advancing the interoperability of electronic health information. These programs and services are listed in Attachment 1 (Overview of VHI Programs and Services), which may be updated from time to time by VHI without the need for an amendment to this MSA. The specific requirements for a VHI Program or other service will be set forth in the applicable Program Addendum appended to this MSA and are incorporated into and made a part of this MSA. Certain services offered on a more limited and/or case-specific basis (for example, as part of a pilot) may be set forth in one or more Statements of Work (SOW), which shall also be considered part of this MSA unless otherwise expressly stated therein.
- 4. Governance.** The composition of the VHI Board of Directors is set forth in §32.1-276.4(A) of the Code of Virginia and shall consist of representatives of state government, including the State Health Commissioner, representatives of the Virginia Department of Medical Assistance Services (DMAS) and the Virginia Bureau of Insurance, health plans and/or health insurance issuers and the consumer, healthcare provider and business communities. Specific VHI Programs or other services may involve additional governance activities and/or additional governing committees, councils or similar bodies (each, including the Board of Directors, a “Governing Body” and, collectively, the “Governing Bodies”), as set may be forth in VHI Program policies, as applicable.
- 5. Responsibilities.**

 - 5.1. Execution of this MSA and Program Addenda. Before Participant commences participation any of the VHI Programs or services, Participant and VHI must execute this MSA, including the attached Business Associate Agreement if applicable, and any applicable Program Addenda in the manner required by VHI. In doing so, each Party affirms that it has full power and authority to enter into and perform its obligations under this MSA and any applicable Program Addendum/Addenda and has taken whatever measures necessary to obtain all required approvals or consents in order for it to execute the same. The individual(s) signing this MSA and any Program Addendum represent and warrant that they have the authority to do so on behalf of the respective Party.
 - 5.2. Compliance with this MSA and Program Addenda. Except to the extent prohibited by Applicable Law, the Parties will comply fully with the requirements of this MSA and any applicable Program Addendum/Addenda. To the extent that a Party delegates its duties under this MSA or Program Addendum/Addenda to a third party (by contract or otherwise), that delegation must be in writing and require the third party to agree to all relevant terms and conditions of this MSA and applicable Program Addendum/Addenda that apply to the third party based upon the duties that the third party is performing for the respective Party.
 - 5.3. Compliance with Applicable Law. Participant shall, at all times, fully comply with all applicable state, federal and local statutes, regulations, standards and policy requirements relating to this MSA and applicable Program Addenda. VHI shall, at all times, fully comply with all applicable statutes and regulations of the Commonwealth of Virginia as well as all applicable federal statutes, regulations, standards and policy requirements relating to this MSA and Program Addenda.

- 5.4. Absence of Final Orders. Each Party hereby represents and warrants that, as of the Effective Date, it is not subject to a final order issued by any federal, state, local or international court of competent jurisdiction, or regulatory or law enforcement agency or authority that will materially impact the Party's ability to fulfill its obligations under this MSA and/or any applicable Program Addendum/Addenda. Each Party shall, as soon as reasonably practicable under the circumstances, inform the other Party if, at any point during the Term of this MSA, the Party becomes subject to such an order.
- 5.5. Federal Health Care Program Participation. Each Party hereby represents and warrants that it is not excluded or debarred from participating, or is otherwise ineligible to participate, in any Federal Health Care Program(s), as defined at 42 U.S.C. § 1320a-7b(f). Each Party will immediately provide written notice to the other Party in the event it is suspended, proposed for debarment or other exclusion, otherwise disqualified or declared ineligible from participating in a Federal Healthcare Program for any reason or is made a party to a legal proceeding that may result in any such action.
- 5.6. Accurate Program Participation Information. If and to the extent participation in a VHI Program is limited to certain types of entities and/or contingent upon other criteria ("Program Eligibility Criteria"), Participant shall be solely responsible for evaluating Participant's satisfaction of such Program Eligibility Criteria and for accurately representing the same to VHI. VHI reserves the right to reasonably request additional information and/or supporting documentation evincing Participant's satisfaction of any applicable Program Eligibility Criteria. Participant understands that satisfaction of all Program Eligibility Criteria, as applicable, is an ongoing obligation of Participant, and Participant must notify VHI immediately of any changes related to whether or how Participant satisfies any such Program Eligibility Criteria.
- 5.7. Allocation of resources. If participation in a VHI program or service requires Participant to undertake any activity on its end, Participant agrees to use its best efforts to perform that work in a timely fashion and allocate the resources that are reasonably required to perform the work. These resources may include, but are not limited to, IT staff or other subject matter expertise, software, access to third-party vendors, upgrade of computer systems and project manager support.
- 5.8. Payment of Fees. If VHI charges fees for any VHI Program or other service, Participant agrees to pay such fees as set forth in the applicable Program Addendum, including within the specified timeframes. Failure to pay fees in accordance with one or more Program Addenda may result in termination of the applicable Program Addendum/Addenda and/or constitute a material breach of this MSA.

