

**CONNECTVIRGINIA MASTER PORTAL SERVICES AGREEMENT  
SERVICE SCHEDULE**

**PARTICIPANT INFORMATION**

Name of Participant: \_\_\_\_\_

Participant Full Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Practice Contact Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

By signing below, Participant agrees to use the ConnectVirginia Portals as specified herein subject to the Terms and Conditions for Use of the ConnectVirginia Portals and any applicable Addenda, Attachments, Exhibits or Statements of Work.

**Basic Services**

[ ]	STREAMLINE Clinical Portal Access (Addendum 1)
[ ]	ConnectVirginia Encounter Alerts Messaging Access(Addendum 2)

\_\_\_\_\_  
**Participant Authorized Signature**

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

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

\_\_\_\_\_  
**ConnectVirginia HIE, Inc. Authorized Representative Signature**

## TERMS AND CONDITIONS FOR USE OF THE CONNECTVIRGINIA PORTALS

1. **Definitions.** Capitalized terms used in this Agreement shall have the meaning set forth in Exhibit 1 of this Agreement.
2. **Structure of this Agreement.** ConnectVirginia offers a variety of services accessible through ConnectVirginia Portals. This Agreement is structured to accommodate that optionality. It includes the Service Schedule, these Terms and Conditions for Use of the ConnectVirginia Portals and separate Addenda that apply to the various services that a Participant can select. Some of these Addenda have attachments that include more information about the option or specific requirements related to the Addenda.
3. **Participant Responsibilities.**
  - 3.1. **Use of the ConnectVirginia Portals.**
    - 3.1.1. Participant desires to use the ConnectVirginia Portals to exchange information with other ConnectVirginia Customers, and Partner Network Participants. Participant and Participant Users shall only use the ConnectVirginia Portals to transact information for a Permitted Purpose in accordance with this Agreement. Neither Participant nor its Participant Users shall use the ConnectVirginia Portals nor any information accessible through the ConnectVirginia Network for any purposes contrary to local, state and federal laws and regulations.
    - 3.1.2. Participant shall not: (a) reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to re-create the ConnectVirginia Portals or its structural framework, or (b) create any derivative works of the ConnectVirginia Portals. Participant shall not modify, enhance or otherwise change the ConnectVirginia Portals without the prior written permission of ConnectVirginia.
  - 3.2. **Subsequent Use of Information.** ConnectVirginia will not maintain a designated record set on behalf of Participant. Participant may retain, use and re-disclose information that it receives through the ConnectVirginia Portals in accordance with Applicable Law and Participant's record retention policies and procedures. If Applicable Law requires that Participant obtain a patient consent or Authorization before it uses or re-discloses information that Participant received through the ConnectVirginia Portals, then it is the responsibility of Participant to obtain this consent or Authorization prior to such use or re-disclosure.
  - 3.3. **Malicious Software.** When performing its obligations under this Agreement and using the ConnectVirginia Portals, Participant will employ security controls that meet applicable industry standards so that the Participant's or Participant Users' use of the ConnectVirginia Portals will not introduce any malware or other program, routine, subroutine, or data designed to disrupt the proper operation of any hardware or software, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause any hardware or software to be improperly accessed, destroyed, damaged, or otherwise diminished, made inoperable or inaccessible. In the absence of applicable industry standards, Participant will use all commercially reasonable efforts to comply with the requirements of this Section.
  - 3.4. **Equipment, Software and Connectivity.** Except as otherwise set forth herein, Participant shall be responsible for procuring and configuring the hardware, software and connectivity that are necessary for Participant and Participant Users to effectively use the ConnectVirginia Portals.
  - 3.5. **Compliance with Policies and Procedures.** Participant shall comply and cause Participant Users to comply with all ConnectVirginia Policies and Procedures that are applicable to the ConnectVirginia

Portals that Participant is using, which are incorporated herein and may be amended from time to time. The specific manner by which Participant chooses to cause its Users to comply shall be left to the Participant but this does not relieve Participant of its obligations. ConnectVirginia will make all applicable ConnectVirginia Policies and Procedures available upon request by email sent to info@connectvirginia.org. If, as a result of an amendment to the applicable ConnectVirginia Policies and Procedures, Participant will not be able to comply with the terms of this Agreement or does not otherwise desire to continue using the ConnectVirginia Portals, then Participant may terminate this Agreement by providing ConnectVirginia with at least ninety (90) days advance written notice of termination and a description of the reasons for such termination.

- 3.6. **Cooperation.** The parties agree to cooperate with each other to accomplish the goals of this Agreement. Each party will appoint an individual who will serve as the primary point of contact for such party on all matters related to this Agreement (the “POC”). Each party may replace its POC by written notice to the other party. If either party reasonably requests, the POCs shall hold status meetings and/or telephone conferences in order to review the status of activities being conducted pursuant to this Agreement.

4. **Participant Users.**

- 4.1. **Identification of Participant Users.** Participant is responsible for controlling access to the ConnectVirginia Portals by individuals whom the Participant wishes to sponsor. Participant shall only sponsor individuals who (i) are employed by, independently contracted to or on the medical staff of Participant’s organization; (ii) who are 18 years of age or older; and (iii) who have a legitimate need to exchange information through the ConnectVirginia Portals. (The term “Participant User” shall be used herein to refer to the Users who meet the foregoing criteria.) Each Participant User must agree to the applicable End User License Agreement prior to being granted access to a ConnectVirginia Portal.
- 4.2. **Duties of Participant when Transacting Information through the ConnectVirginia Portals.** Whenever Participant or Participant Users transact information through a ConnectVirginia Portal, Participant is responsible for ensuring that such transaction is for a Permitted Purpose; is being conducted by a Participant User who has the requisite authority to do so; and is supported by appropriate legal authority for transacting such information including, but not limited to, any consent or Authorization, if required by Applicable Law.
- 4.3. **Enrollment and Maintenance of Participant Users.** Participant shall provide to ConnectVirginia an accurate, complete, virus-free list of all individuals whom the Participant wishes to sponsor, which will include at the least the following information: name, ConnectVirginia Portal to which the individual should have access and User Role (the “User List”). ConnectVirginia is expressly relying upon Participant to prepare and maintain an accurate User List and ConnectVirginia expressly disclaims any responsibility to verify the accuracy of the User List. Participant shall update the User List whenever a Participant User is added or removed. ConnectVirginia shall bear no responsibility for ConnectVirginia Network access by any Participant User whose employment, contract or affiliation with Participant is terminated or who otherwise has his or her access to the ConnectVirginia Network curtailed by Participant, if Participant did not immediately notify ConnectVirginia of such termination or curtailment.
- 4.4. **Training.** Participant shall, with appropriate assistance from ConnectVirginia as provided under this Agreement, ensure that all Participant Users are trained in the use of the applicable ConnectVirginia Portal prior to ConnectVirginia enabling the User on such Portal.
- 4.5. **Monitoring and Auditing.** Participant shall monitor and audit, for system administration, security and other legitimate purposes, all access to and use of the ConnectVirginia Portals by its Participant

Users. Participant shall complete such monitoring and auditing by reviewing an audit report(s) provided by ConnectVirginia to Participant at intervals specified in the ConnectVirginia Policies and Procedures. Based on the results of its monitoring and auditing activities, Participant shall attest to compliance with this Agreement and ConnectVirginia Policies and Procedures as provided in ConnectVirginia Policies and Procedures. If, based on the specific metrics adopted by ConnectVirginia, Participant detects any improper Participant User behavior, it shall immediately report such incident to ConnectVirginia.

