



Connect Virginia

Advancing Virginia's Health Care

**Connect Virginia EXCHANGE
Trust Agreement**

October 8, 2014

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Overview

The Health Information Technology for Economic and Clinical Health (HITECH) Act, one of the key sections of the American Recovery and Reinvestment Act of 2009, aims to improve both the efficiency and quality of healthcare through an unprecedented investment in health information technology. One of the most significant HITECH funding initiatives was the State HIE Cooperative Agreement Program, which funded states' efforts to rapidly build capacity for exchanging health information across the healthcare system both within and across states. During the four year grant period which began in early 2010, each state grantee was responsible for increasing connectivity and enabling patient-centric information flow to improve the quality and efficiency of care through the development of a state-level health information exchange (HIE). This required the establishment of the necessary governance, policies, technical services, business operations, and financing mechanisms to support an operational health information exchange.

The Virginia Department of Health ("VDH") was one of the state grantees under the State HIE Cooperative Agreement Program. In the spring of 2011, VDH issued a Request for Proposals (RFP) for a private, not-for-profit organization to establish the Governance Body, management structure, business operations, and technology infrastructure of the Virginia Statewide HIE, known as ConnectVirginia. Through the competitive procurement process outlined in the RFP, the VDH's Office of Information Management and Health Information Technology selected Community Health Alliance (CHA) as the contractor for the Statewide HIE.

During the later part of 2011, CHA worked with VDH and the Secretary of Health and Human Resources to establish the inaugural Governing Body of ConnectVirginia. The Governing Body of ConnectVirginia was tasked with (i) setting the overall strategic direction of ConnectVirginia; (ii) making important policy decisions that would impact ConnectVirginia operations; and (iii) overseeing the Executive Director as she managed the establishment and operation of ConnectVirginia. All of these activities required the informed input of critical stakeholders and thought leaders who were represented on the Governing Body.

In January 2012, the ConnectVirginia Governing Body was convened to begin developing the policy framework for ConnectVirginia. One of their goals was to address the policy issues presented by the development and implementation of ConnectVirginia EXCHANGE. The policy decisions made by the ConnectVirginia Governing Body were memorialized in this ConnectVirginia EXCHANGE Trust Agreement and the ConnectVirginia EXCHANGE Policies and Procedures.

In February 2014, Virginia's State HIE Cooperative Agreement grant funding period ended as did the agreement between VDH and CHA for the implementation, management and operation of ConnectVirginia. Upon termination of these agreements, under the direction of the ConnectVirginia Governing Body, management and operation of ConnectVirginia was transitioned to ConnectVirginia

HIE, Inc., a non-profit, non-member, non-stock corporation. As part of this transition, all existing ConnectVirginia EXCHANGE Trust Agreements were assigned to ConnectVirginia HIE, Inc. and oversight and governance of ConnectVirginia was transitioned from the original ConnectVirginia Governing Body to the ConnectVirginia HIE, Inc. Board of Directors. ConnectVirginia HIE, Inc. will carry on the great work done by CHA and continue to grow the statewide HIE. As part of its efforts, in March 2014, ConnectVirginia HIE, Inc. updated the ConnectVirginia EXCHANGE Trust Agreement to, among other things, reflect that the ConnectVirginia HIE, Inc. Board of Directors is now the Governing Body for ConnectVirginia.

During the second quarter of 2014 the ConnectVirginia HIE, Inc. Board of Directors made the decision to re-evaluate and overhaul the business and technical strategy to ensure continued value for ConnectVirginia partners while operating in a much different funding environment. Under Secretary Hazel's leadership, a Tiger Team was commissioned to review options. As a result, at its August 2014 meeting the Board of Directors approved a change in the how the technology component of ConnectVirginia's EXCHANGE service will be handled. Going forward, ConnectVirginia will continue to offer EXCHANGE serving as the governance, legal and coordination organization just as in the past; however, the underlying technical infrastructure will no longer exist and ConnectVirginia EXCHANGE participants will utilize the eHealth Exchange technology to perform the mechanics of sharing clinical documents. As a necessary part of this shift in technical approach ConnectVirginia HIE, Inc. updated the ConnectVirginia EXCHANGE Trust Agreement in October 2014.

This overview was prepared to facilitate the reader's understanding of the ConnectVirginia EXCHANGE Trust Agreement, and to place it into an appropriate context. IT IS NOT INCORPORATED AS PART OF THE AGREEMENT AND DOES NOT AMEND OR REVISE IN ANY WAY THE TERMS OF THE AGREEMENT. CONNECTVIRGINIA MAY CHANGE OR REPLACE ANY PORTION OF THIS OVERVIEW AT ANY TIME.

What is ConnectVirginia EXCHANGE?

ConnectVirginia is the statewide health information exchange for the Commonwealth of Virginia, which was created to support the safe and secure transaction of electronic health data. ConnectVirginia EXCHANGE allows ConnectVirginia EXCHANGE Nodes and their users to query and retrieve patient data across all ConnectVirginia EXCHANGE Nodes. ConnectVirginia EXCHANGE is based on the same specifications and standards supported and maintained by the eHealth Exchange.

Why is a Trust Agreement needed?

Organizations participating in a health information exchange must act in ways that support an environment of trust that assures the privacy and security of the electronic health information being exchanged. The ConnectVirginia EXCHANGE Trust Agreement is a legally binding comprehensive

agreement that reflects the policy decisions that have been made by the ConnectVirginia Governing Body.

The ConnectVirginia EXCHANGE Trust Agreement is one component of the comprehensive trust framework that will allow each of the ConnectVirginia EXCHANGE Nodes to feel comfortable participating in ConnectVirginia EXCHANGE. Each organization that wishes to participate as a Node in ConnectVirginia EXCHANGE will sign the ConnectVirginia EXCHANGE Trust Agreement as part of the Node Application Process. ConnectVirginia EXCHANGE Nodes can trust other ConnectVirginia EXCHANGE Nodes that have signed the Trust Agreement because they know that each Node has agreed to act in a similar manner that supports trust.

How was the ConnectVirginia EXCHANGE Trust Agreement developed?

The RFP issued by VDH required that the ConnectVirginia EXCHANGE Trust Agreement be modeled on the eHealth Exchange (previously “Nationwide Health Information Network” or NwHIN Exchange”) Data Use and Reciprocal Support Agreement (DURSA). The eHealth Exchange DURSA is the legally binding, multi-party trust agreement that is entered into voluntarily by all entities, organizations and Federal agencies that desire to engage in electronic health information exchange with each other using the eHealth Exchange. The eHealth Exchange DURSA was developed by a multi-disciplinary team in 2008-2009 as part of the Nationwide Health Information Network Phase II Trial Implementations. Since it was first developed, the eHealth Exchange DURSA has been amended to reflect the experience gained with the early implementations in the NwHIN Exchange and to accommodate new opportunities for the promotion and expansion of health information exchange. As of March 2014, the eHealth Exchange DURSA has been approved and signed by six federal agencies and 110 private and state organizations who are currently engaged in the exchange of electronic health information using eHealth Exchange.

While the RFP required that the eHealth Exchange DURSA be used as a model for the ConnectVirginia EXCHANGE Trust Agreement, the RFP also recognized that the eHealth Exchange DURSA would have to be adapted specifically for ConnectVirginia EXCHANGE to assure compliance with state laws and regulations as well as the policies established by the ConnectVirginia Governing Body. Beginning in March 2012, the Governing Body began an intensive review and vetting process on key policy issues for ConnectVirginia EXCHANGE. ConnectVirginia Management and staff facilitated this Governing Body process by preparing “Issue Briefs” that contained the following:

- (1) a summary of the issue presented by ConnectVirginia EXCHANGE to help the Governing Body understand its significance;
- (2) a summary of the way in which the eHealth Exchange has addressed the issue;
- (3) the recommendations of ConnectVirginia Management on how to address the policy issue; and
- (4) draft ConnectVirginia EXCHANGE Trust Agreement and/or Policy and Procedure language.

The draft ConnectVirginia EXCHANGE Trust Agreement provisions from the Issue Briefs were modified, as necessary, to reflect the policy decisions made by the Governing Body and have been incorporated into the ConnectVirginia EXCHANGE Trust Agreement.

Who are the parties to the ConnectVirginia EXCHANGE Trust Agreement?

The ConnectVirginia EXCHANGE Trust Agreement will be entered into by each ConnectVirginia EXCHANGE Node and ConnectVirginia HIE, Inc.

What are the key provisions of the ConnectVirginia EXCHANGE Trust Agreement?

The ConnectVirginia EXCHANGE Trust Agreement builds upon the various legal requirements that Nodes are already subject to and describes the mutual responsibilities, obligations and expectations of all Nodes that participate in ConnectVirginia EXCHANGE. All of these responsibilities, obligations and expectations create a framework for safe and secure health information exchange, and are designed to promote trust among the ConnectVirginia EXCHANGE Nodes and protect the privacy, confidentiality and security of the health data that is shared.

The ConnectVirginia EXCHANGE Trust Agreement is based upon the existing body of law (Federal and Virginia) applicable to the privacy and security of health information and is supportive of the current policy framework for health information exchange. The ConnectVirginia EXCHANGE Trust Agreement is a legally enforceable contract that represents a framework for broad-based information exchange among a set of trusted entities that have all signed the ConnectVirginia EXCHANGE Trust Agreement. The Agreement reflects consensus among the Governing Body members who were involved in the development of the ConnectVirginia EXCHANGE Trust Agreement regarding the following issues:

- Permitted Purposes for using ConnectVirginia EXCHANGE
- Consent Model
- Protection of Sensitive Data
- Minimum Level of Participation
- Node relationships with and responsibilities with respect to Node Users
- Auditing and Monitoring
- Compliance with ConnectVirginia Exchange's technical and policy requirements
- Suspension and Termination of Nodes
- Dispute Resolution
- Allocation of Risk between Node and ConnectVirginia

Why does the ConnectVirginia EXCHANGE Trust Agreement vary from the eHealth Exchange DURSA in some areas?

While ConnectVirginia EXCHANGE is utilizing the same technical specifications for exchange as those used in eHealth Exchange, there are some important differences between the two initiatives that result in differences between the ConnectVirginia EXCHANGE Trust Agreement and the eHealth Exchange DURSA.