6. Cooperation.

- 6.1. Cooperation with VHI and Other Participants. Participant understands and acknowledges that numerous activities with respect to this MSA and the VHI Programs may likely involve other participants and their employees, agents, third-party contractors, vendors and/or consultants. To the extent not legally prohibited, Participant shall: (a) respond in a timely manner to inquiries from VHI or other participants about possible issues related to this MSA or any applicable VHI Program or service; (b) collaboratively participate in discussions coordinated by VHI to address differing interpretations of requirements of this MSA or any applicable Program Addendum/Addenda. In seeking another participant's cooperation, Participant shall make all reasonable efforts to accommodate the other participant's schedules and reasonable operational concerns. For the avoidance of doubt, in no case shall Participant be required to disclose individually identifiable health information in violation of Applicable Law.

7. Term, Suspension, and Termination.

- 7.1. Term. The initial term of this MSA shall commence on the Effective Date and expire on June 30th of the next calendar year following the Effective Date ("Initial Term"). By way of example only: if the Effective Date of this MSA is any time during 2024, the Initial Term will expire on June 30, 2025. Upon the expiration of the Initial Term, this MSA shall automatically be renewed for successive one-year terms (the "Renewal Term") unless either Party gives notice of nonrenewal at least one hundred and twenty (120) days prior to the end of the then-current term or this MSA is otherwise terminated in accordance with this Section 7. (Together the Initial Term and each/all Renewal Term(s) are referred to as the "Term.")
- 7.2. Termination of MSA by Participant. Except as otherwise set forth in this section, Participant may terminate this MSA: (i) by providing no less than ninety (90) days' written notice to VHI; or (ii) in the event VHI materially breaches this MSA and fails to cure such material breach within sixty (60) days of VHI's receipt from Participant of written notice of such material breach, which notice shall describe the nature of the material breach with reasonable particularity. Notwithstanding the foregoing, this MSA may not be terminated while any Program Addendum/Addenda remain in effect between the Parties. If and to the extent Participant is required by Applicable Law to participate in one or more VHI Programs, Participant understands and acknowledges that Participant's termination of its participation in such VHI Program may give rise to an obligation by VHI to report *possible* noncompliance with mandated program participation by Participant to the appropriate agency or authority. Provided, however, VHI shall bear no responsibility for reviewing, evaluating, opining upon, determining or enforcing Participant's compliance with Applicable Law, and VHI's authority to interpret and enforce compliance with the Program Addenda, including any applicable policies and procedures that may be established by VHI for the VHI Programs and services, shall not be interpreted as any such review, evaluation, opinion, determination or enforcement of Participant's obligations under Applicable Law. Participant shall be solely responsible for all determinations as to Participant's legal status and/or obligations, and VHI may reasonably rely on Participant's representations regarding the same in connection with any/all VHI Programs and/or services.

- 7.3. Termination of MSA by VHI. Except as otherwise set forth in this section, VHI may terminate this MSA as follows: (i) In the event Participant materially breaches this MSA and fails to cure such material breach within sixty (60) days of Participant's receipt from VHI of written notice of such material breach, which notice shall describe the nature of the material breach with reasonable particularity; (ii) Upon written notice from VHI in the event Participant's participation in all VHI Programs and services has been terminated; or (iii) Upon thirty (30) days' written notice from VHI in the event that: (a) no Program Addenda remain in effect between the Parties; and (b) at least 6 months have passed with no Program Terms in effect between the Parties.
- 7.4. Termination of MSA by Mutual Consent. VHI and Participant may mutually consent, in writing, to terminate this MSA at any time, provided no Program Addenda remain in effect between the Parties as of the agreed upon termination date.
- 7.5. Termination of Program Addenda, Generally. A Program Addendum may, but is not required to, provide additional grounds for termination of the applicable Program Addendum by either Participant or VHI. These additional grounds for termination will be specific to the VHI Program or other service and shall control with respect to that VHI Program or service. Termination of the Program Addendum/Addenda for one or more VHI Programs or services by either Participant or VHI shall have no effect on this MSA and/or any other Program Addendum/Addenda that are in effect between the Parties except as expressly stated above.