4.6. **Responsibility for Participant Users and Participant Unauthorized Users.** The ConnectVirginia Portals may only be used by Participant Users in accordance with this Agreement, the applicable End User License Agreement, and the ConnectVirginia Policies and Procedures. Participant shall be responsible for all acts and omissions of (i) Participant Users, and (ii) all other individuals who access the ConnectVirginia Portals by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from Participant or any Participant User (“Participant Unauthorized Users”).

5. **ConnectVirginia Responsibilities.**

5.1. **Use of the ConnectVirginia Portals.** ConnectVirginia will provide Participant and its Participant Users with access and a right to use the ConnectVirginia Portals set forth in the Service Schedule in accordance with this Agreement.

5.2. **Maintenance and Support.** ConnectVirginia shall provide a Help Desk to support Participant’s and Participant Users’ use of the ConnectVirginia Portals, which will be available as set forth in the ConnectVirginia Policies and Procedures.

5.3. **Monitoring/Audit.**

5.3.1. *Monitoring and Auditing ConnectVirginia.* ConnectVirginia, through its agents, employees and independent contractors, shall, for system administration, security, and other legitimate purposes, monitor and audit all access to and use of the ConnectVirginia Portals and the content of any data or messages communicated from or through the ConnectVirginia Portals, in accordance with the ConnectVirginia Policies and Procedures, as amended from time to time.

5.3.2. *Monitoring and Auditing Participant.* ConnectVirginia shall have the right to conduct such audits or inspections of Participant’s facilities, data and records as it reasonably determines to be necessary to verify that Participant is in compliance with the terms and conditions of this Agreement. Any such audits or inspections shall be conducted during business hours and performed so as to not unreasonably disrupt Participant’s business operations. ConnectVirginia shall provide reasonable advance notice to Participant prior to any such inspection or audit, unless such advance notice, in ConnectVirginia’s opinion, would prejudice ConnectVirginia’s ability to ascertain the information desired from the inspection or audit. Participant shall cooperate with and provide such assistance as ConnectVirginia shall reasonably require in connection with any such inspections and audits, including by making Participant Users and other Participant personnel available to ConnectVirginia for interviews.

5.4. **Compliance with ConnectVirginia Policies and Procedures.** ConnectVirginia shall comply with all ConnectVirginia Policies and Procedures that are applicable to ConnectVirginia, which are incorporated herein and may be amended by ConnectVirginia from time to time. If ConnectVirginia makes a material change to the ConnectVirginia Policies and Procedures that apply to Participant by adding a new, or amending, repealing or replacing any existing, ConnectVirginia Policy and Procedure, ConnectVirginia will provide notice to Participant of such material change at least 30 calendar days prior to the effective date of such material change. Notwithstanding the foregoing, if a

new, amended, repealed or replaced ConnectVirginia Policy and Procedure is required for ConnectVirginia or Participant to comply with any Federal or state statute or regulation that ConnectVirginia determines is applicable to this Agreement or is determined necessary by ConnectVirginia to maintain the security or stability of the ConnectVirginia Portals or the ConnectVirginia Network, ConnectVirginia may make the new, amended, repealed or replaced ConnectVirginia Policies and Procedures effective immediately. ConnectVirginia may not, however, require Participant to comply with such new, amended, repealed or replaced ConnectVirginia Policies and Procedures prior to the legally required effective date of the applicable Federal or state statute or regulation. ConnectVirginia will provide notice to Participant immediately in the event of a change to the ConnectVirginia Policies and Procedures that is required in order to comply with Federal or state statute or regulation or to maintain the security or stability of the ConnectVirginia Portals or the ConnectVirginia Network. ConnectVirginia will make all applicable ConnectVirginia Policies and Procedures available to Participant upon request.

- 5.5. **Training Services.** ConnectVirginia shall provide Participant Users training services as agreed to by the parties. In addition, ConnectVirginia shall provide to Participant standard materials that it can use to train Participant Users to help enable Participant Users to effectively utilize the ConnectVirginia Portals. Participant may purchase from ConnectVirginia additional services to customize these standard training materials for Participant or to provide assistance in training Participant Users.
6. **Intellectual Property.** Participant agrees that: (a) ConnectVirginia owns or licenses all right, title and interest in and to the ConnectVirginia Portals in order to grant the rights herein; (b) this Agreement does not convey to Participant any title in or to, or ownership of, the ConnectVirginia Portals or of any part thereof or any modifications, extensions, enhancements or derivative works made thereto, but only a right of limited access and use in accordance with this Agreement; (c) Participant shall not do anything to jeopardize the interests and rights of ConnectVirginia in and to the ConnectVirginia Portals; and (d) Participant shall not remove any intellectual property, trade dress, product identification, proprietary rights notices, or use restriction notices from any portion of the ConnectVirginia Portals or from any output thereof.
7. **Privacy and Security.** Each party shall be responsible for ensuring that performance of its obligations and exercise of its rights under this Agreement complies with all applicable privacy and security laws, including the HIPAA Regulations, and local and state laws rules and regulations. The parties shall comply with the provisions of the Business Associate Addendum set forth in Exhibit 2 to this Agreement (“Business Associate Addendum”), attached hereto and incorporated by reference herein, documenting the assurances and other requirements respecting the use and disclosure of PHI. In the event that this Agreement is, or activities permitted or required by this Agreement are, inconsistent with or do not satisfy the requirements of any applicable privacy or security law, rule or regulation, the parties shall take any reasonably necessary action to remedy such inconsistency.
8. **Security Incident Notification.** Participant agrees that as soon as it suspects a Security Incident that relates to or impacts information available through a ConnectVirginia Portal, Participant will notify ConnectVirginia. Such notification will include, to the extent known, a description of the suspected Security Incident, a description of how the suspected Security Incident was detected, and whether the suspected Security Incident was an attempted or a successful unauthorized use or disclosure of information obtained through a ConnectVirginia Portal. In accordance with Section 3.6 of this Agreement (“Cooperation”), Participant will cooperate with ConnectVirginia in the full investigation of all Security Incidents. Nothing in this Section 8 shall be deemed to supersede Participant’s obligations (if any) under relevant security incident, breach notification or confidentiality provisions of applicable law. For purposes of this Section 8, Security Incident shall have the meaning assigned to it in the HIPAA Regulations.

