



Washington State Health Information Exchange
Participation Terms and Conditions

Effective Date: 3/1/2011

The following OneHealthPort HIE Participation Terms and Conditions apply to the use of the HIE Services offered as part of the OneHealthPort HIE, and are incorporated by reference into the Participation Agreement for the OneHealthPort HIE, as well as all related Schedules and HIE Policies.

Please see the OneHealthPort HIE FAQ and OneHealthPort HIE Glossary at the HIE reference site at <http://www.onehealthport.com/HIE/index.php> for more information about the HIE Services. The OneHealthPort HIE FAQs and OneHealthPort HIE Glossary are incorporated by reference into these Participation Terms and Conditions, and provide important information for understanding these Participation Terms and Conditions.

Please note that compliance with these Participation Terms and Conditions is a requirement for use of the HIE Services, and a violation of them may be grounds for terminating a Participant's Participation Agreement, subscription to one or more of the HIE Services, or a HIE User's registration to use one or more of the HIE Services.

1. HIE SERVICES. The HIE Services are a set of technical services which may be used by a Participant for purposes of health information exchange. Each HIE Service is identified and offered for subscription as specified in the applicable Schedule. Participants may subscribe to a HIE Service by submitting a HIE Service Election Form to OHP, and it will be effective on acceptance of the Service Election by OneHealthPort.

1.1. Publication of Schedules. All Schedules for HIE Services available through the OneHealthPort HIE from time to time are available at the HIE Reference site.

1.2. Policy and Operating Manuals. The HIE Services are subject to HIE Policies, including but not limited to the HIE Security Policy, the HIE User Policy, and the HIE Business Associate Policy, and to the OneHealthPort HIE's operating policies and procedures. The HIE Policies are published in the OneHealthPort HIE Policy Manual, which is available at <http://www.onehealthport.com/HIE/index.php>, and the OneHealthPort HIE's operating policies and procedures are published in the OneHealthPort HIE Operating Manual, available online at the same HIE resource web page..

1.3. Amendment of Schedules. OneHealthPort may amend the terms of any Schedule or any HIE Policy, or terminate a Service by termination of the applicable

Schedule, upon no less than sixty (60) days prior written notice unless a longer period is specified in the notice.

1.4. Amendment of HIE Operating Manual. OneHealthPort may amend any policy or procedure in the HIE Operating Manual, upon notice, and such amendments shall become effective on the later of the date of the notice or the date indicated by OneHealthPort.

1.5. Payment for Services. The fees and costs applicable to a Service shall be identified and payable as specified in the applicable Schedule.

2. USE OF THE SERVICES.

2.1. Registration of HIE Users. Only individuals who are authorized by a Participant under the procedures established by OneHealthPort (HIE Users) shall be authorized to access and use HIE Services. Please see the HIE User Policy in the HIE Policy Manual for information about HIE User registration.

2.2. Responsibility for HIE Users. The Participant shall be responsible for compliance with the Participation Agreement, these Participation Terms and Conditions and OneHealthPort HIE Policy and Operating Manuals by its HIE Users, as well as any other individuals who conduct any HIE activity by use of any user name or password or other security token received or obtained, directly or indirectly,

OneHealthPort HIE
Participation Terms and Conditions

Effective Date: 3/1/2011

Page 2 of 7

lawfully or unlawfully, from the Participant or any of the Participant's HIE Users, and all HIE User and other such individual's acts and omissions shall be deemed to be the acts and omissions of the Participant.

3. COMPLIANCE IN USING, DISCLOSING AND OBTAINING INFORMATION. The Participant acknowledges that the information it may provide to or obtain from other parties through the HIE Services may include Protected Information, which is subject to protections or limitations on its use or disclosure under federal or state laws. OneHealthPort and each Participant is separately responsible for ensuring that it complies with applicable laws in using, disclosing and obtaining information using the HIE Services. Participants are also responsible for obtaining any authorization or consent from any Individual which may be required for use or disclosure of Protected Information as a result of use of the HIE Services. In the event the provision of a HIE Service entails the obtaining, use or disclosure of Protected Health Information by OneHealthPort on behalf of or in order to perform services or functions to or for the Participant, the Schedule for that Service shall be supplemented by the HIE Business Associate Policy.