8. Liability & Insurance.

- 8.1. Exclusion for Government Agencies & Authorities. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION 8, OR ANY OTHER CONTRARY PROVISIONS OF THIS AGREEMENT, IF PARTICIPANT IS A GOVERNMENT AGENCY OR AUTHORITY UNDER FEDERAL, STATE, LOCAL OR TRIBAL LAW AND IS PROHIBITED FROM LIMITING ITS RECOVERY OF DAMAGES FROM A THIRD PARTY UNDER APPLICABLE LAW, THEN ANY SUCH LIMITATIONS SHALL NOT APPLY TO EITHER PARTY. NOTHING IN THIS MSA SHALL BE CONSTRUED TO CREATE LIABILITY FOR A GOVERNMENTAL AGENCY OR AUTHORITY OR TO OTHERWISE ACT AS A WAIVER OF ANY SOVEREIGN IMMUNITY ENJOYED BY SUCH GOVERNMENTAL AGENCY OR AUTHORITY.
- 8.2. Participant Liability. As between Participant and VHI, Participant is responsible for its acts and omissions and not for the acts or omissions of any other VHI Participant. Participant shall be liable to VHI and to other VHI Participants for damages caused by any act or omission of Participant and/or by any individual(s) who uses Participant to access any VHI Program or service. Nothing in this section shall be interpreted to prevent Participant from seeking recovery from any individual(s) who uses Participant to access any VHI Program or service for any damages that the individual causes, but it shall not be the responsibility of VHI or any other VHI Participant to seek recovery directly from such individual(s).

- 8.3. VHI Liability. By entering into this MSA and any/all applicable Program Addendum/Addenda, Participant has agreed to comply with the same. Accordingly, Participant will not hold VHI, its contractors, employees or agents liable for any damages, losses, liabilities or injuries arising from or related to Participant's participation in or use of any VHI Program or service, except to the extent that such damages, losses, liabilities or injuries are the direct result of VHI's gross negligence or willful misconduct.
- 8.4. VHI Governing Body(-ies) Liability. Participant acknowledges that those individuals serving on the VHI Board of Directors and/or VHI Program committees (the "VHI Governing Body(-ies)") are serving as volunteers performing a public service on behalf of an organization exempt under § 501(c) of the Internal Revenue Code. Participant will not seek to hold any VHI Governing Body(-ies), or any Governing Body members, individually or collectively, liable for any damages, losses, liabilities or injuries arising from or related to the VHI Governing Body(-ies)'s acts or omissions related to VHI.
- 8.5. Insurance. During the Term of this MSA, each Party shall keep in force and maintain, at its expense, insurance coverage in at least the minimum amounts required by Applicable Law including, without limitation, workers' compensation, as well as commercially reasonable amounts of general liability insurance.

9. Order of Precedence. In the event of any conflict or inconsistency between a requirement of Applicable Law, any terms in this MSA including exhibits or attachments, any Program Addendum/Addenda applicable to Participant, other specific terms and conditions adopted by VHI to support VHI Programs and services and incorporated by reference, and the terms of any HIPAA-compliant Business Associate Agreement, the following order of precedence shall control: (1) Applicable Law; (2) the terms of a HIPAA-compliant Business Associate Agreement between VHI and Participant with respect to matters involving Protected Health Information as defined by HIPAA; (3) the terms of any Program Addendum entered into between the Parties with respect to activities under the VHI Program and/or service described therein, including, if applicable, any program policies and procedures incorporated by reference; and (4) the terms of this MSA including exhibits.

10. Miscellaneous.

- 10.1. Governing Law & Venue. This MSA and each/all Program Addendum/Addenda shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to the choice of laws principles thereof and shall be deemed to have been executed, entered into and performed within the Commonwealth of Virginia. Each Party hereby submits to the exclusive jurisdiction of any state or federal court sitting in the Commonwealth of Virginia within twenty-five (25) miles of Richmond, Virginia in any legal proceeding arising out of or relating to this MSA and/or any Program Addendum/Addenda. The Parties each agree that all claims and matters arising out of this MSA and/or Program Addendum/Addenda may be heard and determined in such court, and each Party hereby waives any right to object to such filing on grounds of improper venue, *forum non-conveniens* or other venue-related grounds.