## 9. **Fees and Payment**

- 9.1. **Fees.** To the extent that there are any fees associated with the services provided by ConnectVirginia pursuant to this Agreement or Participant's use of the ConnectVirginia Portals, such fees shall be set forth in the Service Schedule, attached hereto and incorporated herein ("Fees"). Participant shall pay all invoices within thirty (30) days after receipt thereof. Any collection costs, attorney's fees or other expenses reasonably incurred by ConnectVirginia in collecting amounts due under this Agreement are the responsibility of Participant. ConnectVirginia may change the Fees in accordance with Section 16.3.
- 9.2. **Suspension of Service.** In the event Participant fails to make any payment required hereunder for more than forty-five (45) days after such payment is due, ConnectVirginia, without limitation to any other remedy it may have, may suspend Participant's use of the ConnectVirginia Portals.
- 9.3. **Sales, Use and Other Taxes.** In addition to the Fees and other charges described herein, Participant shall also pay ConnectVirginia any federal, state or local taxes, duties, excises or other similar amounts, however designated, that ConnectVirginia may be required by law to collect or pay upon the sale, use, licensing or delivery of ConnectVirginia or any other matter related to this Agreement. In the event Participant claims that no such taxes are due, it shall provide ConnectVirginia, at ConnectVirginia's request, with copies of such documentation as may be required by the taxing authorities.

## 10. **Participant Representations and Warranties**

- 10.1. **Accurate Participant Information.** Participant has provided, and shall continue to provide, ConnectVirginia with all information required by this Agreement, reasonably requested by ConnectVirginia, or needed by ConnectVirginia to discharge its duties under this Agreement or Applicable Law, including during the Dispute Resolution Process. Any information provided by Participant to ConnectVirginia shall be responsive and accurate to the issue or problem about which the information applies. Participant shall provide notice to ConnectVirginia if any information provided by the Participant to ConnectVirginia materially changes after it is provided and shall be responsible for updating the information. Participant acknowledges that ConnectVirginia reserves the right to confirm or otherwise verify or check, in its sole discretion, the completeness and accuracy of any information provided by Participant at any time and Participant shall reasonably cooperate with ConnectVirginia in such actions, given reasonable prior notice.
- 10.2. **Compliance with the Agreement.** Except to the extent prohibited by Applicable Law, Participant shall comply fully with all provisions of this Agreement. To the extent that Participant delegates its duties under this Agreement to a third party (by contract or otherwise) and such third party will have access to a ConnectVirginia Portal, that delegation shall be in writing and require the third party to agree to comply with and be bound by all of the provisions that apply through this Agreement to Participant.
- 10.3. **Compliance with Laws.** Participant shall, at all times, fully comply with all applicable statutes and regulations of the state(s) in which Participant operates, as well as all applicable Federal statutes, regulations, standards and policy requirements relating to this Agreement and to the use and exchange of electronic health information.
- 10.4. **Absence of Final Orders.** Participant 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 organization, which will materially impact Participant's ability to fulfill its obligations under this Agreement. Participant shall inform ConnectVirginia if at any point during the term of this Agreement it becomes subject to such an order.

10.5. **Federal Program Participation.** Participant hereby represents and warrants that it is not excluded, debarred, or otherwise ineligible from participating in Federal contracts, subcontracts, grants, and non-procurement transactions ("Federal Programs"). Participant shall immediately provide written notice to ConnectVirginia if it is suspended, proposed for debarment or other exclusion, or otherwise disqualified or declared ineligible from participating in a Federal Program for any reason, or is a party to a legal proceeding that may result in any such action.

10.6. **Express Warranty of Authority.** Participant warrants and represents that it has full power and authority to enter into and perform this Agreement. The representative signing this Agreement on behalf of Participant has been properly authorized and empowered to enter into this Agreement.

## 11. ConnectVirginia Representations and Warranties

11.1. **Compliance with Laws.** ConnectVirginia 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 Agreement and to the use and exchange of electronic health information.

11.2. **Express Warranty of Authority.** ConnectVirginia warrants and represents that it has full power and authority to enter into and perform this Agreement. The representative signing this Agreement on behalf of ConnectVirginia has been properly authorized and empowered to enter into this Agreement.

11.3. **Warranty Pertaining to Malware.** To the best of its knowledge, ConnectVirginia does not believe that the ConnectVirginia Portals will contain or introduce any viruses, worms, unauthorized cookies, trojans, trap doors, back doors, timers, clocks, counters, malicious software, "malware," or other program, routine, subroutine, or data that will disrupt the proper operation of the ConnectVirginia Portals. Notwithstanding the foregoing, ConnectVirginia does not make any representations or warranties regarding the information that Participant sends or receives through the ConnectVirginia Portals.

11.4. **Warranty Pertaining to Intellectual Property.** ConnectVirginia warrants, represents and covenants that the ConnectVirginia Portals do not, and will not, to the best of its knowledge, infringe any patent, trademark, or copyright of any third party; and ConnectVirginia will take no action that would adversely affect any license pertaining to the ConnectVirginia Portals or any right of Participant to use the ConnectVirginia Portals.

11.5. **Compliance with the Agreement.** Except to the extent prohibited by Applicable Law, ConnectVirginia shall comply fully with all provisions of this Agreement. To the extent that ConnectVirginia delegates its duties under this Agreement to a third party (by contract or otherwise) and such third party will have access to a ConnectVirginia Portal, that delegation shall be in writing and require the third party to comply with and be bound by all of the provisions that apply through this Agreement to ConnectVirginia.

11.6. **Absence of Final Orders.** ConnectVirginia 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 organization, which will materially impact ConnectVirginia's ability to fulfill its obligations under this Agreement. ConnectVirginia shall inform Participant if at any point during the term of this Agreement it becomes subject to such an order.

## 12. Disclaimers

12.1. **Availability of ConnectVirginia Portals.** Participant acknowledges and agrees that because the ConnectVirginia Portals: (a) are accessed over the Internet, (b) rely, in part, on the existence and proper operation of equipment and software that is outside of the control of ConnectVirginia, and (c) rely on access to information from, and the provision of information controlled by, third parties,

ConnectVirginia makes no guarantee as to the availability or accessibility of the ConnectVirginia Portals or any information contained therein at any particular point in time.

12.2. **Carrier Lines.** The parties acknowledge that access to the ConnectVirginia Portals is provided over various facilities and communications lines, and information shall be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which may be beyond the parties' control. Provided the parties use reasonable security measures, no less stringent than those directives, instructions, and specifications contained in this Agreement and the ConnectVirginia Policies and Procedures, neither party assumes any liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted over those carrier lines, which are beyond the party's control, or any delay, failure, interruption, interception, loss, transmission, or corruption of any information attributable to transmission over those carrier lines which are beyond the party's control. Use of the carrier lines is solely at Participant's risk and is subject to all Applicable Law.