4. LIMITATIONS ON LIABILITY RELATING TO PERFORMANCE OF SERVICES. The Participant's sole remedies against OneHealthPort for losses or damages caused by or arising in connection with the provision or performance of any HIE Service, or under any HIE policy, procedure or Schedule, regardless of the form of action, whether in contract (including pursuant to the indemnification provisions of these Participation Terms and Conditions), tort, strict liability or otherwise, shall be as follows:

4.1. Indemnification for Damages. In the event that the Participant suffers financial losses or damages due to a failure of a HIE Service to comply with an applicable federal or state law or regulation, provided Participant has otherwise complied with applicable policies and procedures OneHealthPort shall pay the Participant upon demand its actual losses or damages incurred, up to an amount equal to the total sums paid to OneHealthPort by the Participant for subscription to the involved HIE Service during the preceding twelve (12) month period.

4.2. Termination for Failure to Provide Service. Any failure to deliver or inadequacy in any HIE Service by OneHealthPort which is not caused by Force Majeure or a Participant or HIE

User failure to comply with an obligation under or incorporated by HIE policy, procedure or Schedule shall be deemed a Curable Breach. A failure which is caused by Force Majeure or a Participant or HIE User failure to comply shall not be considered a breach by OneHealthPort.

4.3. No OneHealthPort Liability Based on Participant or HIE User Failure. In no event shall OneHealthPort be responsible for any penalties, damages or other losses incurred by the Participant as the result of any event, occurrence or failure to perform by OneHealthPort which was materially caused or contributed to by a Participant's or HIE User's failure to comply with an obligation under any HIE policy, procedure or Schedule, or with any law or regulation.

5. PARTICIPANT SUPPORT OBLIGATIONS. The effective, secure and legally compliant access to and use of the Services is dependent on the Participant's cooperation and support, including but not limited to the following.

5.1. Services Support. The Participant shall be responsible for procuring and maintaining all Required Hardware and Software necessary for it to access and use the HIE Services to which it subscribes.

5.1.1. Required Hardware and Software. The Required Hardware and Software for a HIE Service shall conform to any specifications provided in the applicable Schedule, and may include Third Party Products. OneHealthPort may change the specifications for Required Hardware and Software for a HIE Service from time to time in its sole discretion upon not less than sixty (60) days prior notice to the Participant.

5.1.2. Carrier Lines. Access to the HIE Services is provided over various facilities and communications lines, and information will be transmitted over local network and Internet backbone carrier lines and through routers, switches, and other devices (Carrier Lines) owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which are beyond OneHealthPort's control. OneHealthPort assumes no liability and does not make any warranties with respect to Carrier Lines.

**OneHealthPort HIE
Participation Terms and Conditions**

Effective Date: 3/1/2011

Page 3 of 7

5.1.3. HIE User Training and Awareness. The Participant shall provide training to its HIE Users with respect to the HIE Services, their obligations under the HIE Policies and federal and state laws and regulations applicable to their use of the HIE Services, and shall be solely responsible for ensuring that all its HIE Users are aware of these obligations and requirements.

6. LICENSE TO USE SERVICES. During the term of the Participation Agreement the Participant may subscribe to one or more HIE Services. Upon activation of such a subscription and during the term of the subscription, and subject to the Participant's compliance with the Participation Agreement, OneHealthPort HIE Policy and Operating Manuals and the applicable Schedule, OneHealthPort hereby grants to the Participant, and the Participant accepts, a non-perpetual, terminable, non-exclusive, non-transferable, non-assignable right and license (without the right to sublicense) for each such HIE Service, as follows:

6.1. Scope of License. To use software provided in or as an element of each such HIE Service (~~Associated Software~~) on one or more Authorized Devices owned or leased by the Participant solely in object-code form, only in accordance with the Participation Agreement, HIE Policy and Operating Manuals, and the applicable Schedule, and only in connection with activities and transactions contemplated by the Participation Agreement, HIE Policy and Operating Manuals and Schedule; and

6.1.1. To use the HIE Service and Associated Software solely over an Internet connection; provided that

- a. The HIE Service shall be used solely for purposes of electronic communications and the transfer of electronic data, documents and records in order to provide healthcare, conduct healthcare payment transactions, conduct other communications and transactions in connection with health care-related services or products, or conduct public health transactions and communications, and;
- b. The Participant shall not modify, reverse engineer, decompile,

disassemble, re-engineer or otherwise create or permit or assist others to re-create any Associated Software, create or assist any others in creating any derivative works from any Associated Software, or modify any Associated Software except as approved by OneHealthPort.

