



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 21- 66

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council (the “Tribal Council”) is the Governing Body of the Squaxin Island Tribe (the “Tribe”), its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Counsel and the Secretary of the Interior on July 8, 1965, as amended; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Tribe’s Health Services department wishes to enter into a participation agreement with OneHealthPort Health Information Exchange (“OneHealthPort HIE”) for the secure hub services used to exchange health information electronically; and

WHEREAS, the Tribal Council has not delegated the authority to grant contractual or other waivers of sovereign immunity and therefore must individually approve each waiver by binding council action; and

WHEREAS, the Health Services department, with assistance from the Legal department staff have negotiated the terms of the Health Information Exchange Participation Agreement with OneHealthPort for use of the HIE services and access to the secure hub services, including services of the Web Trader, Activator software, AS2 connection, Web Services Access and Web Services Registration; and

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NOW THEREFORE BE IT FURTHER RESOLVED, the Tribal Council specifically limits its authorization to allow Health Services to enter a waiver of sovereign immunity to the waiver stated in Section 11, Dispute Resolution, and reads as follows:

11. 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. Except as specifically provided in this Paragraph, the Agreement with Participant does not and shall not waive, limit or modify its sovereign immunity from any lawsuit.

NOW THEREFORE BE IT FINALLY RESOLVED, that the Tribal Council hereby authorizes Marvin Campbell, Tribal Administrator, to do any and all accounts necessary to effect execution and implementation of an agreement in substantially the same form as the attached subject to those conditions stated herein.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 14th day of October, 2021, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.

Marvin E. Campbell

Marvin E. Campbell (Oct 14, 2021 11:29 PDT)

for Kris Peters, Chairman

Attested by:

Patrick Braese

Patrick Braese (Oct 14, 2021 11:35 PDT)

Patrick Braese, Secretary

Charlene Krise

Charlene Krise (Oct 14, 2021 11:45 PDT)

Charlene Krise, Vice Chairman



Washington State Health Information Exchange

Participation Agreement
Special Terms for Squaxin Island Indian Tribe
September 30, 2021

Participant (Full legal name of Participant):

Squaxin Island Indian Tribe

Special Terms: notwithstanding any conflicting terms in the Participation Terms and Conditions or Schedules, in recognition of the sovereign status of Participant, OneHealthPort will provide Participant Health Information Exchange (HIE) Services, subject to the following additional understandings:

1. Terms and Conditions Section 7.1 Taxes is amended to read: "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 applicable 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."
2. Terms and Conditions Section 10 Identification of Participation is amended to read: "OneHealthPort may identify the Participant as a participant in the OneHealthPort HIE and the Services to which it subscribes and Participant may identify itself as a Participant and as a subscriber to HIE Services." Deleted language on use of marks.
3. Terms and Conditions Section 11 Dispute Resolution: is amended to read: "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. Except as specifically provided in this Paragraph, the Agreement with Participant does not and shall not waive, limit or modify its sovereign immunity from any lawsuit."

Agreed, as of _____, 2021.

OneHealthPort, Inc.

Participant: Squaxin Island Indian Tribe

By: _____

By: _____

Title: _____

Title: _____



OneHealthPort Health Information Exchange Participation Agreement

Version 1 - Effective Date: 01/01/2016

The "Participant" identified below hereby requests participation in the OneHealthPort Health Information Exchange ("OneHealthPort HIE").

Squaxin Island Health Clinic
90 SE Klah Che Min Dr
Shelton, WA 98584

By submitting this Participation Agreement to OneHealthPort the Participant identified below acknowledges and agrees to the following:

- The individual submitting this Agreement on Participant's behalf has the authority to act on behalf of and bind the Participant in requesting participation in the OneHealthPort HIE under this Agreement.
- Its participation in the OneHealthPort HIE is subject to the obligations and requirements provided in the OneHealthPort HIE Participation Terms and Conditions and OneHealthPort HIE Policies and Operating Manual, as each is amended from time to time. The Participation Terms and Conditions, the OneHealthPort HIE Policies, the OneHealthPort HIE Glossary and the OneHealthPort HIE Operating Manual are all available on the OneHealthPort HIE website at: http://www.onehealthport.com/HIE_Contracting

Upon acceptance by OneHealthPort this Agreement will be effective, until it is terminated as provided in the Participation Terms and Conditions.