- *Nationwide vs. State Approach:* The eHealth Exchange DURSA was written to accommodate and be applicable to nationwide health information exchange among a wide variety of governmental and non-governmental organizations throughout the country. By contrast, the ConnectVirginia EXCHANGE Trust Agreement is focused on health information exchange in Virginia primarily among Virginia health care providers and others who would benefit from participation, including state agencies that are involved in the health of Virginians. Because the ConnectVirginia EXCHANGE Trust Agreement is focused on Virginia, it reflects specific policy decisions that have been made about how the statewide health information exchange will work. *Multi-Party vs. Two-Party Agreement:* The eHealth Exchange DURSA is a multi-party agreement meaning that it is a single agreement among all of the eHealth Exchange Participants. The ConnectVirginia EXCHANGE Trust Agreement will be a two-party agreement, the parties being ConnectVirginia and a Node. Since all Nodes will sign the same agreement with ConnectVirginia, the overall effect is the same as the eHealth Exchange DURSA – all Nodes will have agreed to the same contractual terms. The fact that it is an agreement with ConnectVirginia instead of among all of the Nodes, however, results in some changes from the eHealth Exchange DURSA.
- *eHealth Exchange Coordinating Committee vs. ConnectVirginia Governing Body:* The eHealth Exchange DURSA creates a “Coordinating Committee” that is responsible for overseeing and supporting the Participants in eHealth Exchange. The Coordinating Committee is a creature of contract because the eHealth Exchange is not an entity and does not have a centralized support structure. The Participants had to create the Coordinating Committee and agree to its role and responsibilities through the eHealth Exchange DURSA. By contrast, the ConnectVirginia HIE, Inc. Board of Directors serves as the Governing Body for all ConnectVirginia activities including ConnectVirginia EXCHANGE. This difference between the eHealth Exchange Coordinating Committee and the ConnectVirginia Board of Directors results in some differences between the eHealth Exchange DURSA and the ConnectVirginia EXCHANGE Trust Agreement.
- *Federal Participants vs. No Federal Participants:* There are several Federal agencies that participate in the eHealth Exchange. Because of their participation, some specific provisions were added to the eHealth Exchange DURSA to apply to “Federal Participants.” ConnectVirginia EXCHANGE will not have any Federal agency Nodes. As a result, any provisions in the eHealth Exchange DURSA that relate to Federal agencies have been removed in the ConnectVirginia EXCHANGE Trust Agreement.

Why does the ConnectVirginia EXCHANGE Trust Agreement contain references to the ConnectVirginia EXCHANGE Operational Documents?

Health information exchange is a rapidly evolving space. Including specific policies, procedures and specifications in the “Operational Documents” instead of the ConnectVirginia EXCHANGE Trust Agreement provides the ConnectVirginia Governing Body with greater flexibility to modify these specific requirements without having to go through the lengthy process of amending the ConnectVirginia EXCHANGE Trust Agreement.

For this same reason, the references to the Operational Documents are general references instead of references to specific Policies and Procedures or Specifications. This way, if the Policy and Procedure number changes, the parties will not have to amend the ConnectVirginia EXCHANGE Trust Agreement.

If I have questions about the ConnectVirginia EXCHANGE Trust Agreement and Policies and Procedures, where can I find additional information?

If you have questions about the ConnectVirginia EXCHANGE Trust Agreement, you can submit questions to support@connectvirginia.org. Please make sure to include your contact information with any question so that ConnectVirginia can respond.

ConnectVirginia EXCHANGE Trust Agreement

This ConnectVirginia EXCHANGE Trust Agreement (“Agreement”) entered into on the last date below and effective as of _____ (the “Effective Date”) by and between ConnectVirginia HIE, Inc., a Virginia non-stock, non-member corporation (“ConnectVirginia”) and _____, a _____ (“Participant Node”). (ConnectVirginia and Participant Node may be referred to herein individually as “Party” and collectively as the “Parties.”)

Recitals

WHEREAS, the Virginia Department of Health (“VDH”) received federal funding pursuant to the American Recovery and Reinvestment Act (“ARRA”) to establish and operate a statewide health information exchange;

WHEREAS, following a competitive selection process, VDH selected Community Health Alliance as its contractor and entered into an agreement with Community Health Alliance pursuant to which Community Health Alliance used a portion of the ARRA funds to establish, implement, manage and operate the statewide HIE, known as ConnectVirginia;

WHEREAS, following the end of the contract between Community Health Alliance and VDH, management, operation and governance of ConnectVirginia was transferred to ConnectVirginia HIE, Inc.;

WHEREAS, one component of the ConnectVirginia statewide HIE is ConnectVirginia EXCHANGE, which is an Internet-based network that utilizes the Onboarding and Certification Specifications established by ConnectVirginia that allows ConnectVirginia Nodes, Node Users, OSA Portal Users and Partner Network Participants to exchange information with each other in a private and secure manner (“ConnectVirginia EXCHANGE”);

WHEREAS, Participant Node is an organization that oversees and conducts, on its own behalf and/or on behalf of its Node Users, electronic transactions or exchanges of health information among groups of persons or organizations; has the technical ability to meet the Onboarding and Certification Specifications to electronically Transact health information on its own behalf or on behalf of its Node Users; has the organizational infrastructure and legal authority to comply with the obligations in this Agreement and to require its Node Users to comply with applicable requirements in this Agreement; and has been accepted by ConnectVirginia as a Node;

WHEREAS, Participant Node desires to electronically Transact, on its own behalf or on behalf of its Node Users, health information using ConnectVirginia EXCHANGE;

WHEREAS, as a condition of using ConnectVirginia EXCHANGE, Participant Node must enter into this ConnectVirginia EXCHANGE Trust Agreement and has agreed to do so by executing this Agreement;

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

1. **Definitions.** For the purposes of this Agreement, the following terms have the meaning ascribed to them below. All defined terms are capitalized throughout this Agreement.
 - a. **Applicable Law** means (i) for Participant Node, all applicable statutes and regulations of the State(s) or jurisdiction(s) in which Participant Node operates, as well as all applicable Federal statutes, regulations, standards and policy requirements; and (ii) for ConnectVirginia, all applicable Virginia statutes and regulations as well as all applicable Federal statutes, regulations, standards and policy requirements.
 - b. **Authorization** has the meaning and includes the requirements set forth at 45 C.F.R § 164.508 of the HIPAA Regulations and any similar but additional requirements under Applicable Law.
 - c. **Business Associate** has the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.
 - d. **Carrier Lines** means the facilities and communications lines over which information is transmitted including, but not limited to, local exchange and Internet backbone carrier lines, routers, switches, and other devices.
 - e. **Confidential Business Information**, for the purposes of this Agreement, means proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such upon disclosure or subsequent to disclosure. If the Discloser labels information as proprietary or confidential subsequent to disclosure, the confidentiality obligations of Section 17 will only apply after such labeling. Information disclosed orally will be treated as Confidential Business Information if identified as confidential at the time of the disclosure and if, within a reasonable period of time after the disclosure, the information is reduced to a writing that is labeled confidential. Confidential Business Information includes, but is not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Discloser; and (iii) information or reports provided by a Discloser to a Receiving Party pursuant to this Agreement. Notwithstanding any label to the contrary, Confidential Business Information does not include: Message Content or any information that is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it; is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party's written records; or, is independently developed by Receiving Party without reference to, reliance on, or use of, Discloser's Confidential Business Information. Message Content is excluded from the definition of Confidential Business Information because other provisions of the Agreement address the appropriate protections for Message Content.

- f. **ConnectVirginia EXCHANGE** means the Internet-based service network that utilizes the Onboarding and Certification Specifications established by ConnectVirginia to allow ConnectVirginia Nodes, Node Users, OSA Portal Users and Partner Network Participants to query and retrieve clinical data among each other in a private and secure manner, if permitted by Applicable Law and the ConnectVirginia EXCHANGE Policies and Procedures.
- g. **ConnectVirginia EXCHANGE Policies and Procedures** means the policies and procedures adopted by the ConnectVirginia Governing Body that describe the (i) management, operation and maintenance of ConnectVirginia EXCHANGE; (ii) qualifications, requirements and activities of ConnectVirginia Nodes when using ConnectVirginia EXCHANGE; and (iii) oversight and support of the ConnectVirginia Nodes who wish to use ConnectVirginia EXCHANGE. The ConnectVirginia EXCHANGE Policies and Procedures are available to ConnectVirginia Nodes on ConnectVirginia's Web site at <http://www.connectvirginia.org/>.
- h. **ConnectVirginia Governing Body** means the ConnectVirginia HIE, Inc. Board of Directors.
- i. **ConnectVirginia Node** means an organization that has met the eligibility criteria for participation in ConnectVirginia EXCHANGE and has been accepted as a ConnectVirginia Node by the ConnectVirginia Governing Body. ConnectVirginia Nodes will act as both a Submitter and a Recipient when using ConnectVirginia EXCHANGE.
- j. **Covered Entity** has the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.
- k. **Digital Credentials** means a mechanism that enables Participant Node to electronically prove its identity and its right to use ConnectVirginia EXCHANGE.
- l. **Discloser** means the Party that discloses Confidential Business Information to a Receiving Party.
- m. **Dispute** means any controversy, dispute, or disagreement arising out of or relating to this Agreement.
- n. **Dispute Resolution Process** means the dispute resolution processes set forth in the ConnectVirginia EXCHANGE Policies and Procedures.
- o. **ECI** means the Employment Cost Index for wages and salaries (not seasonally adjusted) for all workers, December 2005 = 100, compiled by the U.S. Department of Labor, Bureau of Labor Statistics. The most recently published ECI prior to the date of this Agreement will be the base for measuring any changes in the ECI, unless otherwise specified in this Agreement. If publication of the ECI is discontinued, a similar cost index will be substituted for use for the purposes that the ECI is used in this Agreement.
- p. **Governmental Node** means a ConnectVirginia EXCHANGE node that is a local or state department, agency, office or other subdivision of any local or state department.
- q. **Health Care Operations** has the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.