6.2. License Restrictions. The Participant shall not use any HIE Services or Associated Software for any purpose other than health information exchange for purposes within the scope of this license, and without limitation the following uses are expressly prohibited:

- a. *No Services to Third Parties.* Except as expressly authorized by OneHealthPort in writing in advance, the Participant shall use all HIE Services and Associated Software only for the Participant's own operational or business purposes, and shall not use any part of the HIE Services or Associated Software to provide separate services or sublicenses to any third party, including without limitation providing any service bureau services or equivalent services to a third party.
- b. *No Services Prohibited by Law.* The Participant shall not use any HIE Service or Associated Software for any purpose or in any manner that is prohibited by federal law or the laws of the State of Washington, or the laws of any other state from which the Participant accesses and uses such Service.

6.3. DISCLAIMER. THE HIE SERVICES AND ALL ASSOCIATED SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS ONLY. ACCORDINGLY, BUT WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, ONEHEALTHPORT DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR ASSOCIATED SOFTWARE WILL MEET THE REQUIREMENTS OF ANY PERSON OR WILL OPERATE ERROR-FREE OR CONTINUOUSLY, AND ONEHEALTHPORT MAKES NO OTHER

**OneHealthPort HIE
Participation Terms and Conditions**

Effective Date: 3/1/2011

Page 4 of 7

REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OR REPRESENTATIONS CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY ONE OR MORE OF THE GOODS AND SERVICES REFERRED TO ABOVE. THE PARTICIPANT AGREES THAT ONEHEALTHPORT HAS MADE NO AGREEMENTS, REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND THAT NO FUTURE AGREEMENT, REPRESENTATION OR WARRANTY OF ONEHEALTHPORT WITH REGARD TO INFORMATION, GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO THIS AGREEMENT. NO STATEMENT OR DESCRIPTION INCLUDED IN ANY HIE POLICY, SCHEDULE, AMENDMENT, ADDENDUM OR OTHER DOCUMENTATION PUBLISHED BY ONEHEALTHPORT FOR ANY PURPOSE SUBJECT TO OR INCLUDED UNDER THE PARTICIPATION AGREEMENT AND CONDITIONS SHALL BE DEEMED AN AMENDMENT OF THIS PROVISION UNLESS IT EXPRESSLY STATES THAT IT IS INTENDED AS SUCH AN AMENDMENT.

7. GENERAL FEE TERMS FOR SERVICES. The fees payable for each HIE Service are provided in the applicable Schedule, as amended from time to time. Unless expressly modified in the Schedule for a specific HIE Service, the following terms apply to payment of fees.

7.1. Taxes. All fees and other charges for subscription to any HIE Service shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and the Participant shall pay any tax (excluding taxes on OneHealthPort's net income) that OneHealthPort may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services provided pursuant to this Agreement.

7.2. Third Party Fees and Charges. The Participant shall be solely responsible for any other charges or expenses the Participant may incur to access or use a HIE Service, including without limitation, Carrier Line and equipment charges, and fees charged by vendors of Third Party Products.

7.3. Failure to Pay Fees.

- a. Fees not paid for HIE Services by the due date set in the published Schedule shall bear interest at the rate of twelve percent (12%) per annum or the highest legal rate of interest, whichever is lower.
- b. In the event fees are not paid by thirty (30) days following the due date (or, in the event the Participant disputes any portion of the fees due, has by such date 1) paid all undisputed amounts, and 2) provided OneHealthPort with a written statement identifying any disputed amounts, including a detailing of the reasons why it believes such disputed amounts are in error, and forwarded to OneHealthPort copies of any documentation substantiating same), OneHealthPort may suspend the Participant's access to a HIE Service on thirty (30) days prior notice. OneHealthPort may charge a reasonable renewal fee to cover its costs and overhead associated with restoring a suspended Service after suspension due to non-payment.

8. FORCE MAJEURE. No party will be liable for any failure to perform its obligations hereunder (other than payment obligations for services previously rendered) where such failure results from force majeure, meaning any cause beyond the reasonable control of the party including acts of God, fire, strike, lockout, labor disputes, disputes with suppliers, accidents, delays in transportation, inability to obtain materials, war, civil insurrection, riots, embargoes, or the demands, restrictions or delays of any government.

9. OWNERSHIP OF INFORMATION. Unless otherwise agreed between the parties to the exchange of information, the disclosure of information by one Participant through a Service to another party conveys to the receiving party full rights to use such

OneHealthPort HIE
Participation Terms and Conditions

Effective Date: 3/1/2011

Page 5 of 7

information, include it in records, disclose it to other parties, create derivative works, modify, disclose and destroy the information, subject to any legal obligations, limitations and conditions applicable to the recipient's use and disclosure of such information by law, including but not limited to HIPAA and HITECH, or by contract, including but not limited to the Participation Agreement, HIE Policies and applicable Schedule.