- 10.2. Amendment(s) to MSA. No change or amendment to any of the terms or provisions of this MSA shall be binding unless in writing and signed by the Party against whom the same is sought to be enforced. For the avoidance of doubt, the forgoing statement applies strictly to the terms and provisions of this MSA. Program terms for the VHI Programs and/or other services—including program/service fees and, if applicable, program policies and procedures—are subject to the applicable change management process(es) set forth in the respective Program Addendum/Addenda.
- 10.3. Assignment. Except as stated herein, Participant may not assign or transfer this MSA or any Program Addendum/Addenda, in whole or in part, without the prior and specific written consent of VHI, which consent shall not be unreasonably withheld. Participant may assign this MSA, together with **all** Program Addenda then in effect between the Parties, to any of Participant’s affiliates by providing written notice to VHI, which notice shall include the effective date of assignment. By making/accepting assignment of any Program Addendum/Addenda, the assignor and assignee each represents and warrants that the individual or entity accepting assignment is not, as of the effective date of assignment, an individual or entity that is not eligible to participate in any of the VHI Programs and services that are subject to such assignment (an “Ineligible Entity”); the assignor and assignee shall be jointly and severally liable to VHI for any breach of a Program Addendum that results from assignment to an Ineligible Entity and shall indemnify and defend VHI from and against any/all claims or damages arising out of or relating to assignment to an Ineligible Entity. In the event of assignment by Participant, VHI shall provide notice to Participant of any changes in applicable program and/or service fees that result from such assignment, in accordance with VHI’s standard fee schedule(s), and such fee changes shall be effective as of the effective date of the assignment. VHI may assign this MSA, together with all Program Addenda, to any successor operator of VHI after giving thirty (30) calendar days’ advance, written notice to Participant; this notice may be a general notice to all participants. This MSA is binding on the respective successors and permitted assigns of the parties. Any purported assignment that is not expressly permitted under this section shall be null and void.
- 10.4. Waiver. The failure of a Party, on any occasion, to insist upon strict adherence to and/or exercise any rights under the terms of this MSA, any applicable Program Addendum/Addenda and/or any other exhibits or attachments hereto shall not be considered, in whole or in part, a waiver thereof or of any other term in effect between the Parties.
- 10.5. Entire Agreement. This MSA, together with all applicable Program Addenda, exhibits, attachments, appendices, or other artifacts attached hereto or referenced herein, set forth the entire and only agreement between the Parties. Any representation, promise, or condition, whether oral or written, not incorporated herein, will not be binding upon the Parties.
- 10.6. Severability. In the event that a court of competent jurisdiction determines that any portion of this MSA and/or an applicable Program Addendum is invalid or otherwise unenforceable by law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of such agreement, all of which are hereby declared severable. Further, the court may modify the offending terms as narrowly as possible to give as much effect as possible to the intentions of the Parties.

- 10.7. Relationship of the Parties. The Parties are independent contracting entities. Nothing in this MSA will be construed to create a partnership, agency relationship, or joint venture between the Parties. Neither Party has any authority to bind or make commitments on behalf of the other Party for any purpose, nor may any such Party hold itself out as having such authority. Neither Party may be held liable for the acts or omissions of the other Party.
- 10.8. Counterparts. This MSA may be executed in any number of counterparts, each of which will be deemed an original as against the Party whose signature appears thereon, but all of which taken together will constitute but one and the same instrument.
- 10.9. Third-Party Beneficiaries. There are no intended third-party beneficiaries under this MSA.
- 10.10. Force Majeure. Except for the obligation to pay any fees due and owing under this MSA, together with the applicable Program Addendum/Addenda, neither Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control and that could not have been prevented through the exercise of reasonable care, precautions and/or mitigations, including without limitation, acts of nature, pandemics, epidemics, strike, lockout, labor disputes, disputes with suppliers, accidents, delays in transportation, delays of common carriers, inability to obtain necessary materials, war, civil insurrection, riots, embargoes, or the demands, restrictions or acts or delays of any government (each a "Force Majeure Event"). Notwithstanding the foregoing, a Force Majeure Event does not include economic hardship, reduction in reimbursement, changes in market conditions or insufficiency of funds. This Section shall not release the Party asserting a delay or failure to perform due to a Force Majeure Event from using its reasonable efforts to remove such cause and/or mitigate the effects of such Force Majeure Event, and the defaulting Party shall resume performance hereunder with the utmost dispatch and diligence whenever such causes are sufficiently ameliorated. Notwithstanding the foregoing, if the period of non-performance by VHI exceeds ninety (90) days, Participant may terminate this MSA upon thirty (30) days written notice to VHI.
- 10.11. Time Periods. Any/All time periods specified in this MSA may be changed by the mutual, written consent of VHI and Participant.
- 10.12. Survival. All provisions that logically ought to survive termination of this MSA shall so survive.