Participant has indicated their organization is at Entry level, with \$0 - \$10 Million revenue for annual price of \$600. OneHealthPort reserves the right to audit the organization subscription and adjust rates annually.

Special Terms: notwithstanding any conflicting terms in the Participation Terms and Conditions or Schedules, OneHealthPort will provide Participant Health Information Exchange (HIE) Services, paid for by LogiCoy, subject to the following additional understandings: 1. Participant Subscription annual fee of \$100 will be assessed first date Participant accesses the HIE Services for use of the query functionality supported by LogiCoy to the Washington State Department of Health Prescription Data Monitoring Program and paid by LogiCoy. 2. Participant's use of HIE Services as described in (1) above, are limited to the PDMP query services supported by LogiCoy. If at any time Participant wishes to utilize any of the other OneHealthPort HIE Services, Participant will waive its \$100 annual fee paid by LogiCoy and OneHealthPort's HIE Annual Subscription fees will apply upon the anniversary of the fee anniversary date of the Participant. 3. OneHealthPort will request written confirmation from Participant for the revocation of the addendum and resumption of payment of the subscription fees as indicated in the Participation Agreement Pricing Schedule.

Accepted electronically by both parties.

OneHealthPort, Inc.

**Participant Name: Squaxin Island Health
Clinic**

(Signature)

(Signature)

Name: Richard D. Rubin
Title: President and CEO
Date: 09/21/2021

Name: Marvin Campbell
Title: Tribal Administrator
Date: 09/30/2021

TO: Potential OneHealthPort HIE Trading Partners
FROM: Rick Rubin, CEO
SUBJECT: HIE Common Contractual Framework
DATE: May 23, 2011

I have prepared this memorandum to provide background on the HIE Common Contractual Framework for organizations considering signing up for the HIE.

The primary distinguishing characteristic of the contract is that every trading partner will sign the same common agreement with the HIE. The HIE will not be negotiating individual agreements with each trading partner. For many enterprises this is a very different contracting model. Most enterprises negotiate aggressively with suppliers and modify agreements to meet their unique style and requirements. As you review the contract I hope the following considerations will enable you to forego the traditional negotiation process and execute the common agreement:

- **Community drafting process** – the contract was developed by two experienced attorneys working with a technical advisory group representative of potential trading partners. The contract you see today was created by a representative sample of your colleagues.
- **Compromise** – the only way to create a single work product from a diverse group of constituents was for all parties to compromise. Organizations use different styles and have different contracting requirements. The contract in front of you represents a compromise work product. I would ask you to similarly be open to accepting this emerging community standard as opposed to your unique form.
- **Broad form** – one aspect of the compromise process was to draft the contract as a “broad form” rather than narrow purpose document. The goal was to allow multiple organizations to exchange multiple types of information without requiring custom one-off agreements. This facilitates efficient information exchange and saves trading partners time and money.
- **Lowest cost model** – the core financial principle for the statewide HIE is to deliver the service to the community at the lowest possible cost. This “co-op” model results in very low prices and stringent limits on profitability for OneHealthPort. In this context I would ask you to understand that OneHealthPort has not budgeted for contract negotiations with each trading partner nor can we accept liability beyond what is included in the agreement.
- **Oversight** – the HIE, the contract, the pricing and the policies are subject to extraordinary oversight. As the leader of the HIE, I am to some degree accountable to; the federal government (ONC), state government (HCA and the Legislature), a HIE Community Oversight Board, the Washington Healthcare Forum, an advisory group of leading health information executives and our own customer-driven Board. You and your organization can rest assured that you are in good company and that the HIE will be operated in a professional manner to the benefit of the community.
- **Transparency** – consistent with our oversight requirements OneHealthPort is scrupulous about operating in a transparent manner. Decisions related to the HIE, the contract, pricing, etc., are all open processes. We operate under a “no secrets” model with all our trading partners and other stakeholders.