- r. **Health Care Provider** has the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.
- s. **Health Plan** has the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.
- t. **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.
- u. **Malicious Software** means any viruses, worms, unauthorized cookies, trojans, “malware,” or other program, routine, subroutine, or data designed to disrupt the proper operation of electronic systems, gather sensitive information, or gain access to computer systems or data without authorization 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 an electronic system to be improperly accessed, destroyed, damaged, or otherwise made inoperable.
- v. **Message** means an electronic transmission of Message Content Transacted between ConnectVirginia Nodes, Node Users, OSA Portal Users and Partner Network Participants using ConnectVirginia EXCHANGE. Messages are intended to include all types of electronic transactions as specified in the Onboarding and Certification Specifications, including the data or records transmitted with those transactions.
- w. **Message Content** means that information contained within a Message or accompanying a Message sent by a ConnectVirginia Node, Node User, OSA Portal User or Partner Network User through ConnectVirginia EXCHANGE. This information includes, but is not limited to, Protected Health Information (PHI), de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. § 164.514), individually identifiable information, pseudonymized data, metadata, Digital Credentials, and schema.
- x. **Message Content Incident** means the unauthorized use of, acquisition of, access to, or disclosure of Message Content while transacting such Message Content through ConnectVirginia EXCHANGE or, the unauthorized use of, acquisition of, access to, or disclosure of Message Content to ConnectVirginia EXCHANGE. The term “Message Content Incident” does not include the following:
 - (i) any unintentional acquisition, access, disclosure, or use of Message Content by an employee or individual acting under the authority of Participant Node or its Node User if—
 - (I) such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with Participant Node or its Node User; and
 - (II) such Message Content is not further acquired, accessed, disclosed or used by such employee or individual; or

- (ii) any acquisition, access, disclosure or use of information contained in or available through Participant Node's System where such acquisition, access, disclosure or use was not directly related to ConnectVirginia EXCHANGE.
- y. **Node Access Policies** means those generally applicable policies and procedures of a ConnectVirginia Node that govern how the ConnectVirginia Node and its Node Users electronically transact information using the Node's System.
- z. **Node User** means any individual or organization who has been authorized to use ConnectVirginia EXCHANGE through a ConnectVirginia Node's System in a manner defined by the ConnectVirginia Node. "Node Users" may include, but are not limited to, individual Health Care Providers; health systems; Health Plans; and employees, contractors, or agents of the Node. A Node User may act as either a Submitter, Recipient or both when using ConnectVirginia EXCHANGE.
- aa. **Notice or Notification** means a written communication, unless otherwise specified in this Agreement, sent to a Party in accordance with Section 24.
- bb. **Onboarding and Certification Specifications** means 1) the specifications adopted by ConnectVirginia to prescribe the standards, services, policies, data content, technical, and security requirements to enable the ConnectVirginia Nodes to use ConnectVirginia EXCHANGE to Transact Message Content; 2) the framework for Testing and validation for organizations seeking to become ConnectVirginia Nodes; 3) any implementation guidance, migration plans and other technical materials and resources approved by the ConnectVirginia Governing Body in accordance with Section 11.02 of this Agreement. The Onboarding and Certification Specifications will be promptly made available by ConnectVirginia to any organization that is considering becoming a ConnectVirginia Node, upon request.
- cc. **OneStopAccess (OSA) Portal Participant** means an organization that has entered into an OSA Portal Use Agreement with ConnectVirginia.
- dd. **OneStopAccess (OSA) Portal User** means an individual who has been authorized by an OSA Portal Participant to submit Messages querying for information to ConnectVirginia Nodes and Partner Network Participants through the ConnectVirginia OSA Portal.
- ee. **Operational Documents** means the ConnectVirginia EXCHANGE Policies and Procedures and the Onboarding and Certification Specifications.
- ff. **Partner Network** means any electronic data exchange network with which ConnectVirginia has a network-to-network relationship which allows ConnectVirginia Nodes, Node Users, and any OSA Portal Users who exchange messages with the Node to Transact Message Content with the Partner Network Participants and vice versa. By way of example only, if ConnectVirginia EXCHANGE becomes a participant in the eHealth Exchange, then eHealth Exchange would be a "Partner Network."
- gg. **Partner Network Participants** means any individual or organization who has been authorized to use a Partner Network and has the ability to Transact Message Content with ConnectVirginia Nodes, Node Users, and any OSA Portal Users who exchange messages with the Node through ConnectVirginia EXCHANGE. By way of example only, if eHealth Exchange is a Partner Network, then each of the participants in eHealth Exchange would be a "Partner Network Participant."

- hh. **Payment** has the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.
- ii. **Permitted Purpose** means one of the reasons set forth in the ConnectVirginia EXCHANGE Policies and Procedures for which ConnectVirginia Nodes or Node Users may legitimately Transact Message Content.
- jj. **Protected Health Information or PHI** has the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.
- kk. **Receiving Party** means a Party that receives Confidential Business Information from a Discloser.
- ll. **Recipient** means the ConnectVirginia Node(s), Node User(s) or OSA Portal User(s) that receives Message Content through a Message from a Submitter for a Permitted Purpose. For purposes of illustration only, Recipients include, but are not limited to, Nodes or Nodes Users who receive queries or responses to queries.
- mm. **Sensitive Information** means the categories of health information that are afforded a higher degree of protection under Applicable Law than the protections provided by HIPAA and are identified in the ConnectVirginia EXCHANGE Policies and Procedures.
- nn. **Submitter** means the ConnectVirginia Node(s), Node User(s), or OSA Portal User(s) who submits Message Content through a Message to a Recipient for a Permitted Purpose. For purposes of illustration only, Submitters include, but are not limited to, ConnectVirginia Nodes or Node Users who push Messages with Message Content, send Messages seeking Message Content, or send Messages in response to a request.
- oo. **System** means software, portal, platform, or other electronic medium controlled by a ConnectVirginia Node, Node User, OSA Portal User or Partner Network Participant through which the ConnectVirginia Node, Node User or Partner Network Participant conducts its health information exchange related activities. For purposes of this definition, it does not matter whether the ConnectVirginia Node, Node User or Partner Network Participant controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.
- pp. **Technology Service Provider or TSP** means a company or other organization that will support Participant Node by providing it with operational, technical, or health information exchange services in support of communication with ConnectVirginia EXCHANGE. A company or other organization that only provides Carrier Lines to Participant Node is not a TSP for purposes of this Agreement.
- qq. **Testing** means the tests and demonstrations of Participant Node's System and processes used for interoperable health information exchange, to assess conformity with the Onboarding and Certification Specifications.
- rr. **Transact** means to send, request, receive, assert, respond to, submit, route, subscribe to, or publish Message Content using ConnectVirginia EXCHANGE.
- ss. **Treatment** has the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.

2. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated into this Agreement in their entirety and will be given full force and effect as if set forth in the body of this Agreement.

3. **Purpose of the Agreement.** The purpose of this Agreement is to provide a legal framework that will enable Participant Node and its Node Users to Transact Message Content with other ConnectVirginia Nodes, Node Users, OSA Portal Users, and Partner Network Participants using ConnectVirginia EXCHANGE. It is a binding legal contract that imposes rights and responsibilities on both Parties.

4. **ConnectVirginia Governing Body.**

4.01. **Grant of Authority.** Participant Node authorizes the ConnectVirginia Governing Body to exercise control over ConnectVirginia EXCHANGE by conducting activities including, but not limited to, the following:

- a. Determining whether to admit an organization as a ConnectVirginia Node;
- b. Establishing a relationship with another data exchange network that will become a Partner Network;
- c. Evaluating, prioritizing, developing new, and amending existing Operational Documents in accordance with Section 11 of this Agreement;
- d. Receiving reports of Message Content Incidents and acting upon such reports in accordance with Section 14.04 of this Agreement (Message Content Incident Notification);
- e. Suspending or terminating ConnectVirginia Nodes in accordance with Section 21 of this Agreement (Suspension and Termination);
- f. Resolving Disputes between ConnectVirginia Nodes in accordance with Section 23 of this Agreement (Dispute Resolution); and
- g. Fulfilling all other responsibilities set forth in the ConnectVirginia Governing Body Policies and Procedures or delegated by the ConnectVirginia Nodes to the ConnectVirginia Governing Body as set forth in this Agreement.

To the extent permitted under Applicable Law, this grant of authority to the ConnectVirginia Governing Body is unconditional and does not require any further consideration or action by Participant Node.

The ConnectVirginia Governing Body has the authority to unilaterally delegate to the chairperson of the ConnectVirginia Governing Body, a committee of the ConnectVirginia Governing Body or the ConnectVirginia Chief Executive Officer or Executive Director any of the authorities, duties or responsibilities granted to the ConnectVirginia Governing Body by the ConnectVirginia Nodes. Notwithstanding the foregoing, the ConnectVirginia Governing Body may not delegate its authority to approve substantive changes to the ConnectVirginia EXCHANGE Policy and Procedure that defines “Permitted Purposes” for ConnectVirginia EXCHANGE.

5. **Patient Consent.** ConnectVirginia has chosen to not implement a specific, statewide consent model, e.g. opt-in or opt-out, at the ConnectVirginia level. In accordance with Section 14 of this Agreement, Participant Node is responsible for complying with Applicable Law in connection with its use of ConnectVirginia EXCHANGE.

6. **Use of Network and Message Content.**

- 6.01. **Permitted Purpose.** Participant Node may only use ConnectVirginia EXCHANGE to Transact Message Content for a Permitted Purpose. Participant Node will require that its Node Users comply with this Section.
- 6.02. **Permitted Future Uses.** Subject to this Section 6.02 and Section 21.09, when Participant Node or its Node Users receive Message Content through a Message Transacted through ConnectVirginia EXCHANGE for a Permitted Purpose, Participant Node or its Node Users may retain, use and re-disclose such Message Content in accordance with Applicable Law and its record retention policies and procedures. If Participant Node is a Business Associate of its Node Users, Participant Node may retain, use and re-disclose Message Content in accordance with Applicable Law and the agreements between Participant Node and its Node Users.
- 6.03. **Management Uses.** ConnectVirginia may request information from Participant Node, and Participant Node will provide requested information, for the purposes listed in Section 4.02 of this Agreement. Notwithstanding the preceding sentence, in no case will Participant Node be required to disclose PHI to ConnectVirginia in violation of Applicable Law. Any information, other than Message Content, provided by Participant Node to ConnectVirginia may be labeled as Confidential Business Information, in which case it will be treated as such in accordance with Section 17.