This MSA is hereby executed and delivered by officials duly authorized to bind the respective Parties.

PARTICIPANT

VIRGINIA HEALTH INFORMATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Email: _____

Email: _____

Phone: _____

Phone: _____

Date: _____

Date: _____

*For Review Purposes Only;
Electronic Signature Required*

PARTICIPANT CONTACTS

**PARTICIPANT OWNER/ADMINISTRATOR/CEO
CONTACT**

LEGAL CONTACT

Name: _____

Name: _____

Title: _____

Title: _____

Email: _____

Email: _____

Phone: _____

Phone: _____

*For Review Purposes Only;
Electronic Signature Required*

ATTACHMENT 1: Overview of VHI Programs and Services

- A. Advance Health Care Planning Registry (“ACP Registry”).** The Advance Health Care Planning Registry is the state-designated advance care planning (ACP) repository for the Commonwealth of Virginia. ACP documents such as advance directives, portable medical orders and healthcare power of attorney forms are uploaded and stored in the ACP Registry by residents and licensed healthcare providers on behalf of their patients. Alerts are sent to Virginia emergency departments in the event that an ACP document is stored in the Registry for a patient that is seeking care. The Registry may be searched by licensed medical providers in real time via the Registry website and healthcare organizations may implement a query-based exchange with the Registry.
- B. All-Payer Claims Database (APCD).** The APCD is a program under authority of the Virginia Department of Health (VDH) that collects paid medical and pharmacy claims for Virginia residents with commercial, Medicaid and Medicare coverage across all types of healthcare services. Claims and corresponding enrollment records submitted to the Virginia APCD includes information such as patient demographics, location of care across all settings, who provided care to the patient, any diagnoses presented by the patient and the actual allowed amount or “cost” of a particular service.
- C. The EXCHANGE Programs.** VHI’s EXCHANGE Programs support connectivity via one or more national health information exchange networks/frameworks, including:
- The **eHealth Exchange** network;
 - The **Carequality Framework**; and/or
 - **TEFCA** (supported by the eHealth Exchange QHIN).

Each of these networks/frameworks supports certain permitted exchange purposes and exchange modalities for the exchange of health data at a nationwide level, and each is subject to its own Program-specific terms and conditions.

- D. Smartchart Network Program (formerly, the Emergency Department Care Coordination (EDCC) Program).** Established by the Virginia General Assembly as a response to the overutilization of emergency departments seen throughout the country, the EDCC Program is a single, statewide, real-time communication and collaboration program among healthcare providers and other clinical and care management personnel for patients receiving services in Virginia for the purpose of improving the quality of patient care services. In recognition of the growth and utility of the EDCC Program beyond the emergency department setting, the Virginia General Assembly expanded the scope of this program and renamed it the Smartchart Network Program effective January 1, 2024.
- E. Patient Level Data (PLD) System.** Established by the Virginia General Assembly in 1993, the Virginia PLD is a complete database of all licensed Virginia acute care hospital discharges. VHI’s PLD system includes patient demographic, administrative, clinical and financial information on every acute discharge that occurs in Virginia-licensed hospitals. PLD files are produced for every calendar quarter since the third quarter of 1993 and are available approximately six months after the end of each calendar quarter.

- F. Public Health Reporting Pathway (PHRP).** VHI enables connectivity to the Virginia Department of Health for electronic public health reportable data including immunizations, bidirectional immunizations, syndromic surveillance, electronic lab reporting, cancer registry, inter-partner messaging, client matching data for payers' HEDIS measures and newborn screening. The PHRP also supports data exchange between the Virginia Department of Health and the Center for Disease Control and Prevention Immunization (IZ) Gateway and Association of Public Health Laboratories Informatics Messaging Services (AIMS) platform.