12.3. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, CONNECTVIRGINIA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW AS TO ANY MATTER WITH RESPECT TO CONNECTVIRGINIA, THE CONNECTVIRGINIA NETWORK, THE CONNECTVIRGINIA PORTALS OR ANY SERVICES PROVIDED BY CONNECTVIRGINIA UNDER THIS AGREEMENT. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, THERE IS NO WARRANTY THAT THE CONNECTVIRGINIA PORTALS OR INFORMATION AVAILABLE THROUGH THE CONNECTVIRGINIA PORTALS IS TRUE, COMPLETE, CORRECT, OR ERROR-FREE, VIRUS-FREE OR UNINTERRUPTED. CONNECTVIRGINIA SHALL HAVE NO LIABILITY WHATSOEVER FOR INFORMATION TRANSACTED THROUGH THE CONNECTVIRGINIA PORTALS, INCLUDING WITHOUT LIMITATION ITS INTEGRITY AND QUALITY. EXCEPT AS SET FORTH HEREIN, CONNECTVIRGINIA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM INFRINGEMENT AND ANY IMPLIED WARRANTIES ALLEGEDLY ARISING FROM TRADE USAGE OR COURSE OF DEALING. THE CONNECTVIRGINIA PORTALS ARE NOT ELECTRONIC HEALTH RECORDS NOR ARE THEY INTENDED TO REPLACE ANY OFFICIAL MEDICAL RECORDS MAINTAINED BY PARTICIPANT. CONNECTVIRGINIA DOES NOT WARRANT AND WILL NOT BE LIABLE FOR THE INTERPRETATION OF ANY OF THE INFORMATION AVAILABLE THROUGH THE CONNECTVIRGINIA PORTALS OR FOR ANY USE OF THE CONNECTVIRGINIA PORTALS BY PARTICIPANT, PARTICIPANT USERS OR PARTICIPANT UNAUTHORIZED USERS. ANY USE BY PARTICIPANT OR ITS PARTICIPANT USERS OF THE CONNECTVIRGINIA PORTALS, INFORMATION AVAILABLE THROUGH THE CONNECTVIRGINIA PORTALS, INTERPRETATIONS OR DECISIONS RESULTING THEREFROM ARE AT THE SOLE RISK OF PARTICIPANT.

12.4. **DISCLAIMER OF INCIDENTAL, SPECIAL AND CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF CONNECTVIRGINIA OR THE CONNECTVIRGINIA PORTALS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE



POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, EQUIPMENT USE, DATA OR INFORMATION OF ANY KIND.

13. **Liability/Indemnification**

13.1. **Indemnification by Participant.** Participant will indemnify and hold ConnectVirginia and its employees, agents, subcontractors and licensors harmless from and against any and all liability (including reasonable attorney's fees), injury or damage that is occasioned through use of the ConnectVirginia Portals by any of Participant, Participant Users, and Participant Unauthorized Users, except to the extent such liability, loss, damage, cost or expense is caused by ConnectVirginia's breach of this Agreement, negligence, gross negligence or willful misconduct.

13.2. **Liability Cap.** To the fullest extent permitted by law, ConnectVirginia, its licensors, affiliates, contractors, agents or employees' total liability for any claim by Participant under this Agreement, will be limited to the fees paid by Participant to ConnectVirginia for the services provided hereunder for the twelve (12) months prior to the month in which the claim arose.

14. **Term, Suspension and Termination**

14.1. **Initial Term.** The initial term of this Agreement shall commence on the Effective Date and expire on December 31<sup>st</sup> of the first calendar year following the Effective Date ("Initial Term"). By way of example only, if the Effective Date of this Agreement is any time during 2015, the Initial Term will expire on December 31, 2016. Upon the expiration of the Initial Term, this Agreement shall automatically be renewed for successive one year terms (the "Renewal Term") unless terminated or not renewed in accordance with this Section 14 ("Term, Suspension and Termination").

14.2. **Expiration; Renewal; Termination.** Either party may allow this Agreement to expire at the end of the Initial Term or any Renewal Term by providing written notice of its intent to the other party not less than 90 days prior to the expiration of the Initial Term or any Renewal Term. Notwithstanding anything herein to the contrary, if ConnectVirginia decides to discontinue providing health information exchange services, it may terminate this Agreement by providing notice to Participant not less than 30 days prior to such cessation.

14.3. **Suspension of Service.** Either ConnectVirginia or Participant may suspend Participant's or a Participant User's use of a ConnectVirginia Portal in accordance with the ConnectVirginia Policies and Procedures.

14.4. **Termination For Cause by ConnectVirginia.** ConnectVirginia may terminate this Agreement and Participant's right to use a ConnectVirginia Portal after taking a suspension action in accordance with Section 14.3 of this Agreement ("Suspension of Service") if Participant has not completed the agreed upon plan of correction within ninety (90) days following such agreement. Participant may appeal such termination through the Dispute Resolution Process. However, during the pendency of any such appeal, Participant may continue to be suspended from using a ConnectVirginia Portal at the discretion of ConnectVirginia. Notwithstanding the foregoing, ConnectVirginia may also terminate Participant for non-payment of fees, regardless of whether ConnectVirginia suspended Participant pursuant to Section 9.2 of this Agreement, if Participant fails to pay the Fees within 60 days of the due date.

14.5. **Termination of Individual Participant Users by ConnectVirginia.** In the event of any of the following, ConnectVirginia may terminate a Participant User's access to a ConnectVirginia Portal: (i) suspension of such Participant User pursuant to Section 14.3 ("Suspension of Service") if the issue leading to the suspension is not resolved to the satisfaction of ConnectVirginia within 30 days of the initial suspension; (ii) Participant User violates any of the terms and conditions of this Agreement, the applicable End User License Agreement, or the ConnectVirginia Policies and Procedures; (iii) upon ConnectVirginia discovering any error or omission in the information that Participant or Participant User provided to ConnectVirginia during the enrollment process; (iv) Participant User has not used

the ConnectVirginia Portal at all for a period of six (6) months; (v) Participant User's relationship with Participant is terminated, in which case the Participant is responsible for notifying ConnectVirginia of such termination pursuant to Section 4.3 ("Enrollment and Maintenance of Participant Users"); or (vi) the Agreement terminates.

**14.6. Termination For Cause by Participant.** Should ConnectVirginia commit an Event of Default that is not cured within the Cure Period, Participant may terminate this Agreement.

**14.7. Effect of Termination.** Upon termination hereof for any reason, Participant agrees to immediately cease all use of the ConnectVirginia Portals, and cause all use by Participant Users to immediately cease. To the extent that Participant has pre-paid any Fees, Participant will not receive any refund of such pre-paid Fees unless the Participant terminates this Agreement pursuant to Section 14.6 in which case Participant shall receive a pro-rata refund of any pre-paid Fees.

**15. Confidentiality.** Each party agrees to use the other party's Confidential Information only as authorized in this Agreement and to perform its obligations in this Agreement, and for no other purpose. Each party hereto shall act as a Discloser and a Recipient, accordingly. A Recipient will disclose the Confidential Information it receives only to its employees and agents who require such knowledge and use in the ordinary course and scope of their employment or retention, and are obligated to protect the confidentiality of such Confidential Information in a manner substantially equivalent to the terms required herein for treatment of Confidential Information. Otherwise, a Recipient agrees not to disclose the Confidential Information received to anyone. In the event a Recipient has any question about whether information and/or materials it receives is Confidential Information, it shall treat the same as if it were Confidential Information.