7. **System Access Policies.**

- 7.01. **Autonomy Principle.** Participant Node will have and maintain its own Node Access Policies. Participant Node acknowledges that Node Access Policies will differ among ConnectVirginia Nodes as a result of differing Applicable Law and business practices. Participant Node will be responsible for determining whether and how to use ConnectVirginia EXCHANGE based on the application of its Node Access Policies to the information contained in a Message. Participant Node agrees that it will comply with the Applicable Law, this Agreement, and all applicable Onboarding and Certification Specifications when using ConnectVirginia EXCHANGE.
- 7.02. **Identification.** Participant Node will employ a process by which it, or its designee, validates sufficient information to uniquely identify each person seeking to become a Participant Node User prior to issuing credentials that would grant the person access to the Participant Node's System.
- 7.03. **Authentication.** Participant Node will employ a process by which it, or its designee, uses the credentials issued pursuant to Section 7.02 to verify the identity of each Participant Node User prior to enabling such Node User to use ConnectVirginia EXCHANGE.

8. **Enterprise Security.**

- 8.01. **General.** Participant Node is responsible for maintaining a secure environment that supports the operation and continued development of ConnectVirginia EXCHANGE. Participant Node will use appropriate safeguards to prevent use or disclosure of Message Content other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of that Message Content. Appropriate safeguards for Participant Node are those identified in the HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and C, as safeguards, standards, "required" implementation specifications, and "addressable" implementation

specifications to the extent that the “addressable” implementation specifications are reasonable and appropriate in the Participant Node’s environment. If an “addressable” implementation specification is not reasonable and appropriate in Participant Node’s environment, then Participant Node must document why it would not be reasonable and appropriate to implement the implementation specification and implement an equivalent alternative measure if reasonable and appropriate. Participant Node will, as appropriate under either the HIPAA Regulations, or under Applicable Law, have written privacy and security policies in place by the Effective Date. Participant Node is also required to comply with any Operational Documents adopted by the ConnectVirginia Governing Body that define expectations for ConnectVirginia Nodes with respect to enterprise security.

8.02. **Malicious Software.** Participant Node will ensure that it employs security controls that meet applicable industry or Federal standards so that the information and Message Content being Transacted through ConnectVirginia EXCHANGE and any method of Transacting such information and Message Content will not introduce any Malicious Software to ConnectVirginia EXCHANGE; a System or any part thereof; or any hardware, software or data used by a ConnectVirginia Node, Node User, OSA Portal User or a Partner Network Participant in connection with Transacting Message Content. In the absence of applicable industry standards, Participant Node will use all commercially reasonable efforts to comply with the requirements of this Section.

9. **Equipment and Software.** Participant Node is responsible for procuring, and assuring that each of its Node Users has or has access to, all equipment and software necessary for it to use ConnectVirginia EXCHANGE. Participant Node will ensure that all computers and electronic devices owned or leased by Participant Node and its Node Users to be used to Transact Message Content through ConnectVirginia EXCHANGE are properly configured, including, but not limited to, the base workstation operating system, web browser, and Internet connectivity. Participant Node may fulfill this obligation by requiring in its agreements with its Node Users that they are responsible for obtaining access to and configuring all necessary equipment and software.

10. **Auditing and Monitoring.**

10.01. **Auditing and Monitoring by Participant Node.** Participant Node represents that, through its agents, employees, and independent contractors, it has the ability to monitor and audit all access to and use of its System for system administration, security, and other legitimate purposes. Participant Node shall perform such auditing and monitoring activities required by the ConnectVirginia EXCHANGE Policies and Procedures. If, through its auditing and monitoring activities, Participant Node discovers any information that leads Participant Node to reasonably believe that a Message Content Incident may have occurred, Participant Node shall report such potential Message Content Incident to ConnectVirginia in accordance with Section 14.04. Based on the results of its regular auditing and monitoring activities, every twelve months Participant Node shall attest to compliance with this Agreement and the ConnectVirginia EXCHANGE Policies and Procedures as provided in the ConnectVirginia EXCHANGE Policies and Procedures.

10.02. **Auditing and Monitoring by ConnectVirginia.** ConnectVirginia, through its agents, employees and independent contractors, may, for system administration, security, and other legitimate purposes, monitor and audit all access to and use of ConnectVirginia EXCHANGE and the content of any Messages communicated to, from or through ConnectVirginia EXCHANGE, in accordance with the ConnectVirginia EXCHANGE Policies and Procedures.

11. Operational Documents.

11.01. **General Compliance.**

- a. **Onboarding and Certification Specifications.** Participant Node will comply with all of the Onboarding and Certification Specifications.
- b. **ConnectVirginia EXCHANGE Policies and Procedures.** Participant Node will comply with those ConnectVirginia EXCHANGE Policies and Procedures that are applicable to ConnectVirginia Nodes.

11.02. **Adoption of Operational Documents.** Participant Node hereby grants to the ConnectVirginia Governing Body, or its designee to the extent permitted by Section 4.02, the right to adopt new Operational Documents, and to amend, repeal or replace the Operational Documents at any time in accordance with the Policy and Procedure Amendment Process set forth in the ConnectVirginia Policies and Procedures.

11.03. **Effective Date of Changes to the Operational Documents.** If the ConnectVirginia Governing Body approves a substantive change to the Operational Documents by adding a new, or amending, repealing or replacing any existing, Operational Document(s) that are applicable to ConnectVirginia Nodes, then ConnectVirginia will provide at least 30 calendar days to ConnectVirginia Nodes prior to the effective date of such new, amended, repealed or replaced Operational Document. Notwithstanding the foregoing, if a new, amended, repealed or replaced Operational Document is required for ConnectVirginia EXCHANGE or ConnectVirginia Nodes to comply with any Federal or state statute or regulation that the ConnectVirginia Governing Body determines is applicable to ConnectVirginia EXCHANGE or is determined necessary by the ConnectVirginia Governing Body to maintain the security or stability of ConnectVirginia EXCHANGE, the ConnectVirginia Governing Body may make the new, amended, repealed or replaced Operational Document effective immediately. The ConnectVirginia Governing Body may not, however, require ConnectVirginia Nodes to comply with such new, amended, repealed or replaced Operational Document prior to the legally required effective date of the applicable Federal or state statute or regulation. The ConnectVirginia Governing Body will provide Notice to Participant Node immediately in the event of a change to the Operational Documents that is required in order to comply with Federal or state statute or regulation or to maintain the security or stability of ConnectVirginia EXCHANGE.

11.04. **Request for Delayed Implementation.** Within 15 calendar days of receiving Notice of the new, amended, repealed or replaced Operational Document, Participant Node may request that the ConnectVirginia Governing Body delay implementation of the new, amended, repealed or replaced Operational Document based on good cause. The ConnectVirginia Governing Body will respond to a request to delay implementation within seven calendar days of receiving the request.

11.05. **Participant Node Duty to Terminate Participation.** If a new, amended, repealed or replaced Operational Document results in a substantive change to the Operational Documents and Participant Node (1) will not be able to comply with such change or (2) no longer desires to continue to use ConnectVirginia EXCHANGE after such change becomes effective, then Participant Node will terminate this Agreement in accordance with Section 21.04.

12. Expectations of Node.

12.01. **Minimum Levels of Participation in ConnectVirginia EXCHANGE.**

- a. If Participant Node requests, or allows its Node Users to request, Message Content for Treatment, Participant Node will have a corresponding reciprocal duty to respond to Messages that request Message Content for Treatment. Participant Node will fulfill its duty to respond by either (i) responding to the Message with the requested Message Content or, (ii) responding with a standardized response that indicates the Message Content is not available or cannot be exchanged. All responses to Messages must comply with the Operational Documents, this Agreement, any agreements between Participant Node and its Node Users, and Applicable Law. Node may, but is not required to, use ConnectVirginia EXCHANGE to Transact Message Content for a Permitted Purpose other than Treatment. Nothing in this Section (a) requires a disclosure that is contrary to a restriction placed on the Message Content by a patient pursuant to Applicable Law.
- b. If Participant Node desires to stop Transacting Message Content with another ConnectVirginia Node based on the other ConnectVirginia Node's acts or omissions in connection with this Agreement, Participant Node may temporarily stop Transacting Message Content with such other ConnectVirginia Node either through modification of its Node Access Policies or through some other mechanism, to the extent necessary to address Participant Node's concerns. If any such cessation occurs, Participant Node will provide a Notification to ConnectVirginia of such cessation and the reasons supporting the cessation. Participant Node will submit the Dispute leading to the cessation to the Dispute Resolution Process in Section 23.
- c. If Participant Node has participants in its network that make data available for exchange through Participant Node in response to requests for information from other Participant Node participants and Participant Node enables such participants to exchange information through ConnectVirginia EXCHANGE, Participant Node must require such participants to comply with the requirements set forth in Sections (a) and (b) above with respect to queries sent through ConnectVirginia EXCHANGE.

12.02. **Participant Node Users and TSPs.** Participant Node will require that all of its Node Users and TSPs use ConnectVirginia EXCHANGE only in accordance with the terms of this Agreement, including without limitation those governing the use, confidentiality, privacy, and security of Message Content. Participant Node will appropriately discipline each of its employee Node Users, or take appropriate contractual action with respect to each contractor Node User or TSP, who fails to act in accordance with the terms of this Agreement relating to the privacy and security of Message Content and, as appropriate, in accordance with Participant Node's employee disciplinary policies and procedures or its contractor and vendor policies and contracts, respectively.

13. **Specific Duties of Participant Node When Submitting a Message.** Whenever Participant Node or its Node User acts as a Submitter by submitting a Message to another ConnectVirginia Node, Node User, OSA Portal User, or Partner Network Participant, the Submitter is responsible for:

13.01. Submitting each Message in compliance with Applicable Law, this Agreement, and the applicable Operational Documents including, but not limited to, representing that the Message is:

- (i) for a Permitted Purpose;
- (ii) submitted by a Submitter who has the requisite authority to make such a submission;

- (iii) supported by appropriate legal authority for Transacting the Message Content including, but not limited to, any consent or Authorization, if required by Applicable Law; and
 - (iv) submitted to the intended Recipient.
- 13.02. Representing that assertions or statements related to the submitted Message are true and accurate (but see 18.01), if such assertions or statements are required by the Operational Documents;
- 13.03. Complying with the ConnectVirginia EXCHANGE Policies and Procedures regarding the inclusion or exclusion of Sensitive Information;
- 13.04. Retaining any information about the Message Content disclosed in the Message that is required by Applicable Law to be retained including, but not limited to, information to provide an accounting of disclosures under HIPAA; and
- 13.05. Submitting a copy of the Authorization to the Recipient, if the Submitter is requesting Message Content from another Node or Node User based on such Authorization. Nothing in this Section will be interpreted as requiring a Submitter who is requesting Message Content to obtain or transmit an Authorization for a request based on a Permitted Purpose other than the one related to uses and disclosures pursuant to an Authorization, even though certain other ConnectVirginia Nodes or Node Users require such Authorization to comply with Applicable Law.