- G. ImmuTrack.** VHI's ImmuTrack service provides access to data and analytics on the vaccination status of early childhood patient populations for Virginia healthcare providers and health plans. The Virginia Immunization Information System (VIIS) provides recurring data files for comparison with Participant patient population files within the VHI ImmuTrack portal to support outreach efforts and inoculation tracking.

Business Associate Agreement

This **Business Associate Agreement (“BAA”)** is attached to and made a part of the Master Services Agreement, including the applicable Program Terms, (the “Underlying Agreement” or, simply, the “Agreement”) entered into by and between _____ (the “Participant”) and Virginia Health Information (VHI) (the “Business Associate”) as of _____ (the “Effective Date”). Participant and Business Associate may be individually referred to in this BAA as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Business Associate will have access to Protected Health Information (“PHI”) as part of the services that it provides to Participant in support of the VHI Programs;

WHEREAS, Business Associate requires a HIPAA-compliant business associate agreement with any organization that provides it access to PHI as part of Business Associate’s provision of the VHI Programs to such organization;

NOW, THEREFORE, in consideration of the mutual promises contained in this BAA, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as set forth below.

AGREEMENT

- 1. Defined Terms.** Unless otherwise specifically defined in this BAA, all capitalized terms shall have the meanings provided in either the Underlying Agreement or 45 C.F.R [160.103](#), [164.103](#), and [164.501](#) (“HIPAA”).
- 2. Relationship to the Underlying Agreement.** This BAA supplements the Underlying Agreement. The terms and provisions of this BAA shall control to the extent they are contrary, contradictory or inconsistent with the terms of the Underlying Agreement. Otherwise, the terms and provisions of the Underlying Agreement shall remain in full force and effect.
- 3. Relationship of the Parties & Covered Entity Status.** To the extent Participant may be a business associate to its “Participant Users” (as such term is defined in the Underlying Agreement) and is not, itself, a Covered Entity under HIPAA, Participant represents and warrants that, at all times during the term of this BAA:
 - (a) Participant has a valid business associate agreement in effect with any and all Covered Entity Participant Users (an “Upstream BAA”); and

- (b) Any and all such Upstream BAAs are consistent with, and allow Participant to meet its obligations under, this BAA and the activities contemplated under the Underlying Agreement with respect to the access, use and/or disclosure of PHI in connection with Participant's and its Participant Users' participation in the VHI Programs.

Participant shall be solely responsible for ensuring any and all Upstream BAAs with its Participant Users, as applicable, permit the Parties hereto to act in compliance with this BAA and the applicable Program Terms. In the event Participant's compliance with the terms of this BAA requires modification to any of Participant's Upstream BAAs, Participant shall be responsible for ensuring all necessary amendments and/or addenda or for the execution of a distinct business associate agreement with such Participant User for purposes of participation in the VHI Programs. Participant shall indemnify, defend and hold VHI harmless for any claim, dispute, action, damages, penalties or other legal, equitable or administrative consequences arising out of or related to any inconsistencies between this BAA and any upstream business associate agreement(s), or lack thereof, between Participant and any of Participant's Participants Users with respect to the use or disclosure of PHI in connection with the VHI Programs.

4. Business Associate Obligations.

- a. **Compliance with Privacy and Security Obligations.** Business Associate agrees to comply with those requirements of HIPAA and the HITECH Act that relate to the privacy and security of PHI, and are made applicable to business associates, and such requirements are hereby incorporated into and made a part of this BAA.
- b. **Uses and Disclosure by Business Associate.** As permitted by the terms of this BAA and the Underlying Agreement, Business Associate may make any and all uses and disclosures of PHI necessary: (i) to perform Business Associate's duties and obligations under the Underlying Agreement; (ii) for Business Associate's proper management and administration, in accordance with the Underlying Agreement; and/or (iii) to carry out the legal responsibilities of Business Associate, including, but not limited to, disclosures that are required by Applicable Law. When using or disclosing PHI in accordance with the Underlying Agreement and this BAA, and where applicable under HIPAA, Business Associate will make reasonable efforts to use and disclose only the minimum amount of PHI reasonably necessary to accomplish the intended purpose of the use or disclosure and will comply with any guidance issued by the Secretary of HHS regarding compliance with the minimum necessary standard.
- c. **Safeguards.** Business Associate will comply with all applicable provisions of Applicable Law including, but not limited to, the Privacy Rule and the Security Rule and will implement and maintain reasonable and appropriate administrative, physical and technical safeguards to protect the availability, integrity and confidentiality of PHI in accordance with Applicable Law. Business Associate shall also develop and implement

policies and procedures and maintain documentation of such policies and procedures to assure compliance with Applicable Law including, but not limited to, the Privacy Rule and the Security Rule.