My hope is that based on the description above you trust us, trust the contract and trust the existing accountability mechanisms enough to feel comfortable executing this common contractual framework. We believe the HIE and the common contractual framework will provide significant benefit to your organization, other trading partners and the patients, consumers and members we all serve. Thank you for your interest in the statewide HIE and please feel free to contact me if you have any questions.



Washington State Health Information Exchange

Participation Agreement

Pricing Schedule: 1/1/2016

In connection with the OneHealthPort HIE Participation Agreement (the "Agreement"); the OneHealthPort HIE Pricing Schedule has three components:

- **One-time license fee** – A one-time license fee charged to the Participant to license HIE Software.
- **Mapping fees** – A charge for the professional services required to map the Participant's data to the Implementation Guide.
- **Annual subscription** – An annual fee based on size of the Participant operation.

1. **One-time License Fee.** The Participant shall pay to OneHealthPort a one-time license fee based on the following schedule:

B2Bi	(required)	waived, no cost
Web Trader	(optional)	waived, no cost
Activator	(optional)	waived, no cost

2. **Mapping Fees.** If the Participant's data needs to be mapped to transaction specifications published in an Implementation Guide, the Participant may map the data using their own resources. If the Participant needs data mapping and elects to use OneHealthPort resources, the Participant shall pay to OneHealthPort mapping fees as charged. The mapping fees charged by OneHealthPort shall reflect the actual hours worked by OneHealthPort's contractor plus 5 percent. The mapping fees shall be billed to the Participant on a monthly basis as the work is performed. Prior to initiating data mapping, OneHealthPort shall provide the Participant with a proposed statement of work and an estimate of mapping fees that must be approved by both parties.

3. **Participant Annual Subscription.** The Participant shall pay OneHealthPort an annual subscription for use of the HIE. The annual subscription rates shall be derived from the schedule below. The annual subscription will be billed to the Participant at the time the Participant goes live with the HIE and on each annual anniversary date thereafter.

Organization Level	Annual Organization Net Operating Revenue	Annual Subscription Fee
Entry	\$0 – \$10 Million	\$600
Small	\$10 Million – \$100 Million	\$6,000
Mid-size	\$100 Million – \$500 Million	\$12,000
Large	\$500 Million – \$1 Billion	\$24,000
Leadership	\$ 1 Billion Plus	\$48,000



Washington State Health Information Exchange

Secure Hub Services

Effective Date: 1/1/2016

OneHealthPort hereby offers the Services described below to any organization which is a Participant under a Participation Agreement for OneHealthPort HIE Services.

Subject to acceptance by OneHealthPort, Participant, by execution of a Participation Agreement for OneHealthPort HIE Services agrees to comply with the HIE policies and procedures applicable to the following HIE Services:

1. SECURE HUB SERVICES. The Participant may use the Secure Hub Service to obtain electronic information from and make electronic information available to any other Participant for purposes authorized under the HIE Policies. The Participant uses the Secure Hub Service through the use of one or more of the following options:

- Web Trader – A browser-based, zero footprint mailbox for Participants with limited infrastructure to upload files up to 200GB with applet over a HTTP/S connection. Used for Participants who want or need ad-hoc file transfer capability. Includes non-repudiation, checkpoint restart and acknowledgements of all messages.
- Activator – A lightweight software B2B gateway component that allows Participants to securely and reliably exchange documents with complete visibility, tracking and confirmation of receipt. Can be set to “push” and/or “pull” messages from the HIE hub using the AS2 protocol over an HTTP/S connection. Includes non-repudiation, checkpoint restart and acknowledgements of all messages.
- AS2 connection using Participant supplied commercial management tools over an HTTPS connection.
- Web Services Access – Use one or more web service URL links secured by a pre-exchange of certificates and a setup of permission requirements.
- Web Services Registration – Register a web service for the Trusted Community to access via the HIE. Pre-exchange certificates and permission requirements for use.