14. Privacy and Security.

- 14.01. **Applicability of HIPAA Regulations to Participant Node.** To support the privacy, confidentiality, and security of the Message Content, Participant Node agrees as follows:
 - a. If Participant Node is a Covered Entity, Participant Node does, and at all times will, comply with the HIPAA Regulations to the extent applicable.
 - b. If Participant Node is a Business Associate of a Covered Entity, Participant Node does, and will at all times, comply with the provisions of its Business Associate Agreements and Applicable Law.
 - c. If Participant Node is a Governmental Node, Participant Node does, and at all times will, comply with the applicable privacy and security laws and regulations.
- 14.02. **Business Associate Addendum.** The Parties shall execute a Business Associate Addendum identical or substantially similar to Attachment 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.
- 14.03. **Safeguards.** In accordance with Sections 8, 9 and 10, Participant Node agrees to use reasonable and appropriate administrative, physical, and technical safeguards and any mechanisms identified in the Operational Documents to protect Message Content and to prevent use or disclosure of Message Content other than as permitted by Section 6 of this Agreement.

14.04. Message Content Incident Notification.

- a. Participant Node agrees that within one hour of having probable cause to believe that a Message Content Incident has occurred, it will alert ConnectVirginia. As soon as reasonably practicable, but no later than 24 hours after determining that a Message Content Incident has occurred, Participant Node will provide a Notification to ConnectVirginia of such Message Content Incident. The Notification should include sufficient information for ConnectVirginia to understand the nature of the Message Content Incident. The Notification should include, to the extent available at the time of the Notification, the following information:
 - One or two sentence description of the Message Content Incident
 - Description of the roles of the people involved in the Message Content Incident (e.g. employees, Node Users, service providers, unauthorized persons, etc.)
 - The type of Message Content involved in the Message Content Incident
 - ConnectVirginia Nodes likely impacted by the Message Content Incident
 - Number of individuals or records impacted/estimated to be impacted by the Message Content Incident
 - Actions taken by Participant Node to mitigate the Message Content Incident
 - Current status of the Message Content Incident (under investigation or resolved)
 - Corrective action taken and steps planned to be taken to prevent a similar Message Content Incident.

Participant Node will supplement the information contained in the Notification as it becomes available and cooperate with ConnectVirginia and other ConnectVirginia Nodes in accordance with Section 22(e) of this Agreement. The Notification required by this Section 14.04 will not include any PHI. If, on the basis of the Notification, ConnectVirginia determines that (i) the other ConnectVirginia Nodes would benefit from a summary of the Notification or (ii) a summary of the Notification to the other Nodes would enhance the security of ConnectVirginia EXCHANGE, it may provide, in a timely manner, a summary to such ConnectVirginia Nodes that does not identify any of the ConnectVirginia Nodes or individuals involved in the Message Content Incident.

- b. If, after becoming aware of a Message Content Incident, Participant Node desires to stop Transacting Message Content with the ConnectVirginia Node that reported or was involved in a Message Content Incident, it may stop Transacting Message Content in accordance with Section 12.01(b) of this Agreement.
- c. Information provided by Participant Node in accordance with this Section 14.04 except Message Content, may be “Confidential Business Information.” Such “Confidential Business Information” will be treated in accordance with Section 17.
- d. This Section 14.04 does not supersede Participant Node’s obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law.
- e. Compliance with this Section 14.04 does not relieve Participant Node of any other reporting requirements under Applicable Law regarding a security incident or breach.

15. **Representations and Warranties.** Participant Node hereby represents and warrants the following:

- 15.01. **Accurate Node Information.** Except to the extent prohibited by Applicable Law, Participant Node has provided, and will continue to provide, ConnectVirginia with all information reasonably requested by ConnectVirginia and needed by ConnectVirginia or the ConnectVirginia Governing Body to discharge its duties under this Agreement or Applicable Law, including during any Dispute Resolution Process. Any information provided by Participant Node to ConnectVirginia must be responsive and accurate. Participant Node will provide Notice to ConnectVirginia if any information provided by Participant Node to ConnectVirginia materially changes. Participant Node 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 Node at any time and Participant Node will reasonably cooperate with ConnectVirginia in such actions, given reasonable prior Notice.
- 15.02. **Execution of the Agreement.** Before using ConnectVirginia EXCHANGE, Participant Node will have executed this Agreement and returned an executed copy to ConnectVirginia. In doing so, Participant Node affirms that it has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals or consents in order for it to execute this Agreement. The representatives signing this Agreement on behalf of Participant Node affirm that they have been properly authorized and empowered to enter into this Agreement on behalf of Participant Node.
- 15.03. **Compliance with this Agreement.** Except to the extent prohibited by Applicable Law, Participant Node will comply fully with all provisions of this Agreement. To the extent that Participant Node delegates its duties under this Agreement to a third party (by contract or otherwise) and such third party will have access to Message Content, that delegation must be in writing and require the third party, prior to using ConnectVirginia EXCHANGE, to agree to the same restrictions and conditions that apply through this Agreement to Participant Node.
- 15.04. **Requirements for Participant Node Users.** Participant Node is required to ensure that each of its Node Users is legally obligated to, at a minimum: (i) comply with all Applicable Law; (ii) reasonably cooperate with Participant Node on issues related to this Agreement; (iii) Transact Message Content only for a Permitted Purpose; (iv) use Message Content received from another ConnectVirginia Node, Node User, OSA Portal User or Partner Network Participant in accordance with the terms and conditions of this Agreement; (v) as soon as reasonably practicable after determining that a Message Content Incident occurred, report such Message Content Incident to Participant Node; and (vi) refrain from disclosing to any other person any passwords or other security measures issued to the Node User that permit access to ConnectVirginia EXCHANGE. Participant Node may obligate its Node Users to abide by these requirements through any mechanism it deems appropriate including, but not limited to, policies and procedures with which the Node Users are obligated to comply, medical staff bylaws or data sharing agreements.
- 15.05. **Agreements with Technology Partners.** To the extent that Participant Node uses technology partners in connection with Participant Node's use of ConnectVirginia EXCHANGE, Participant Node affirms that it has valid and enforceable agreements with each of its technology partners, including TSPs, that require the technology partner to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of any Message Content to which it has access; (iii) as soon as reasonably practicable after determining that a Message Content Incident occurred, report such Message Content

Incident to Participant Node; and (iv) reasonably cooperate with Participant Node in its interactions with other ConnectVirginia Nodes on issues related to this Agreement that involve the technology partner's products or services.

- 15.06. **Compliance with Specifications, Policies and Procedures.** Participant Node affirms that it fully complies with the Operational Documents as more fully discussed in Section 11 of this Agreement.
- 15.07. **Accuracy of Message Content.** When acting as a Submitter, Participant Node hereby represents, subject to Section 18.01, that at the time of transmission, the Message Content it provides is (a) an accurate representation of the data contained in, or available through, its System, (b) sent from a System that employs security controls that meet industry standards so that the information and Message Content being transmitted are intended to be free from Malicious Software in accordance with Section 8.02, and (c) provided in a timely manner and in accordance with the Operational Documents. Other than those representations in Sections 15.07 and 15.08, the Participant Node, when acting as a Submitter, makes no other representation, express or implied, about the Message Content.
- 15.08. **Express Warranty of Authority to Transact Message Content.** To the extent Participant Node is a Submitter and is providing Message Content to a Recipient, Participant Node represents and warrants that it has sufficient authority to transact such Message Content.
- 15.09. **Use of Message Content.** Participant Node hereby represents and warrants that it will use the Message Content only in accordance with the provisions of this Agreement.
- 15.10. **Compliance with Laws.** Participant Node will, at all times, fully comply with all Applicable Law relating to this Agreement, the Transaction of Message Content for a Permitted Purpose and the use of Message Content.
- 15.11. **Absence of Final Orders.** Participant Node 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 Node's ability to fulfill its obligations under this Agreement. Participant Node will inform ConnectVirginia if at any point during the Term of this Agreement it becomes subject to such an order.
- 15.12. **Federal Program Participation.** Participant Node hereby represents and warrants that it is not excluded or debarred from participating or is otherwise ineligible to participate in Federal health care programs or contracts, subcontracts, grants, or nonprocurement transactions ("Federal Programs"). Participant Node will 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.

16. **ConnectVirginia Representations and Warranties.**

- 16.01. **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.

- 16.02. **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.
- 16.03. **Warranty Pertaining to Malware.** ConnectVirginia warrants, represents and covenants that, to the best of its knowledge after completing a commercially reasonable investigation, ConnectVirginia EXCHANGE will not contain, nor will ConnectVirginia introduce, any Malicious Software that will disrupt the proper operation of ConnectVirginia EXCHANGE. With the exception of the foregoing, ConnectVirginia does not make any representations or warranties regarding the information that Participant Node sends or receives through ConnectVirginia EXCHANGE.
- 16.04. **Warranty Pertaining to Intellectual Property.** ConnectVirginia warrants, represents and covenants that ConnectVirginia EXCHANGE does not, and will not, to the best of its knowledge after completing a commercially reasonable investigation, infringe any patent, trademark, or copyright of any third party; and ConnectVirginia will take no action that would adversely affect any license pertaining to ConnectVirginia EXCHANGE or any right of Participant Node to use ConnectVirginia EXCHANGE.
- 16.05. **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 ConnectVirginia EXCHANGE, 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.
- 16.06. **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 Node if at any point during the Term of this Agreement it becomes subject to such an order.
- 16.07. **Federal Program Participation.** ConnectVirginia hereby represents and warrants that it is not excluded or debarred from participating or is otherwise ineligible to participate in Federal health care programs or contracts, subcontracts, grants, or nonprocurement transactions ("Federal Programs"). ConnectVirginia will immediately provide written Notice to Participant Node 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.