10. IDENTIFICATION OF PARTICIPATION.

OneHealthPort may identify the Participant as a participant in the OneHealthPort HIE and the Services to which it subscribes, including use of the Participant's logos, trademarks and service marks (Marks) for that limited purpose only, and Participant may identify itself as a Participant and as a subscriber to HIE Services, including use of any Marks applicable to the OneHealthPort HIE and the HIE Services; provided that each party shall comply with the other party's reasonable usage guidelines, and shall not knowingly use such Marks in any manner likely to diminish their value and shall not assert any ownership interest in or transfer rights to such Marks.

11. INDEMNIFICATION. Except for matters expressly addressed in other terms and conditions, each party will indemnify, hold harmless and defend the other party from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result of or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under the Participation Agreement, any HIE Policy or Schedule (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the party's performance under the Participation Agreement, any HIE policy, procedure or Schedule; provided that the party to be indemnified promptly gives the indemnifying party notice of the same and fully cooperates with the indemnifying party in its investigation and defense of the same.

12. DISPUTE RESOLUTION. In the event of any dispute between the parties arising from or pertaining to the OneHealthPort HIE, the Participation Agreement, any HIE policy, procedure or Schedule, the parties shall use their best efforts to resolve the dispute through face-to-face good faith negotiations. Disputes not resolved within sixty (60) days following notice of the dispute shall be submitted to binding arbitration in King County, Washington by a single arbitrator under

the auspices of Judicial Dispute Resolution, LLC, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. The arbitrator may award the prevailing party the cost and reasonable attorney's fees expended in such arbitration.

13. TERMINATION OF PARTICIPATION AGREEMENT AND SUBSCRIPTION PRIVILEGES. The Participation Agreement, and Participant's privilege to subscribe to HIE Services, may be terminated as follows:

13.1. Termination by OneHealthPort of HIE Services. By OneHealthPort at any time without cause, by giving not less than ninety (90) days written notice to all Participants, as well as the State of Washington Health Care Authority and the Foundation for Health Care Quality or their successors in interest.

13.2. Termination at Will by Participant. By the Participant at any time without cause, by giving not less than sixty (60) days prior written notice to OneHealthPort.

13.3. Termination for Legal Violation. By a non-breaching party for cause upon breach of the other party immediately upon written notice to the breaching party, without any term of notice and/or judicial intervention being required, and without liability for such termination, under the following conditions:

13.3.1. Business Associate Policy Violation by OneHealthPort. The Participant may terminate the Participation Agreement upon written notice at its sole discretion in the event that it has actual knowledge that OneHealthPort has engaged in an activity or practice that constituted a material breach of the Business Associate Policy and, following written notice of such breach and a demand for cure from the Participant, did not take reasonable steps to cure the breach or was otherwise not successful in curing the breach within a reasonable period. The time periods of Section 13.4 shall govern termination under this subsection unless allowing such a length of time is not reasonable given the nature of the breach.

13.3.2. Violations of Other Laws. Either party may terminate the Participation Agreement upon written notice at its sole discretion in the event the other party receives (i) a Criminal Conviction for any

**OneHealthPort HIE
Participation Terms and Conditions**

Effective Date: 3/1/2011

Page 6 of 7

offense involving fraud, theft or malicious intent, or (ii) is named as a defendant in a criminal proceeding for a violation of HIPAA.

13.3.3. Insolvency and Bankruptcy. Either party may terminate the Participation Agreement upon written notice at its sole discretion in the event bankruptcy or insolvency proceedings under bankruptcy or insolvency code or similar law, whether voluntary or involuntary, are properly commenced by or against the other party, or the other party is dissolved or liquidated.

13.4. Termination for Curable Breach.

Either party may terminate the Participation Agreement in the event the other party fails to remedy a breach which can be cured by action of the breaching party (Curable Breach). In the event of a Curable Breach the non-breaching party shall give written notice identifying the breach and demanding a cure. In the event that the breaching party fails to cure the breach within sixty (60) days of such notice, or if the breach by its nature is not reasonably susceptible to cure within sixty (60) days fails to commence and diligently pursue a cure within such time period, the non-breaching party may terminate the Participation Agreement effective upon written notice.