- d. **Reports of Unauthorized Access, Use or Disclosure.** Business Associate shall report in writing to Participant, without unreasonable delay, any use or disclosure of PHI that is not authorized by this BAA or the Agreement. Business Associate shall report in writing to Participant any Breach of Unsecured Protected Health Information no later than five (5) business days after the date on which it (or any member of its workforce or its agent, except the person(s) responsible for the unauthorized use or disclosure or Breach) became aware, or in the exercise of reasonable diligence should have become aware, of such unauthorized use or disclosure or Breach. Notice of any unauthorized use or disclosure or Breach shall include the following information if known at the time of the Notice: (i) describe the event resulting in the unauthorized use or disclosure or Breach; (ii) describe the types of PHI that were involved in the unauthorized use or disclosure or Breach; and (iii) describe what Business Associate is doing to investigate, mitigate losses arising from and protect against any further unauthorized use or disclosure or Breach. Business Associate shall maintain, for no less than six (6) years, all documentation associated with the investigation of a potential unauthorized use or disclosure or Breach, including any information influencing its determination that the use or disclosure was or was not a Breach, and any exceptions applied to the use or disclosure. On request, Business Associate shall provide Participant with the documentation relevant to the circumstances surrounding the unauthorized use or disclosure or Breach. This section shall hereby serve as notice, and no additional notification shall be required, of the routine occurrence of unsuccessful attempted unauthorized access, use, disclosure, modification or destruction of electronic PHI or unsuccessful attempted interference with system operations of a system containing electronic PHI.
- e. **Unsuccessful Security Events.** The Parties agree that this section satisfies any notices necessary by Business Associate to Participant of the ongoing existence and occurrence of unsuccessful security events for which no additional notice to Participant shall be required, except on request, as stated below. For purposes of this BAA, an “Unsuccessful Security Event” includes, 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 Event results in unauthorized access, use, disclosure, modification or destruction of PHI. Notwithstanding the foregoing, in response to a written request by Participant, Business Associate will provide a log or similar documentation of Unsuccessful Security Events over a reasonable period of time specified in Participant’s request.
- f. **Mitigation Procedures.** In the event of any improper use and/or disclosure of PHI, Business Associate shall work cooperatively and diligently with Participant to implement appropriate procedures for mitigating any harmful effects of such improper use and/or disclosure.

- g. **Accounting of Disclosures.** Within twenty-one (21) calendar days of receiving a request from Participant, Business Associate shall make available to Participant such information as is in Business Associate's possession and is required for Participant to make an accounting of disclosures, as required by HIPAA. For disclosures covered by the accounting obligation set forth in HIPAA, Business Associate shall record and provide Participant with the following information: (i) the date of the disclosure; (ii) the name of the entity or person to whom/which the disclosure was made; and (iii) a brief description of the PHI disclosed, if known. In the event an individual requests an accounting of disclosures by Participant directly from Business Associate, Business Associate shall direct such request to Participant in a timely manner.
- h. **Access to Protected Health Information.** If and to the extent Business Associate maintains a Designated Record Set for Participant, Business Associate shall make available to Participant such PHI provided to Business Associate by Participant for so long as Business Associate maintains such information. In the event an individual requests access to Participant-provided PHI directly from Business Associate, Business Associate shall forward such request to Participant in a timely manner. Any provision or denial of access to PHI so requested by an individual shall be the responsibility of Participant.
- i. **Amendment of Protected Health Information.** If and to the extent Business Associate maintains a Designated Record Set for Participant, Business Associate agrees to make an amendment, within a reasonable amount of time of receipt of a written request by Participant, to PHI in the Designated Record Set in accordance with the requirements of HIPAA. In the event an individual directs a request for an amendment to Participant-provided PHI directly to Business Associate, Business Associate shall forward such request to Participant in a timely manner. The review and consideration of a requested amendment shall be the sole responsibility of Participant, as shall Participant's provision of the substance of any authorized amendment to Business Associate.
- j. **De-Identified PHI.** Business Associate agrees that it will not deidentify PHI to which it has access under the Underlying Agreement except as for a purpose permitted under the Program Terms and in accordance with Applicable Law.
- k. **Aggregation.** Business Associate may use PHI to provide Data Aggregation Services to Participant if and to the extent provided for in the Underlying Agreement.
- l. **Subcontractors.** Business Associate shall ensure that any subcontractor to whom it provides PHI agrees to substantially the same restrictions and conditions that apply to Business Associate through this BAA and under Applicable Law. Business Associate shall remain liable to Participant for the acts or omissions of any subcontractor or agent to which Business Associate discloses PHI; however, in no case shall Business Associate be liable for any party who is under a direct contract with Participant or for the acts or omissions of other participants.