17. **Confidential Business Information.**

- 17.01. Each Receiving Party will hold all Confidential Business Information in confidence and agrees that it will not, during the Term or after the termination of this Agreement, redisclose to any person or entity, nor use for its own business or benefit, any Confidential Business Information obtained by it in connection with this Agreement, unless such use or redisclosure is permitted by the terms of this Agreement.
- 17.02. Confidential Business Information may be redisclosed as required by operation of law, provided that the Receiving Party immediately notifies the Discloser of the existence, terms

and circumstances surrounding such operation of law to allow the Discloser its rights to object to such disclosure. If after Discloser's objection, the Receiving Party is still required by operation of law to redisclose Discloser's Confidential Business Information, it will do so only to the minimum extent necessary to comply with the operation of the law and will request that the Confidential Business Information be treated as such.

18. **Disclaimers.**

- 18.01. **Reliance on a System.** Participant Node acknowledges and agrees that (i) the information available through ConnectVirginia EXCHANGE is drawn from numerous sources, (ii) ConnectVirginia has not and will not confirm the accuracy of any information available through ConnectVirginia EXCHANGE, (iii) the information provided through ConnectVirginia EXCHANGE may not include the individual's full and complete medical record or history, and (iv) ConnectVirginia reveals the source of the information so that Participant Node and its Node Users will be able to make appropriate decisions about their use. Participant Node agrees that ConnectVirginia merely provides the infrastructure for Message Content to be transacted and therefore shall not be held responsible by Participant Node for the quality of any Message Content, except as set forth in Section 19.02. Participant Node acknowledges that other ConnectVirginia Nodes' Digital Credentials may be activated, suspended or revoked at any time, subject to the relevant provisions of this Agreement, or a ConnectVirginia Node may suspend its participation in ConnectVirginia EXCHANGE; therefore, Participant Node may not rely upon the availability of a particular ConnectVirginia Node's Message Content.
- 18.02. **Health Care Services.** As between the Participant Node and ConnectVirginia, ConnectVirginia is not responsible for any decisions or actions taken or not taken involving patient care, utilization management, and quality management resulting from, or in any way related to, the use of ConnectVirginia EXCHANGE or the Message Content made available thereby. By executing this Agreement or Transacting Message Content, neither Participant Node nor any Participant Node User assumes any responsibility or liability for the health care services provided by any other ConnectVirginia Node or Node User to a patient. Message Content obtained through a Message is not a substitute for Participant Node or its Node User, if that person/entity is a Health Care Provider, obtaining whatever information he/she/it deems necessary, in his/her professional judgment, for the proper treatment of a patient.
- 18.03. **Carrier lines.** The Parties acknowledge that ConnectVirginia EXCHANGE is to be provided over various Carrier Lines owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which may be beyond a Party's control. Provided a Party uses reasonable security measures, no less stringent than those directives, instructions, and specifications contained in this Agreement and the Operational Documents, neither Party assumes 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 Message Content or other information attributable to transmission over those Carrier Lines which are beyond a Party's control. Use of the Carrier Lines is solely at the Participant Node's risk and is subject to all Applicable Law.
- 18.04. **No Warranties.** EXCEPT AS REPRESENTED IN SECTIONS 13.02, 15.07, 15.08 and 16, CONNECTVIRGINIA EXCHANGE AND MESSAGE CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING,

BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT WILL A PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR OTHER THIRD PARTIES.

19. **Liability.**

- 19.01. **Participant Node Liability.** As between Participant Node and ConnectVirginia: Node is responsible for its acts and omissions and not for the acts or omissions of any other ConnectVirginia Node. Participant Node is also liable for damages to ConnectVirginia and other ConnectVirginia Nodes caused by any act or omission of an individual who uses ConnectVirginia EXCHANGE or exchanges Confidential Business Information through Participant Node or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from Participant Node or any of its Node Users, but only if two conditions are met: (1) the damages were caused by Participant Node's breach of the Agreement or its negligent conduct; and (2) a remedy exists under Applicable Law for those damages. Notwithstanding any provision in this Agreement to the contrary, Participant Node will not be liable for any act or omission if a cause of action for such act or omission is unavailable or is otherwise prohibited by Applicable Law. This section is not intended to be and is not a hold harmless or indemnification provision.
- 19.02. **ConnectVirginia Liability.** Participant Node has agreed to comply with this Agreement. Accordingly, Participant Node will not hold ConnectVirginia, its contractors, employees or agents liable for any damages, losses, liabilities or injuries arising from or related to Participant Node's participation in or use of ConnectVirginia EXCHANGE, except to the extent that such damages, losses, liabilities or injuries are the direct result of (i) ConnectVirginia's grossly negligent or willful misconduct in the operation of ConnectVirginia EXCHANGE or (ii) ConnectVirginia's breach of the Trust Agreement related to the operation of ConnectVirginia EXCHANGE. In no case shall ConnectVirginia or any of its employees, contractors, or agents be held liable for any acts or omissions of the ConnectVirginia Governing Body or that were undertaken at the direction of the ConnectVirginia Governing Body provided that the direction of the ConnectVirginia Governing Body reflects a decision made in good faith and consistent with normal business practices.
- 19.03. **ConnectVirginia Governing Body Liability.** Participant Node acknowledges that those individuals serving on the ConnectVirginia Governing Body are serving as volunteers performing a public service. Participant Node will not hold the ConnectVirginia Governing Body itself, or any of its members individually or collectively, liable for any damages, losses, liabilities or injuries arising from or related to the ConnectVirginia Governing Body's acts or omissions related to ConnectVirginia.
- 19.04. **Effect of Agreement.** Except as provided in Section 18.04, Section 19.02, Section 19.03 and Section 23, this Agreement is not intended to and does not restrict a Party's right to pursue all remedies available under law for damages or other relief arising from acts or omissions

related to ConnectVirginia EXCHANGE, or to limit any rights, immunities or defenses to which a Party may be entitled under Applicable Law.

- 19.05. **Insurance.** During the Term of this Agreement, ConnectVirginia shall keep in force and maintain, at its expense, insurance coverage in at least the minimum amounts required by law including, without limitation, workers' compensation in such amount as is required by the Commonwealth of Virginia. In addition, ConnectVirginia shall maintain commercially reasonable amounts of commercial general liability and errors and omissions insurance.

20. **Participation Fee and Payment.**

- 20.01. **Participation Fee.** In consideration for the access to ConnectVirginia EXCHANGE provided by ConnectVirginia to Participant Node under this Agreement, Participant Node shall pay to ConnectVirginia an annual Participation Fee calculated in accordance with the ConnectVirginia EXCHANGE Policies and Procedures. ConnectVirginia reserves the right to change the Participation Fee by revising the ConnectVirginia EXCHANGE Policies and Procedures in accordance with Section 11; however, ConnectVirginia shall not increase the annual Participation Fee by more than five percent (5%) per year, or the percentage increase in the ECI from the prior year's anniversary of the Effective Date, whichever is less, without the consent of Participant Node. ConnectVirginia shall provide Notice to Participant Node of any increase in the Participation Fee at least one hundred and eighty (180) days prior to the end of a Term and such increase shall be effective on the first day of the next Renewal Term.
- 20.02. **Invoices and Payment Date.** Participant Node shall pay the annual Participation Fee in twelve (12) equal monthly installments. Unless the ConnectVirginia EXCHANGE Policies and Procedures provide otherwise, the first installment shall be due on the Effective Date of this Agreement. ConnectVirginia shall invoice Participant Node for all subsequent monthly installments by the 1st day of each month of the Term. Invoices shall be due and payable by Participant Node within thirty (30) days after receipt thereof.
- 20.03. **Collection Costs.** In the event of a dispute between the Parties under this Agreement, the prevailing Party, as determined by the court, shall be entitled to any collection costs, including reasonable attorney's fees or other expenses reasonably incurred by a Party in any such action.
- 20.04. **Suspension of Service.** In the event Participant Node fails to make any payment required hereunder, ConnectVirginia, without limitation to any other remedy it may have, may, if such payment is not received after ten (10) days' Notice, suspend such Participant Node's use of ConnectVirginia EXCHANGE. ConnectVirginia is not required to follow the procedures set out in Section 21.03 of this Agreement if the suspension is due to non-payment of the Annual Participation Fee.

21. **Term, Suspension and Termination.**

- 21.01. **Term.** The initial term of this Agreement shall commence on the Effective Date and expire on December 31st of the second calendar year following the Effective Date ("Initial Term"). By way of example only, if the Effective Date of this Agreement is any time during 2014, 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 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 Agreement is terminated in

accordance with this Section 21. (Together the Initial Term and all Renewal Terms are referred to as “Term.”)

- 21.02. **Suspension by Participant Node.** In accordance with the ConnectVirginia EXCHANGE Policies and Procedures, Participant Node may voluntarily suspend its own use of ConnectVirginia EXCHANGE by informing ConnectVirginia of its voluntary suspension. Participant Node may undertake a voluntary suspension for the following reasons: (i) the Participant Node is doing technical maintenance or making technical modifications to its Systems that require it to cease Transacting Message Content through ConnectVirginia EXCHANGE for a limited period of time; (ii) the Participant Node becomes aware of a privacy or security threat in its Systems that could pose a threat to ConnectVirginia EXCHANGE that can only be mitigated by temporarily ceasing to Transact Message Content through ConnectVirginia EXCHANGE; or (iii) any other valid purpose approved by the Governing Body. Once Participant Node has properly informed ConnectVirginia of its voluntary suspension, neither Participant Node, nor its Node Users, may use ConnectVirginia EXCHANGE until the voluntary suspension has ended and Participant Node has informed ConnectVirginia that the suspension has ended in accordance with the ConnectVirginia EXCHANGE Policies and Procedures. During the period of the voluntary suspension, Participant Node’s inability to Transact Message Content and comply with this Agreement’s terms requiring Transaction of Message Content will not be deemed a breach of this Agreement.
- 21.03. **Suspension by ConnectVirginia.** If necessary to address a threat posed by Participant Node, and upon Notice to such Participant Node as provided in the ConnectVirginia EXCHANGE Policies and Procedures, ConnectVirginia may suspend Participant Node’s right to use ConnectVirginia EXCHANGE once the ConnectVirginia Executive Director completes a preliminary investigation and determines that there is a substantial likelihood that Participant Node’s acts or omissions create an immediate threat or will cause irreparable harm to another party including, but not limited to, a ConnectVirginia Node, a Node User, an OSA Portal User, or a Partner Network Participant; the integrity or operation of ConnectVirginia EXCHANGE; or an individual whose Message Content is Transacted using ConnectVirginia EXCHANGE. Upon suspension, ConnectVirginia will immediately take whatever actions it deems necessary to limit Participant Node’s ability to use ConnectVirginia EXCHANGE and provide Participant Node with a written summary of the reason(s) for suspension. In accordance with the ConnectVirginia EXCHANGE Policies and Procedures, Participant Node will use reasonable efforts to respond to the suspension notice with a detailed plan of correction or an objection and ConnectVirginia will review and act on Participant Node’s plan of correction or objection.
- 21.04. **Termination by Participant Node.** Participant Node may terminate this Agreement by giving ConnectVirginia written Notice of termination under the following circumstances:
- a. Participant Node ceases to be an organization that oversees and conducts, on its own behalf and/or on behalf of its Node Users, electronic transactions or exchanges of health information among groups of persons or organizations;
 - b. Participant Node’s continued participation in ConnectVirginia EXCHANGE would result in Participant Node violating Applicable Law;
 - c. In accordance with Section 11.05, ConnectVirginia adopts a new, amended, repealed or replaced Operational Document that results in a substantive change to the

Operational Documents and Participant Node will not be able to comply with such change or does not otherwise desire to continue to use ConnectVirginia EXCHANGE after such change becomes effective;

- d. ConnectVirginia has failed to cure a material breach of its obligations under this Agreement within sixty (60) days of receiving written Notice of such breach from Participant Node; or
- e. In accordance with Section 25.02, Participant Node will not sign an amendment to this Agreement.