2. Subscription Period. The Annual Subscription Period begins when the Participant uses the Secure Hub Service(s) through the earlier of the date of (a) the termination of the Participation Agreement by OneHealthPort or (b) the termination of this subscription by the Participant as provided in the Participation Terms and Conditions.

3. Application of HIPAA. The Service is a HIPAA-Regulated Service.

4. Fees for Services. The Service(s) are provided under the following payment terms:
Web Trader and Activator payment terms are waived.

5. SERVICE LEVEL COMMITMENTS.

Support Levels:

Severity 1 Issues – 24 hour support for Severity 1 issues reported through the HIE Services [Support Request Form](#).

Severity 2 and 3 Issues – Support between 7 AM and 4 PM Pacific Time, Monday through Friday (Excluding Federal holidays) for Severity 2 and 3 issues reported through the HIE Services [Support Request Form](#).

Response Time:

	Response Time	Target Resolution Time
Severity 1	2 Hours	4 Hours from Acknowledgement
Severity 2	4 Hours	8 Hours from Acknowledgement
Severity 3	Next Business Day	5 Business days from Acknowledgement

Response Time is the elapsed time between when an issue is logged in as an incident and the time a support individual contacts the reporting Participant.

Resolution Time is the time necessary to provide and implement a corrective action plan.

Severity 1 Issues are issues involving a system or critical business function down condition, and which result in a major impact on Participant's ability to operate.

Severity 2 Issues are significant issues affecting a HIE User's or workgroup's ability to conduct business efficiently and which critically impair business operations, but for which an inefficient workaround exists.

Severity 3 issues are issues affecting a limited number of users and for which an acceptable, but not optimal, workaround exists, resulting in no significant impairment of critical business operations.



Washington State Health Information Exchange
Participation Terms and Conditions
Effective Date: 1/1/2016

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 Glossary located at the end of this Participation Agreement for more information about the HIE Services. The OneHealthPort HIE Glossary is 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.

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.

1.1. Publication of Schedules. All Schedules for HIE Services available through the OneHealthPort HIE from time to time are included in this Participation Agreement..

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 this OneHealthPort HIE Participation Agreement and the OneHealthPort HIE's operating policies and procedures are published in the OneHealthPort HIE Operating Manual, available at <http://www.onehealthport.com/contracting>.

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 Participation Agreement 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 Operating Manual 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, 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. Indemnification And Liability Limitations.

4.1. Intellectual Property Infringement OneHealthPort agrees to defend, settle and indemnify Participant against any amounts payable under judgment, court order or settlement brought by any third party against Participant to the extent that such action results from actual or alleged infringement by any HIE Service of any third party copyright, trade secret or patent right. In connection with any allegation of infringement of any third party rights, Participant shall (and it shall be a condition of reliance upon the indemnity for Participant to): 1) promptly notify OneHealthPort in writing of the allegation; and 2) allow OneHealthPort sole control of the defense and any related settlement negotiations; and 3) cooperate in good faith in said defense and comply with all of OneHealthPort's or its designee's reasonable requests (at OneHealthPort's expense) in defending or settling the claim. Should Participant's use of an HIE Service be determined to have infringed any third party rights, or if in OneHealthPort's judgment, such use is likely to be infringing, OneHealthPort shall endeavor at its option to do one of the following, at its own expense: 1) procure for Participant the right to continue use of such HIE Service, 2) replace or modify such HIE Service to make its use non-infringing while yielding substantially equivalent functionality. If and only if the previous options are not, in OneHealthPort's reasonable judgment, commercially reasonable, then OneHealthPort may terminate the Participation Agreement and any related Schedule as it applies to the specific HIE Service impacted and the corresponding rights of use. The obligations of OneHealthPort in this Article 4.1 will not apply to the extent that the infringement or claim thereof is based on Participant's use of the HIE Service other than in accordance with the terms of the Participation Agreement, and of any applicable Schedules and Policies, THIS ARTICLE 4.1 SETS FORTH THE FULL SCOPE OF ONEHEALTHPORT'S LIABILITY AND PARTICIPANT'S EXCLUSIVE REMEDY, TO THE EXTENT PERMITTED BY LAW, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF THIRD PARTY RIGHTS IN CONNECTION WITH THE HIE SERVICES.