#### **16. Miscellaneous/General**

**16.1. Notices.** All notices, unless otherwise specified in this Agreement, shall be given in writing by electronic, registered or certified mail, return receipt requested to Participant at the address set forth on the Service Schedule and to ConnectVirginia at 4900 Cox Road, Ste. 245, Glen Allen, Virginia 23060. Unless otherwise expressly provided herein, notices shall be effective upon receipt in the case of personal delivery or electronic mail, or upon the delivery or refusal date specified on the return receipt in the case of registered or certified mail.

**16.2. Governing Law.** This Agreement 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 Virginia. Any action brought pursuant hereto shall be brought in the state or federal courts of the Commonwealth of Virginia. The parties agree that they will not oppose this jurisdiction.

**16.3. Amendment.** This Agreement may be amended by ConnectVirginia from time to time. ConnectVirginia will provide Participant with notice of such amendment at least ninety (90) days prior to the effective date of such amendment. If ConnectVirginia provides Participant with notice of an amendment to this Agreement, Participant shall be required to sign such amendment or terminate participation by providing at least thirty (30) days prior written notice of such termination to ConnectVirginia. Notwithstanding the foregoing, no amendment to this Agreement shall be unilaterally proposed to Participant unless such amendment is proposed to all similarly situated ConnectVirginia Participants.

**16.4. Assignment.** ConnectVirginia may assign this Agreement to any of its Affiliates. This Agreement is binding on the respective successors and permitted assigns of the parties. Other than the permitted assignment by ConnectVirginia to any of its Affiliates, neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Any purported assignment without such consent shall be null and void. For the purposes of this Section 16.4, "Affiliates" shall

mean organizations that are directly or indirectly, in control of, controlled by, or under common control with ConnectVirginia.

- 16.5. **Survival.** Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.
- 16.6. **Waiver.** No failure or delay by any Participant in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.
- 16.7. **Entire Agreement.** This Agreement, together with all Attachments, Exhibits and Schedules, constitutes the entire agreement between the parties and supersedes all other prior and contemporaneous agreements, understandings, and commitments between ConnectVirginia and Participant with respect to the subject matter hereof.
- 16.8. **Validity of Provisions.** In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of this Agreement, invalid, void or otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect.
- 16.9. **Priority.** In the event of any conflict or inconsistency between a provision in the body of this Agreement and any Attachment, Schedule or Exhibit hereof, the terms contained in the body of this Agreement shall prevail.
- 16.10. **Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify, or aid in the interpretation or construction of meaning of the provisions of this Agreement. All references in this instrument to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Agreement. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision.
- 16.11. **Relationship of the Parties.** The Parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the Parties.
- 16.12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the party whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.
- 16.13. **Third-Party Beneficiaries.** There shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.
- 16.14. **Force Majeure.** Neither party shall be liable for any costs or damages due to failure in performance, delay, loss or damage under this Agreement arising out of any cause or event clearly not within the reasonable control of such party and without its fault or negligence.
- 16.15. **Time Periods.** Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of the parties.
- 16.16. **Use of Name.** Except as otherwise provided in this Agreement, neither party may use the other's name in any form of media, whether written, electronic, video or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, the parties may each issue announcements concerning this Agreement to the trade press and industry participants which includes the name of the other party and a general description of operations, provided the announcement is provided for review in advance to the other party.

## Exhibit 1 – Definitions

1. “Agreement” means the Service Schedule, the Terms and Conditions for use of the ConnectVirginia Portals and all Addenda, Attachments, Exhibits or Statements of Work specifically incorporated by reference therein.
2. “Applicable Law” means (i) for the Participant, all applicable statutes and regulations of the State(s) or jurisdiction(s) in which the Participant operates, as well as all applicable Federal statutes, regulations, standards and policy requirements; and (ii) for ConnectVirginia, all applicable statutes and regulations of the state(s) in which it operates, as well as all applicable Federal statutes, regulations, standards and policy requirements.
3. “Authorization” shall have the meaning and include the requirements set forth at 45 CFR § 164.508 of the HIPAA Regulations and include any similar but additional requirements under Applicable Law.
4. “Confidential Information” means proprietary and confidential materials or information in any medium or format that a Discloser labels as such upon disclosure to a Recipient, including but not limited to: (i) the fact of, reasons for and contents of this Agreement, (ii) a Discloser’s designs, drawings, procedures, trade secrets, processes, specifications, source code, research and development, pricing, passwords and identifiers, new products, and marketing plans, (iii) proprietary financial and business information of a Discloser, (iv) non-public information concerning Participant Users, (v) all other non-public information designated by either party in writing as confidential or proprietary. Confidential Information does not include any information which is or becomes known publicly through no fault of a Recipient; or is learned by a Recipient from a third party entitled to disclose it; or is already known to a Recipient before receipt from a Discloser as documented by Recipient’s written records; or must be disclosed under operation of law, provided that a Discloser gives Recipient reasonable notice to allow the non-disclosing party its rights to object to such disclosure and then only to the minimum extent necessary to comply with the operation of the law.
5. “ConnectVirginia Customer” means an individual or organization who has been authorized to exchange information through the ConnectVirginia Network. This includes ConnectVirginia EXCHANGE Nodes, ConnectVirginia EXCHANGE Node Users, ConnectVirginia Portal Participants, ConnectVirginia Portal Users, and PHRP Registrants.
6. “ConnectVirginia Network” means the Internet-based network established by ConnectVirginia that allows ConnectVirginia Customers to exchange information with each other and others, as permitted by ConnectVirginia. The ConnectVirginia Network may include, but not be limited to, the ConnectVirginia Portals, ConnectVirginia EXCHANGE and the Public Health Reporting Pathway and may be modified by ConnectVirginia from time to time in its discretion.
7. “ConnectVirginia Policies and Procedures” means the policies and procedures developed by ConnectVirginia that describe (i) management, operation and maintenance of the ConnectVirginia Network; (ii) qualifications, requirements and activities of ConnectVirginia Customers when exchanging information using the ConnectVirginia Network; and (iii) support of ConnectVirginia Participants.
8. “ConnectVirginia Portal” means any online portal provided by ConnectVirginia to ConnectVirginia Customers for the purpose of sending or receiving patient records or information, including, but not limited to, the CVEAM Portal and the *STREAMLINE* Clinical Portal.
9. “ConnectVirginia Portal Participant” means an organization that has entered into the ConnectVirginia Master Portal Services Agreement with ConnectVirginia to electronically exchange information through one or more of the ConnectVirginia Portals.