21.05. **Termination by ConnectVirginia.** The ConnectVirginia Governing Body may terminate Participant Node's right to participate in ConnectVirginia EXCHANGE and this Agreement after one of the following events occurs:

- a. Participant Node rejects a plan of correction mandated by the ConnectVirginia Governing Body to address a suspension action taken by ConnectVirginia;
- b. Participant Node fails to successfully implement a plan of correction that is agreed upon by the Parties or mandated by the ConnectVirginia Governing Body to cure the condition that led to Participant Node's suspension by ConnectVirginia;
- c. Participant Node is in material default of the performance of a duty or obligation set forth in this Agreement and Participant Node has not substantially cured that default within sixty (60) calendar days following receipt of written Notice of that default from ConnectVirginia; or
- d. Participant Node fails to pay the required Participation Fee within ninety (90) days of receiving an invoice for such Fee.

21.06. **Termination by Mutual Consent.** ConnectVirginia and Participant Node may agree to terminate Participant Node's right to participate in ConnectVirginia EXCHANGE and this Agreement.

21.07. **Effect of Termination.**

- a. Upon any termination of this Agreement for any reason, Participant Node will cease to be a ConnectVirginia Node and thereupon and thereafter neither Participant Node nor its Node Users will have any rights to use ConnectVirginia EXCHANGE to Transact Message Content with other ConnectVirginia Nodes, Node Users, OSA Portal Users or Partner Network Participants (unless Node Users have an independent right to Transact Message Content through another ConnectVirginia Node). ConnectVirginia will undertake all actions necessary to terminate Participant Node's ability to use ConnectVirginia EXCHANGE. ConnectVirginia will provide Notice of Participant Node's termination to all other ConnectVirginia Nodes. If, after termination, Participant Node wishes to rejoin ConnectVirginia EXCHANGE as a ConnectVirginia Node, it will follow the application process that is in place at such future time.
- b. In the event of termination of this Agreement pursuant to Sections 21.04(a) or 21.05, such termination shall not affect or negate the obligation of Participant Node to pay the annual Participation Fee for the then current Term. The total remaining annual Participation Fee for the then current Term shall become immediately due and payable within five (5) days after the date of any termination hereunder notwithstanding anything set forth herein to the contrary.

- 21.08. **Confidential Business Information.** All information ConnectVirginia or Participant Node uses, provides or creates in accordance with this Section 21, except for Message Content, will be labeled as “Confidential Business Information” and will be treated as such in accordance with Section 17.
- 21.09. **Disposition of Message Content on Termination.** At the time of termination, Participant Node may, at its election, retain Message Content that it has received through ConnectVirginia EXCHANGE in accordance with Participant Node’s document and data retention policies and procedures, Applicable Law, and the terms of this Agreement, including Section 6.02.
22. **Cooperation.** Participant Node understands and acknowledges that numerous activities with respect to this Agreement will likely involve ConnectVirginia’s or another ConnectVirginia Node’s employees, agents, and third party contractors, vendors, or consultants. To the extent not legally prohibited, Participant Node will: (a) reasonably cooperate with ConnectVirginia, each other ConnectVirginia Node, and any such third parties with respect to such activities as they relate to this Agreement; (b) provide such information to ConnectVirginia, each other ConnectVirginia Node, or such third parties as may reasonably be requested for purposes of performing activities relating to this Agreement; (c) devote such time as may reasonably be requested by ConnectVirginia to review information and to meet with, respond to, and advise ConnectVirginia or other ConnectVirginia Nodes with respect to activities relating to this Agreement; (d) provide such reasonable assistance as may be requested by ConnectVirginia when performing activities relating to this Agreement; and (e) subject to Participant Node’s right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting Participant Node’s Confidential Business Information, provide information and assistance to ConnectVirginia or other ConnectVirginia Nodes in the investigation of Message Content Incidents and Disputes. In no case will Participant Node be required to disclose PHI in violation of Applicable Law. In seeking another ConnectVirginia Node’s cooperation, Participant Node will make all reasonable efforts to accommodate the other ConnectVirginia Node’s schedules and reasonable operational concerns. If Participant Node experiences any problems or issues that arise in working with another ConnectVirginia Node’s employees, agents, or subcontractors that threaten to delay or otherwise adversely affect Participant Node’s ability to fulfill its responsibilities under this Agreement, then Participant Node will promptly report orally, and if necessary in writing, each of those problems or issues to the other ConnectVirginia Node and to ConnectVirginia. This writing must set forth in detail and with clarity the problems that Participant Node has identified.
23. **Dispute Resolution.**
- 23.01. **General.** Participant Node acknowledges that it may be in its best interest to resolve Disputes with other ConnectVirginia Nodes through an alternative dispute resolution process rather than through civil litigation. Participant Node has reached this conclusion based upon the fact that the legal and factual issues involved in this Agreement are unique, novel, and complex and limited case law exists which addresses the legal issues that could arise from this Agreement. Therefore, Participant Node will submit Disputes with another ConnectVirginia Node(s) related to this Agreement to and participate in the non-binding Dispute Resolution Process set forth in the ConnectVirginia EXCHANGE Policies and Procedures. Except in accordance with Section 23.02, if Participant Node refuses to participate in the Dispute Resolution Process with respect to a Dispute with another ConnectVirginia Node, such refusal shall constitute a material breach of this Agreement and may be grounds for termination in accordance with Section 21.05. Notwithstanding the

foregoing, for any Dispute (i) between Participant Node and ConnectVirginia, or (ii) involving claims of non-ConnectVirginia Node third parties (e.g., patients, members or clients), either Party may pursue any remedies available to it in a court of competent jurisdiction without participating in the alternative dispute resolution process.

23.02. Immediate Injunctive Relief.

- a. Notwithstanding and in addition to Section 23.01, Participant Node may be relieved of its obligation to participate in the Dispute Resolution Process if Participant Node (i) believes that another ConnectVirginia Node's acts or omissions create an immediate threat to the confidentiality, privacy or security of Message Content or will cause irreparable harm to the other party (ConnectVirginia Node, Node User, the integrity or operation of ConnectVirginia EXCHANGE, or an individual) and (ii) pursues immediate injunctive relief against such other ConnectVirginia Node in a court of competent jurisdiction. If Participant Node pursues immediate injunctive relief, it must provide a Notification to ConnectVirginia of such action within 24 hours of filing for the injunctive relief and of the result of the action within 24 hours of learning of same.
- b. If the injunctive relief sought in Section 23.02(a) is not granted and Participant Node chooses to pursue the Dispute, Participant Node must then submit to the Dispute Resolution Process in accordance with Section 23.01.

23.03. Activities during Dispute Resolution Process. Pending resolution of any Dispute under this Agreement, Participant Node agrees to fulfill its responsibilities in accordance with this Agreement, unless Participant Node voluntarily suspends its right to Transact Message Content in accordance with Section 21.02, is suspended in accordance with Section 21.03, or terminates this Agreement in accordance with Section 21.04.

23.04. Implementation of Agreed Upon Resolution. If, at any point during the Dispute Resolution Process, all of the ConnectVirginia Nodes involved in the Dispute accept a proposed resolution of the Dispute, Participant Node agrees to implement the terms of the resolution in the agreed upon timeframe.

23.05. Reservation of Rights. If, following the Dispute Resolution Process, in the opinion of Participant Node, the mandatory Dispute Resolution Process failed to adequately resolve the Dispute, Participant Node may pursue any remedies available to it in a court of competent jurisdiction.

23.06. Conflict of Interest. If any member of the Governing Body is an employee, agent or is otherwise affiliated with a ConnectVirginia Node that is involved in a Dispute that is being handled through the Dispute Resolution Process, such member of the Governing Body shall recuse himself from any Governing Body discussions, deliberations or decisions related to the Dispute.

24. Notices. All Notices to be made under this Agreement must be given in writing to the Party at the address listed in Attachment 1, and will be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by the United States Postal Service Certified Mail, return receipt requested; and (iii) if by facsimile telecommunication or other form of electronic transmission, upon receipt when the Notice is directed to a facsimile telecommunication number or electronic mail address listed on Attachment 1 and the sending facsimile machine or electronic mail address receives confirmation of receipt by the receiving facsimile machine or electronic mail address.