- m. **Availability of Books and Records.** Business Associate agrees to make its internal practices, books and records relating to its uses or disclosures of the PHI available to Participant, or, if directed in writing, to the Secretary of HHS for purposes of determining compliance with HIPAA, subject to attorney-client, peer review and other applicable privileges.

5. Participant Obligations.

- a. Participant agrees to use appropriate safeguards to protect the confidentiality and security of PHI in transmitting the PHI to Business Associate pursuant to the Underlying Agreement, the applicable Policies and Procedures and this BAA.
- b. Participant shall notify Business Associate of any limitations in its Notice of Privacy Practices (NPP) that it provides to individuals, as well as any changes to its NPP to the extent that such limitations or changes may affect Business Associate's use or disclosure of PHI.
- c. Participant shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes affect Business Associate's future use or disclosure of PHI.
- d. Participant shall notify Business Associate of any restrictions on the use or disclosure of PHI to which Participant has agreed in accordance with [45 CFR 164.522](#) to the extent that such restrictions may affect Business Associate's use or disclosure of PHI.

6. Term and Termination.

- a. **Term.** This BAA shall become effective on the Effective Date unless Participant and Business Associate mutually agree in writing to an alternative effective date.
- b. **Termination.**
 - i. **Automatic Termination.** This BAA will automatically terminate upon the termination or expiration of the Underlying Agreement. This BAA cannot be terminated by either Party, except as provided for below in the event of a material breach that is not cured, unless the Underlying Agreement is terminated.
 - ii. **Material Breach of Business Associate Agreement.** Notwithstanding any provisions in this BAA, either Party may terminate this BAA if it determines that the other Party has breached a material term of this BAA and has not cured such breach within twenty-one (21) calendar days of receiving notice of the breach. Termination for material breach of this BAA shall, likewise, result in automatic termination of the Underlying Agreement.

iii. **Effect of Termination.** Participant acknowledges that the return of PHI upon termination of this BAA is commercially unreasonable and impractical and that Business Associate needs to retain such PHI for its own proper management and administration and to carry out its legal responsibilities. Therefore, upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Participant, shall extend the protections of this BAA to all PHI provided by Participant in perpetuity.

7. Miscellaneous Terms. This BAA supersedes all prior understandings and agreements, written or oral, between Participant and Business Associate with respect to its subject matter. This BAA is incorporated into the Underlying Agreement. The section titles used in this BAA are provided for convenience only and are not intended to affect the interpretation of any provision. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Participant and Business Associate to comply with Applicable Law. Any and all references in this BAA to a statute or regulation mean the section as in effect or as amended. Participant and Business Associate agree that if Applicable Law changes, this BAA will be deemed to incorporate such changes as necessary for the Parties to operate in compliance with the amended or modified requirements of Applicable Law. Otherwise, this BAA may only be amended by a written instrument signed by both Parties. Nothing in this BAA is to be construed as conferring any right, remedy or claim on any person or entity other than Participant and Business Associate and their respective successors and permitted assigns. This BAA may not be assigned by either Party unless the Underlying Agreement is assigned in accordance with its terms. The unenforceability of any provision in this BAA will not affect the enforceability of any other provision. The waiver of any right or obligation under this BAA will not be deemed to be a continuing waiver or the waiver of another right or obligation. All waivers must be in writing signed by both Parties or the waiving Party, as the case may be. This BAA may be executed in counterparts which, when considered together, will constitute one and the same document. Facsimile or email transmission of a signed photocopy, facsimile document or other electronic image of this BAA will be deemed delivery of an original.

IN WITNESS WHEREOF, Participant and Business Associate have hereby caused this BAA to be executed and delivered, by their respective duly authorized representative, as of the Effective Date.

PARTICIPANT:

VIRGINIA HEALTH INFORMATION:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____