13.4.1. Payment Breach by Participant. If the breach is a failure by the Participant to pay fees due under any Schedule, OneHealthPort may require a reasonable advance fee deposit or other assurance of future payments by the Participant.

13.5. Effect of Termination on HIE Services.

Upon termination of the Participation Agreement for any reason the Participant and its HIE Users shall no longer be authorized to use HIE Services, access to all HIE Services and user names and security tokens shall be terminated, and any further access by or on behalf of the Participant shall be prohibited unless otherwise agreed in writing by OneHealthPort.

13.6. Effect of Termination on Protected Health Information.

Upon termination of the Participation Agreement for any reason, OneHealthPort shall return or destroy any Protected Health Information of Participant which is maintained by or for OneHealthPort for purposes of the HIE Services, including any

Protected Health Information in the possession of Services Vendors or agents of OneHealthPort; provided that in the event that OneHealthPort determines that returning or destroying some or all of the Protected Health Information is not feasible, OneHealthPort shall promptly notify Participant of the determination and of the conditions that make return or destruction infeasible, and may retain the Protected Health Information included in the notification under the protections of the Business Associate Policy and Security Policy, provided that OneHealthPort limits any further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as OneHealthPort maintains such Protected Health Information.

13.7. Effect of Termination of Subscription.

The termination of a subscription to one or more, or all, HIE Services, for any reason, shall not effect a termination of the Participation Agreement.

14. MEDICARE ACCESS TO RECORDS.

If required for purposes of 45 CFR §§ 420.300 . 420.320, upon written request OneHealthPort shall make any necessary books, records and documents available to DHHS or the Comptroller General or their duly authorized representatives, for purposes of verifying the nature and extent of any costs incurred by the Participant for services furnished by OneHealthPort for which payment may be or have been made under Medicare, Medicaid or other applicable federal reimbursement programs. OneHealthPort's obligation to provide access to records under this Section shall extend for four (4) years from the last date on which services are provided under this Agreement, and survive the termination of this Agreement for such period if applicable.

15. INTERPRETATION OF PROVISIONS.

15.1. Interpretation.

The Participation Agreement, the OneHealthPort HIE Policy and Operating Manuals, and all Schedules shall be interpreted as an integrated set of agreements, obligations and requirements; provided that any ambiguity or material conflict between any of their provisions shall be resolved as follows: (a) The provisions of the Participation Agreement shall control all other provisions; (b) the provisions of these Participation Terms and Conditions shall control all provisions except those of the Participation Agreement; (c) and the other HIE

OneHealthPort HIE
Participation Terms and Conditions

Effective Date: 3/1/2011

Page 7 of 7

policies and procedures shall control all provisions except those of the Participation Agreement and these Participation Terms and Conditions.

15.2. Definitions. Capitalized terms are defined in the HIE Glossary, available at <link4>.

15.3. Applicable Law. The Participation Agreement, OneHealthPort HIE Policy and Operating Manual, and all Schedules shall be interpreted consistently with federal law applicable to the parties, including but not limited to HIPAA and HITECH, provided that state law issues shall be exclusively interpreted according to the laws of the State of Washington, without regard to choice of law principles.

15.4. Severability. If any portion of the Participation Agreement or any OneHealthPort HIE policy, procedure or Schedule shall for any reason be invalid or unenforceable, such portions shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining portions shall remain valid and enforceable and in full force and effect.

15.5. No Waiver. No delay or omission by either party hereto to exercise any right, power or remedy occurring upon any noncompliance or default by the other party with respect to any of the terms of the Participation Agreement, any OneHealthPort HIE policy, procedure or Schedule shall impair any such right, power or remedy or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained. No waiver of a breach on one occasion shall be deemed a waiver on another occasion.

16. THIRD PARTY BENEFICIARIES. Neither the Participation Agreement, or any OneHealthPort HIE policy, procedure or Schedule is intended for the benefit or any third party, and no third party shall have any cause of action arising from or pertaining to it, EXCEPT that the State of Washington Health Care Authority, the Foundation for Health Care Quality, and the respective officers, employees, agents, subcontractors and services providers of OneHealthPort and the Participant are acknowledged to be the intended third party beneficiaries of the

provisions related to warranties, limitations of liability and indemnification.

17. ASSIGNMENT. The Participation Agreement, and all rights and obligations under it, may be assigned or transferred, in whole but not in part, by either party by sale or merger of such party, upon written notice to the other party and upon the acquiring party's written agreement to be bound by the terms of the Participation Agreement.