4.2. Liability Limitations. EXCEPT ONEHEALTHPORT'S OBLIGATIONS UNDER SECTION 4.1, ONEHEALTHPORT IS NOT LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK, STOPPAGE, LOST PROFITS, LOST DATA OR COMPUTER OR SOFTWARE DAMAGE, FAILURE OF MALFUNCTION, WHETHER OR NOT ONEHEALTHPORT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ONEHEALTHPORT'S LIABILITY TO PARTICIPANT FOR ANY CLAIM, LOSS OR DAMAGE SHALL NOT EXCEED PARTICIPANT'S ACTUAL LOSSES UP TO A MAXIMUM OF THE TOTAL SUMS PAID TO ONEHEALTH PORT BY PARTICIPANT FOR SUBSCRIPTION TO THE INVOLVED HIE SERVICE DURING THE PRECEDING TWELVE MONTH PERIOD.

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.

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 Operating Manual 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 Operating Manual, and the applicable Schedule, and only in connection with activities and transactions contemplated by the Participation Agreement, HIE 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 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 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. 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.

12. Termination of Participation Agreement and Subscription Privileges. The Participation Agreement, and Participant's privilege to subscribe to HIE Services, may be terminated as follows:

12.1. 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 appropriate oversight authority or their successors in interest.

12.2. 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.

12.3. 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:

12.3.1 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 12.4 shall govern termination under this subsection unless allowing such a length of time is not reasonable given the nature of the breach.

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

12.3.3 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.

12.4. 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.

12.4.1 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.

12.5. 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.

12.6. 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.

12.7. 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.

13. 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.

14. Interpretation of Provisions.

14.1. Interpretation. The Participation Agreement, the OneHealthPort HIE Operating Manual, 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 policies and procedures shall control all provisions except those of the Participation Agreement and these Participation Terms and Conditions.

14.2. Definitions. Capitalized terms are defined in the HIE Glossary.

14.3. Applicable Law. The Participation Agreement, OneHealthPort HIE 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.

14.4. 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.

14.5. 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.

15. Third Party Beneficiaries. Neither the Participation Agreement, or any OneHealthPort HIE policy, procedure or Schedule is intended for the benefit of 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 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.

16. 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.



Washington State Health Information Exchange

Business Associate Policy

Effective Date: 1/1/2016

This Business Associate Policy is published by OneHealthPort and applies to the operation and use of the HIE Services by any Participant in the OneHealthPort HIE.

This Policy is subject to the applicable Participation Agreement and the OneHealthPort HIE Participation Terms and Conditions. The Participation Terms and Conditions and the HIE Glossary are included in this Participation Agreement.

A. Operation or management of certain of the HIE Services may entail the obtaining, use or disclosure of Protected Health Information by OneHealthPort, or by Services Vendors acting under contract to OneHealthPort, to perform functions or activities on behalf of Participants which are Covered Entities or Business Associates.

B. The provisions of this Business Associate Policy are effective between OneHealthPort and Participants which are Covered Entities or Business Associates under HIPAA and HITECH, for or on behalf of which OneHealthPort creates, receives, obtains, maintains, uses, transmits or discloses Protected Health Information for purposes of any Service, and are intended to provide for compliance with 45 CFR §§ 164.314(a), .502(e) and .504(e) as these regulations may be amended.