10. "ConnectVirginia Portal User" means an individual who has been authorized by ConnectVirginia or a ConnectVirginia Portal Participant to access one or more of the ConnectVirginia Portals.
11. "Cure Period" means the ninety day period after ConnectVirginia's receipt of written notice by Participant of an Event of Default or, in the event that ConnectVirginia has commenced a cure within such ninety day period, but such cure cannot be completed within such time, the period reasonably required by ConnectVirginia to rectify the Event of Default.
12. "Discloser" means a party that discloses Confidential Information to a Recipient.
13. "Dispute" means any controversy, dispute, or disagreement arising out of or relating to this Agreement.
14. "Event of Default" means a default in the performance of any material obligation under this Agreement or breach of any material provision contained in this Agreement.
15. "HIPAA Regulations" means the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as in effect on the Effective Date of this Agreement and as may be amended, modified, or renumbered.
16. "Material Defect" means programming errors that materially and adversely affect the operation of the ConnectVirginia Network.
17. "*STREAMLINE* Clinical Portal" or "*STREAMLINE* Portal" means an Internet-based user interface provided by ConnectVirginia that allows ConnectVirginia Users to view and exchange information through the ConnectVirginia Network.
18. "Participant Users" means those ConnectVirginia Portal Users whose participation in the ConnectVirginia Network is sponsored or authorized by Participant.
19. "Partner Network" means any electronic data exchange network with which ConnectVirginia has a relationship which allows ConnectVirginia Customers to exchange information with the other network's participants and users and vice versa.
20. "Partner Network Participants" means any individual or organization who has been authorized to use a ConnectVirginia Partner Network and has the ability to exchange data with ConnectVirginia Customers through the ConnectVirginia Network.
21. "Permitted Purposes" means those purposes, identified in the ConnectVirginia Policies and Procedures, for which Participant and Participant Users may use the ConnectVirginia Portals to exchange health information.
22. "Protected Health Information" or "PHI" shall have the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.
23. "Recipient" means a party that receives Confidential Information from a Discloser.
24. "Request" means a query for information sent through the *STREAMLINE* Clinical Portal by a ConnectVirginia Customer for a Permitted Purpose and in accordance with the Agreement or the *STREAMLINE* Portal End User License Agreement.
25. "Unauthorized Users" means all individuals other than Participant Users who access a ConnectVirginia Portal through Participant or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from Participant or any Participant User.



## Exhibit 2 – Business Associate Addendum

### A. INTRODUCTION.

1. Participant is a Covered Entity under the federal Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing regulations, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, *Standards for Privacy of Individually Identifiable Health Information*, and 45 C.F.R. Part 164, Subpart C, *Security Standards for the Protection of Electronic Protected Health Information* (collectively, the “Privacy and Security Standards”);
2. Business Associate is retained by Participant and, in this capacity, serves as a Business Associate to Participant under the Privacy and Security Standards.
3. The Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921-17954), and regulations promulgated thereunder (collectively, the “HITECH Act”) impose certain obligations upon Business Associates with respect to compliance with the Privacy and Security Standards.
4. The parties have a prior written agreement (hereinafter referred to as the “Agreement”) that governs Participant’s ability to access and use the ConnectVirginia Network to exchange health information, and in performing duties in accordance with that Agreement, the Business Associate may use and/or disclose Protected Health Information, as defined herein.
5. Both parties are committed to complying with the Privacy and Security Standards, and this Business Associate Addendum sets forth the terms on which the parties shall work cooperatively to achieve compliance.

**B. DEFINITIONS.** Terms used in this Business Associate Addendum shall have the same meanings as those terms in the Privacy and Security Standards and the HITECH Act or the Agreement.

**C. MODIFICATION OF AGREEMENT.** This Business Associate Addendum modifies and amends the Agreement presently existing between the parties, inclusive of all other prior amendments or modifications to such Agreement. The terms and provisions of this Business Associate Addendum shall control to the extent they are contrary, contradictory or inconsistent with the terms of the Agreement. Otherwise, the terms and provisions of the Agreement shall remain in full force and effect.

### D. OBLIGATIONS OF BUSINESS ASSOCIATE

**1. Compliance with Privacy and Security Obligations.** Consistent with Section 13404(a) of the HITECH Act, Business Associate agrees that the requirements of the HITECH Act that relate to privacy and security and are made applicable with respect to Participant shall also be applicable to Business Associate, and are hereby incorporated into and made a part of this Business Associate Addendum. Without limitation, Business Associate agrees that:

- (a) Section 13401(a) of the HITECH Act causes 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 to apply directly to Business Associate in the same manner that such sections apply to Participant; and

(b) Section 13404(a) of the HITECH Act causes the provisions of 45 C.F.R. § 164.504(e) governing use and disclosure of Protected Health Information to apply directly to Business Associate in the same manner that such section applies to Participant.

**2. Permitted Uses and Disclosures of Protected Health Information.** Pursuant to the Agreement, Business Associate provides services for and on behalf of Participant that may involve the use and/or disclosure of Protected Health Information. As permitted by the terms of this Business Associate Addendum, the Agreement and as otherwise permitted by the Privacy and Security Standards or as required by law, Business Associate may make any and all uses and disclosures of Protected Health Information necessary to perform its duties and obligations under the Agreement. Participant explicitly acknowledges and agrees that Business Associate's disclosure, by and through its agents or subcontractors, of Protected Health Information received from Participant pursuant to the provisions of the Agreement including, but not limited to, disclosure to ConnectVirginia Customers (as those terms are defined in the Agreement), shall be considered permitted disclosure of Protected Health Information for purposes of the Agreement and this Business Associate Addendum. All other uses and disclosures not set forth herein are prohibited.

**3. Use of Protected Health Information.** Business Associate shall not, and shall ensure that its partners, directors, officers, employees, contractors and agents do not, use Protected Health Information received from Participant in any manner that would constitute a violation of the Privacy and Security Standards if used by Participant, except that Business Associate may use Protected Health Information: (a) for Business Associate's proper management and administrative services in accordance with the Agreement between Business Associate and Participant; or (b) to carry out the legal responsibilities of Business Associate.

**4. Disclosure of Protected Health Information.** Business Associate shall not, and shall ensure that its partners, directors, officers, employees, contractors and agents do not, disclose Protected Health Information received from Participant in any manner that would constitute a violation of the Privacy and Security Standards if disclosed by Participant, except that Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate; or to carry out the legal responsibilities of Business Associate. Disclosures for these purposes are only valid if the disclosure is required by law, or Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that the third party will (a) abide by the same restrictions and conditions that apply to Business Associate with respect to such Protected Health Information, (b) hold such Protected Health Information confidential as provided pursuant to this Business Associate Addendum and only disclose such Information as required by law or for the purposes for which it was disclosed to such third party, (c) immediately notify Business Associate of any Breaches of the confidentiality of the Protected Health Information, to the extent it has obtained knowledge of such Breach, (d) provide information regarding the Breach so that Business Associate may comply with the requirements set forth at 45 C.F.R. § 164.400 et seq. as more fully described in Section 8 below, and (e) take reasonable steps to mitigate the harm to the individual impacted by the Breach and to protect against future Breaches.