25. *Miscellaneous/General.*

- 25.01. **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.
- 25.02. **Amendment.** This Agreement may be amended by ConnectVirginia from time to time. ConnectVirginia will provide Participant Node with Notice of such amendment at least ninety (90) days prior to the effective date of such amendment. If ConnectVirginia provides Participant Node with Notice of an amendment to this Agreement, Participant Node 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 Node unless such amendment is proposed to all other ConnectVirginia Nodes.
- 25.03. **Assignment.** Participant Node may not assign or transfer this Agreement, or any part thereof, without the prior and specific written consent of ConnectVirginia, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Participant Node may assign this Agreement to any of its affiliates without ConnectVirginia's consent. If Participant Node assigns this Agreement pursuant to the terms of this Section, ConnectVirginia shall provide Notice to Participant Node of any changes in Participant Node's annual Participation Fee as a result of such assignment and such changes shall take effect on the effective date of the assignment. ConnectVirginia may assign this Agreement to any successor operator of ConnectVirginia. This Agreement is binding on the respective successors and permitted assigns of the parties. Any purported assignment without such consent shall be null and void.
- 25.04. **Survival.** The provisions of Sections 1, 6.02, 6.03, 14, 15.09, 17, 19, 21.08, 21.09, 22 and 23 will survive the termination of this Agreement for any reason.
- 25.05. **Waiver.** No failure or delay by a Party in exercising its rights under this Agreement will operate as a waiver of such rights, and no waiver of any right will constitute a waiver of any prior, concurrent, or subsequent right.
- 25.06. **Entire Agreement.** This Agreement, together with all Attachments, appendices, exhibits, policies and procedures attached hereto or referenced herein, sets forth the entire and only Agreement between the Parties relative to the subject matter hereof. Any representation, promise, or condition, whether oral or written, not incorporated herein, will not be binding upon the Parties.
- 25.07. **Validity of Provisions.** In the event that a court of competent jurisdiction holds 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 will remain in full force and effect.
- 25.08. **Priority.** In the event of any conflict or inconsistency between a provision in the body of this Agreement and any attachment hereto, the terms contained in the body of this Agreement will prevail. Notwithstanding the foregoing, the Business Associate Addendum referred to in

Section 14.02 shall control in the event of a conflict between the addendum and the body of this Agreement.

- 25.09. **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.
- 25.10. **Relationship of the Parties.** The Parties are independent contracting entities. Nothing in this Agreement will be construed to create a partnership, agency relationship, or joint venture among 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. No Party may be held liable for the acts or omissions of the other Party.
- 25.11. **Counterparts.** This Agreement 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.
- 25.12. **Third-Party Beneficiaries.** There exists no right of any person, except for other ConnectVirginia Nodes, who are third party beneficiaries of this Agreement, to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.
- 25.13. **Force Majeure.** Neither Party will be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other disruptive natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) terrorist attacks; (g) acts of legislative, judicial, executive, or administrative authorities; or (h) any other circumstances that are not within its reasonable control. This Section 25.13 will not apply to obligations imposed under Applicable Law. Notwithstanding the foregoing, if the period of non-performance by ConnectVirginia exceeds ninety (90) days, Participant Node may terminate this Agreement upon thirty (30) days written Notice to ConnectVirginia.
- 25.14. **Time Periods.** Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of ConnectVirginia and Participant Node.

This Agreement has been entered into and executed by officials duly authorized to bind their respective Parties.

ConnectVirginia

[Participant Node]_____

By: _____

By: _____

Sandy McCleaf

Name: _____

Executive Director of ConnectVirginia

Title: _____

Date: _____

Date: _____

Attachment 1 - Addresses for Notice

	ConnectVirginia	Participant Node
Address	4900 Cox Rd., Suite 245	
Attention	Sandy McCleaf	
Fax Number	804-665-2459	
Email Address	support@connectvirginia.org	

A copy of the Notice shall also be sent to Participant Node’s General Counsel at:

Attachment 2 – Business Associate Addendum

This Business Associate Addendum (“Business Associate Addendum”), effective _____ (“Effective Date”), is attached to and made a part of the ConnectVirginia EXCHANGE Trust Agreement (the “Agreement”) entered into by and between _____ (“Participant Node”) and Community Health Alliance dba ConnectVirginia (“Business Associate”).

Recitals

1. Participant Node is a Covered Entity or a Business Associate of a Covered Entity and is subject to 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. Participant Node participates in Business Associate’s health information exchange known as ConnectVirginia EXCHANGE and, in this capacity, Business Associate serves as a Business Associate to Participant Node 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. Business Associate may use and/or disclose Protected Health Information, as defined herein and in accordance with the Trust Agreement.
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.

NOW THEREFORE, for and in consideration of the foregoing recitals and the mutual promises and covenants hereinafter contained, the parties agree as follows:

A. 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.

B. 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.

C. OBLIGATIONS OF BUSINESS ASSOCIATE

1. Compliance with Privacy and Security Obligations. Business Associate agrees to comply with those requirements relating to privacy and security that are made applicable to Business Associate under the HITECH Act, and such requirements 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 Node; and

(b) Section 13404(a) of the HITECH Act provides that a business associate which obtains or creates PHI pursuant to a written contract described in 45 C.F.R. § 164.502(e)(2) may use and disclose PHI only if such use or disclosure is in compliance with each applicable provision of 45 C.F.R. § 164.504(e).

2. Permitted Uses and Disclosures of Protected Health Information. Pursuant to the Agreement, Business Associate provides services for and on behalf of Participant Node 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, Business Associate may make any and all uses and disclosures of Protected Health Information necessary to perform its duties and obligations under the Agreement. All other uses and disclosures are prohibited. When using or disclosing PHI in accordance with the Agreement and this Business Associate Addendum, Business Associate will make reasonable efforts to use and disclose only the minimum amount of Participant Node's PHI reasonably necessary to accomplish the intended purpose of the use or disclosure and will comply with the specific "minimum necessary" provisions in Business Associate's Policies and Procedures Manual.

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 Node in any manner that would constitute a violation of the Privacy and Security Standards if used by Participant Node. 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 Node; 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 Node in any manner that would constitute a violation of the Privacy and Security Standards if disclosed by Participant Node, except that Business Associate may disclose Protected Health Information: (a) in a manner permitted pursuant to this Business Associate Addendum; or (b) as required by law. Participant Node explicitly acknowledges and agrees that Business Associate's disclosure, by and through its agents/subcontractors, of PHI received

from Participant Node pursuant to the provisions of the Agreement shall be considered permitted disclosure of PHI for purposes of the Agreement and this Business Associate Addendum.

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.

6. Safeguards Against Misuse of Information. Business Associate agrees that it will implement all appropriate and reasonable safeguards in compliance 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 Node, as required by the Privacy and Security Standards. In the event of any improper use and/or disclosure of Protected Health Information by Business Associate, Business Associate shall work, and where practicable Participant Node shall work cooperatively with Business Associate, at Business Associate's sole expense, to implement procedures for mitigating the harmful effects of such improper use and/or disclosure.

7. Breach Notification.

(a) Business Associate shall report in writing to Participant Node (i) any use or disclosure of PHI that is not authorized by the Agreement including, but not limited to, Security Incidents and Message Content Incidents, and (ii) any Breach of Unsecured PHI. Business Associate shall deliver such written notice as soon as practicable, but no later than ten (10) days, after 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 Message Content Incident, unauthorized use or disclosure or Breach. Notice of any Message Content Incident, unauthorized use or disclosure or Breach shall (i) identify each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed in such 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 Node to each such individual pursuant to the HITECH Act.

8. Access to Information. Throughout the term of this Business Associate Addendum, Business Associate shall make available to Participant Node such Protected Health Information provided to Business Associate by Participant Node for so long as such information is maintained. In the event any individual requests access to Participant Node-provided Protected Health Information directly from Business Associate, Business Associate shall forward such request to Participant Node. Any denials of access to the Protected Health Information requested shall be the responsibility of Participant Node.

9. Availability of Protected Health Information for Amendment. Upon receipt of a request from Participant Node to update Protected Health Information for an individual, Business

Associate agrees to incorporate any such amendment as may be required by 45 C.F.R. § 164.526. Business Associate shall refer to Participant Node any requests received by Business Associate requesting amendments to Participant Node-provided PHI. Any review and consideration of a requested amendment shall be the responsibility of Participant Node.

10. Accounting of Disclosures. Within 21 days of receiving a request from Participant Node, Business Associate shall make available to Participant Node such information as is in Business Associate's possession and is required for Participant Node to make an accounting, as required by 45 C.F.R. § 164.528. Business Associate shall provide Participant Node 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 Node. It shall be Participant Node's responsibility to prepare and deliver any such accounting requested.

11. 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 Node, available to the Secretary (or its designee) for purposes of determining Participant Node's and Business Associate's compliance with the Privacy and Security Standards, subject to attorney-client and other applicable privileges. Business Associate agrees to notify Participant Node promptly of: (1) any request by the Secretary to examine such internal practices, books, records, policies, procedures, and Protected Health Information, and (2) the results and disposition of any such request. Business Associates shall provide Participant Node a copy of any Protected Health Information that Business Associate provides to the Secretary concurrently with the providing of such Protected Health Information to the Secretary.

12. Delegation of Participant Node's Obligations to Business Associate. To the extent that the Participant Node requests that Business Associate carry out one or more of Participant Node's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate will comply with the requirements of Subpart E that apply to Participant Node in the performance of such obligations.

D. 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; however, it will remain in effect as long as the Agreement is renewed.

(b) Termination for Judicial or Administrative Proceedings. Participant Node may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a

criminal proceeding for a violation of HIPAA, the regulations under HIPAA or other security or privacy laws, or (ii) a finding or stipulation is made in any administrative or civil proceeding in which Business Associate has been joined that the Business Associate has materially violated any standard or requirement of HIPAA, the regulations under HIPAA, or other security or privacy laws.

(c) **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. Participant Node shall allow Business Associate the opportunity to cure the alleged breach prior to terminating the relationship with Business Associate unless the Parties jointly determine that cure is not possible, in which case Participant Node may immediately terminate this Business Associate Addendum and the Agreement. If Business Associate does not cure the breach within thirty (30) days of Participant Node's written notice of the breach to Business Associate, Participant Node may terminate the Agreement and this Business Associate Addendum. Likewise, Business Associate may terminate the Agreement and this Business Associate Addendum if Participant Node commits a material breach of this Business Associate Addendum that is not cured within thirty (30) days of Business Associate's written notice of the breach to Participant Node.

(d) **Effect of Termination.** Upon termination of this Business Associate Addendum, if it is not possible for Business Associate to destroy or return to Participant Node Protected Health Information received from Participant Node or Protected Health Information created or received by Business Associate on behalf of Participant Node, Business Associate and Participant Node shall continue to maintain such information in accordance with the terms of this Agreement.

F. MISCELLANEOUS

1. **Independent Contractors.** In performing the services herein specified, Business Associate will be acting as an independent contractor of Participant Node. 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.

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 as permitted by the Agreement. 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 Node 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.

IN WITNESS WHEREOF, the parties hereto have signed this Business Associate Addendum on the _____ day of _____.

Participant Node: _____

By: _____

Title: _____

ConnectVirginia: _____

By: Sandy McCleaf

Title: Executive Director