**5. Subcontractors.** In accordance with 45 C.F.R. §164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree in a Business Associate Agreement to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information. Upon request, Business Associate shall furnish Participant with documentation regarding such subcontractor agreements. In furtherance of the foregoing, Business Associate shall implement and maintain sanctions against subcontractors, if any, who violate restrictions and conditions imposed consistent with this Section 5. Business Associate shall terminate any agreement with a subcontractor who



fails to comply fully with such restrictions and conditions or, if termination is not feasible, report all such violations promptly and in writing to Participant.

**6. Minimum Necessary.** In accordance with the ConnectVirginia Policies and Procedures, Business Associate agrees to use, disclose or request only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder. Business Associate shall comply with any guidance issued by the Secretary regarding compliance with the minimum necessary standard.

**7. Safeguards Against Misuse of Information.** Business Associate agrees that it will implement all appropriate and commercially reasonable safeguards consistent with the Privacy and Security Standards to maintain the security of, and prevent the improper use or disclosure of, Protected Health Information. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Participant, as required by the Privacy and Security Standards. In the event of any improper use and/or disclosure of Protected Health Information, Business Associate shall work, and where practicable Participant shall work cooperatively with Business Associate, to implement procedures for mitigating the harmful effects of such improper use and/or disclosure.

**8. Breach Notification.**

(a) Business Associate shall report in writing to Participant (i) any use or disclosure of Protected Health Information that is not authorized by this Business Associate Addendum or the Agreement including, but not limited to, Security Incidents, and (ii) any Breach of Unsecured Protected Health Information. Business Associate shall deliver such written notice within ten (10) business days of the date on which Business Associate (or any member of Business Associate's workforce or agent of Business Associate except the person(s) responsible for the 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 (i) identify each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed in such unauthorized use or disclosure or Breach, and (ii) provide with respect to each such individual all information required to be included in the notice of Breach to be delivered by Participant to each such individual pursuant to the HITECH Act. Business Associate shall maintain all documentation associated with the investigation of any unauthorized use or disclosure of Protected Health Information or a potential Breach of Unsecured Protected Health Information and shall provide Participant with such documentation upon request.

(b) The Parties acknowledge and agree that this section constitutes notice by Business Associate to Participant of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents for which no additional notice to Participant shall be required. As used in this paragraph, "Unsuccessful Security Incidents" means pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Health Information.

**9. Access to Information.** Within five (5) days of a request by Participant for access to Protected Health Information about an individual contained in a Designated Record Set, Business Associate shall make available to Participant such Protected Health Information for so long as such information is maintained by Business Associate in a Designated Record Set. In the event any individual requests access to Participant-provided Protected Health Information directly from Business Associate, Business Associate

shall forward such request to Participant. Any denials of access to the Protected Health Information requested shall be the responsibility of Participant.

**10. Availability of Protected Health Information for Amendment.** Within five (5) days of receipt of a request from Participant for the amendment of an individual's Protected Health Information or record regarding an individual contained in a Designated Record Set, for as long as the Protected Health Information is maintained by Business Associate in a Designated Record Set, Business Associate shall provide such information to Participant for amendment and shall incorporate such amendment as may be required by 45 C.F.R. § 164.526. Business Associate shall refer to Participant any requests received by Business Associate for amendments to Participant-provided Protected Health Information. Any review and consideration of a requested amendment shall be the responsibility of Participant.

**11. Accounting of Disclosures.** Upon 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, as required by 45 C.F.R. § 164.528. Business Associate shall provide Participant with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and, if known, the address of such recipient entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure, which shall include an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward such request to Participant. It shall be Participant's responsibility to prepare and deliver any such accounting requested.

**12. De-Identification and Aggregation.** Business Associate may use Protected Health Information received from, or created or received by Business Associate on behalf of, Participant to de-identify such information. Business Associate may also use Protected Health Information to provide data aggregation services to Business Associates participants as permitted by 42 C.F.R. 164.504(e)(2)(i)(B).

**13. Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, created or received by Business Associate on behalf of Participant, available to the Secretary (or its designee) for purposes of determining Participant's and Business Associate's compliance with the Privacy and Security Standards, subject to attorney-client and other applicable privileges.

**14. Business Associate's Performance of Participant's Obligations.** To the extent Business Associate is to carry out one or more of Participant's obligations under the Privacy Rule at Subpart E of 45 C.F.R. Part 164, Business Associate will comply with the requirements of the Privacy Rule that apply to Participant in the performance of such obligations.

## **E. OBLIGATIONS OF PARTICIPANT**

**1. Safeguards.** Participant will use appropriate safeguards to maintain the confidentiality, privacy and security of PHI in transacting same using the ConnectVirginia Network pursuant to the Agreement.

**2. Notice of Privacy Practices.** Participant shall notify Business Associate of any limitation(s) in its notice of privacy practices, to the extent that Participant is aware of such limitations and such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.

3. **Changes to Permissions.** Participant shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that Participant is aware of such changes and such changes affect Business Associate's use or disclosure of Protected Health Information.

4. **Restrictions.** Participant shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Participant has agreed to in accordance with 45 C.F.R. 164.522, to the extent that Participant is aware of such restriction and such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. **Prohibited Requests.** Participant shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Participant, except as provided in Section D.3 of this Business Associate Addendum.

## **F. TERMS AND TERMINATION**

1. **Term.** This Business Associate Addendum shall become effective on the Effective Date indicated above, unless the parties otherwise mutually agree in writing to an alternative effective date.

### **2. Termination.**

(a) **Automatic Termination.** This Business Associate Addendum will automatically terminate upon the termination or expiration of the Agreement.

(b) **Material Breach of Business Associate Addendum.** Notwithstanding any provisions in this Business Associate Addendum or the Agreement to the contrary, either party may terminate the Agreement if it determines that the other party has breached a material term of this Business Associate Addendum. The non-breaching party shall allow the breaching party thirty (30) calendar days to cure the alleged breach prior to terminating the Agreement and this Business Associate Addendum.

(c) **Effect of Termination.** Upon termination of this Business Associate Addendum, Business Associate shall, if feasible, return or destroy all Protected Health Information received from, or created or received by Business Associate on behalf of, Participant that Business Associate or any contractor, agent or associate of Business Associate still maintains in any form, and shall retain (and permit any such contractor, agent or associate to retain) no copies of such information, or, if such return or destruction is not feasible, extend (and cause any such contractor, agent or associate to extend) the protections of this Business Associate Addendum to such Protected Health Information and limit further uses and disclosures thereof to those purposes that make the return or destruction of the information infeasible.

## **G. MISCELLANEOUS**

1. **Independent Contractors.** In performing the services herein specified, Business Associate will be acting as an independent contractor engaged by Participant to facilitate access to and use of the ConnectVirginia Network. Nothing contained in the Agreement shall be construed to create a partnership or a joint venture or to authorize Business Associate to act as a general or special agent, except as specifically set forth in this Business Associate Addendum or the Agreement between the parties.

2. **Assignment.** Nothing contained in this Business Associate Addendum shall be construed to permit the assignment or delegation by Business Associate of any rights or obligations hereunder, and such assignment is expressly prohibited except to the extent such assignment is permitted by the Agreement.

3. **Notices.** Notices or communications required or permitted to be given under this Business Associate Addendum shall be given in accordance with the terms of the Agreement. If the Agreement fails to so specify the terms for provisions of Notice, Notice shall be given to the respective parties by hand or by registered or certified mail (said notice being deemed given as of the date of receipt) at the last known address of either Party. A Party may change the address for notice by giving written notice of such change of address to the other Party.

4. **Governing Law.** This Business Associate Addendum shall be governed by federal law and the laws of the Commonwealth of Virginia.

5. **Section Headings; Preamble.** The section headings in this Business Associate Addendum are for reference purposes only and shall not be given any legal effect or affect in any way the meaning or interpretation of this Business Associate Addendum. The preamble language, including the recitals, of this Business Associate Addendum shall be considered part of this Business Associate Addendum and shall be considered in the interpretation hereof.

6. **Entire Agreement.** The Agreement and this Business Associate Addendum together constitute the entire agreement between the parties related to this subject matter and supersede all previous contracts or agreements between the parties with respect to the subject matter hereof.

7. **Amendments.** This Business Associate Addendum, and any provision thereof, may be amended, modified or deleted only by written agreement of the parties. The parties agree to take such action as is necessary to amend this Business Associate Addendum from time to time as is necessary for Participant and Business Associate to comply with the Privacy and Security Standards and all other applicable laws or regulations.

8. **Severability.** If any clause or provision herein shall be judged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, the validity of any other clause or provision shall not be affected and the remainder of this Business Associate Addendum and the Agreement between the parties shall remain in full force and effect. Each of the provisions of this Business Associate Addendum shall be enforceable independent of any other provision of this Business Associate Addendum and independent of any other claim or cause of action.

9. **Survival.** The provisions of this Business Associate Addendum, which by their terms contain continuing obligations, shall survive the termination of the Business Associate Addendum. The respective obligations of Business Associate as well as the effects of termination of this Business Associate Addendum, including retaining Protected Health Information by the Business Associate, shall specifically survive termination of this Business Associate Addendum.

10. **Waiver.** The failure or delay of any Party to enforce or pursue any right or remedy existing pursuant to this Business Associate Addendum shall not be deemed a waiver of such right or remedy and shall not limit such Party's ability to pursue or enforce such right or remedy or any future right or remedy.

11. **Interpretation.** This Business Associate Addendum shall be interpreted as broadly as necessary to implement and comply with the Privacy and Security Standards. The parties hereby agree that

any ambiguity in this Business Associate Addendum shall be resolved in favor of a meaning that complies with the Privacy and Security Standards.

**12. Regulatory References.** Any and all references in this Business Associate Addendum to a section in the Privacy and Security Standards or any other HIPAA rules and regulations means the section as in effect or as amended.



## **Addendum 1 - *STREAMLINE* Clinical Portal**

**SCOPE OF THIS ADDENDUM:** The terms in this Addendum 1 only apply if and when Participant provides its Participant Users with access to the *STREAMLINE* Clinical Portal. To the extent there are any Fees associated with this Addendum, they will be set forth in the Service Schedule.

Unless defined herein, capitalized terms have the same meaning that they do in the Agreement.

1. **Permitted Purposes for Patient Search.** Participant and Participant Users may only use the patient search functionality of the *STREAMLINE* Clinical Portal to request information on individuals for the following purposes: (i) for the treatment of, or payment related to, individual patients with whom the Participant has an established treatment relationship; or (ii) the Participant's health care operations provided such operations are included in paragraphs (1) or (2) of the definition of health care operations in HIPAA and the Participant has a treatment relationship with the individual whose information is being requested. "Treatment," "payment," and "health care operations" have the meaning assigned to them in HIPAA. Notwithstanding the foregoing or anything herein to the contrary, ConnectVirginia may change the Permitted Purpose for the *STREAMLINE* Clinical Portal, and effectively amend this Section, by providing Participant with Notice of such change.
2. **Requests.** All requests for information must be made by a Participant User whose role, as assigned by Participant, permits him to make such requests and such requests must comply with the requirements of the Agreement. If required by ConnectVirginia, Participant and Participant Users shall provide information to substantiate requests made through the *STREAMLINE* Clinical Portal including, but not limited to, assertions or statements about the purpose for which information is being requested and the legal authority for requesting such information.
3. **eHealth Exchange.** ConnectVirginia shall permit Participant Users to use the *STREAMLINE* Clinical Portal to request information through eHealth Exchange.

## Addendum 2 – ConnectVirginia Encounter Alerts Messaging Portal

**SCOPE OF THIS ADDENDUM:** The terms in this Addendum 2 only apply if and when Participant provides its Participant Users with access to the ConnectVirginia Encounter Alerts Messaging (“CVEAM”) Portal. To the extent there are any Fees associated with this Addendum, they will be set forth in the Service Schedule.

Unless defined herein, capitalized terms have the same meaning that they do in the Agreement.

1. **Site Administrator and Delegates.** For each of Participant’s CVEAM accounts, Participant must identify a Site Administrator and additional individuals who will have access to such CVEAM account (“CVEAM Delegates”). Participant shall update ConnectVirginia whenever it wishes to add or remove a Site Administrator or CVEAM Delegate.
2. **Encounter Alerts Delivery.** Encounter Alerts may only be sent to a CVEAM account that has been established by Participant.
3. **Encounter Alerts Subscriptions.** Participant will direct its Site Administrator(s) to send to ConnectVirginia through CVEAM a list of individuals for whom Participant would like to receive Encounter Alerts and the CVEAM account to which such Encounter Alerts will be sent (the “Subscription List”). Participant may only include on its Subscription List those individuals with whom they have a current relationship for the purposes of providing treatment (e.g. have seen the patient at least twice in the past 18 months) or care coordination (e.g. individual is a member of a plan/ACO or other care management program). Participant agrees that it will review its Subscription List and notify ConnectVirginia of any changes in accordance with the ConnectVirginia Policies and Procedures. Participant acknowledges and agrees that it is solely responsible for the content of its Subscription List and ensuring its timely delivery to ConnectVirginia.
4. **Clinical Information.** Participant agrees that it will only have access to the clinical information that triggered an Encounter Alert if it has enrolled with ConnectVirginia for access to the *STREAMLINE* Clinical Portal. If Participant has not enrolled for the *STREAMLINE* Clinical Portal, Participant or its Participant Users will receive the Encounter Alerts but will not have access to the underlying clinical information. Even if Participant and Participant Users have access to the *STREAMLINE* Clinical Portal, additional information about an Encounter Alert may not be available through the *STREAMLINE* Clinical Portal.
5. **Notice to ConnectVirginia.** Participant agrees that it will notify ConnectVirginia immediately in the event that it receives an Encounter Alert pertaining to an individual with whom the Participant does not have a current relationship for purposes of providing treatment (e.g. have seen the patient at least twice in the past 18 months) or care coordination (e.g. individual is a member of a plan/ACO or other care management program).