C. Neither OneHealthPort nor any of its Subcontractors shall act as or be deemed agents of any Participant. The Services are provided by OneHealthPort for the use of Participants, which may subscribe to and use them as provided in the Participation Agreement and Participation Terms and Conditions, as published and maintained by OneHealthPort.

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.

OneHealthPort and Subcontractors may create, receive, obtain, use, maintain, transmit or disclose Protected Health Information obtained from or on behalf of any Participant for the following purposes, provided that in all cases it shall use or disclose only the Minimum Necessary:

- a. For purposes of providing the HIE Services;
- b. For purposes of installing, maintaining, upgrading or removing software or hardware supporting of the HIE Services.
- c. In order to provide technical and administrative support to Participants and HIE Users in the use of the HIE Services.
- d. For purposes of OneHealthPort's proper management and administration, and fulfillment of OneHealthPort's legal responsibilities.

e. If Required by Law.

f. As otherwise expressly authorized in writing by the Participant, to the extent not prohibited by law or by any HIE Policy.

2. PROHIBITED USES AND DISCLOSURES. OneHealthPort shall not use or disclose Protected Health Information obtained from or on behalf of the Participant for any purpose not permitted by this Business Associate Policy.

3. SECURITY INCIDENTS AND BREACHES. OneHealthPort shall notify impacted Participants of Security Incidents and any Breach affecting Protected Health Information as provided in the Security Policy included in this Participation Agreement.

4. SUBCONTRACTORS. OneHealthPort may make use of Subcontractors as follows:

a. OneHealthPort may delegate functions and activities involving Protected Health Information to Services Vendors for purposes of providing the HIE Services as permitted by this Agreement, in which case the Services Vendor shall be considered a Business Associate of OneHealthPort unless the functions or activities delegated to the Services Vendor do not include access to or maintaining Protected Health Information;

b. OneHealthPort may disclose Protected Health Information to a Services Vendor for OneHealthPort's proper management and administration, or to carry out OneHealthPort's legal responsibilities, if OneHealthPort first obtains a written agreement from the Services Vendor as required by 45 CFR §§ 164.314(a)(2)(i)(B) and .164.504(e)(4)(ii)(B); and

c. OneHealthPort may disclose Protected Health Information to a Services Vendor to carry out OneHealthPort's legal responsibilities if the disclosure is Required by Law.

5. ONEHEALTHPORT RELATIONSHIP TO INDIVIDUAL DATA SUBJECT. The parties acknowledge that OneHealthPort has no direct relationship with Individuals who may be the subject of Protected Health Information which may be obtained or disclosed through the HIE Services, but may maintain Designated Record Sets including Protected Health Information for certain Services. The parties therefore agree that:

a. Requests from Individuals for (i) access to, (ii) copies of, (iii) amendment of, (iv) Additional Restrictions on, or (v) an Accounting of Disclosures with respect to Protected Health Information which pertains to them shall be directed to the applicable Participant; and

b. In the event that an Individual contacts OneHealthPort in order to request any such action with respect to Protected Health Information which may be in or accessible through a Service, OneHealthPort will refer the Individual to the applicable Participant for a determination of the appropriate response, and shall not perform the requested action or provide the requested information directly to or for the Individual.

6. ACCESS TO INFORMATION. Upon a request by a Participant for Access to Protected Health Information, OneHealthPort shall provide any Protected Health Information which OneHealthPort or any Services Vendor maintains about the Individual in a Designated Record Set on behalf of the Participant within ten (10) business days of receipt of the request. The Information shall be provided in the format and medium in which it is maintained by or for OneHealthPort unless the Participant requests it in a specific electronic format and medium, in which case OneHealthPort shall provide it in such format and medium if reasonably possible. If it is not reasonably possible for OneHealthPort to produce the information in the requested

format and medium OneHealthPort may produce it in readable hard-copy form, or such other form and format as OneHealthPort and the Participant may agree upon.

7. AMENDMENT OF INFORMATION. Upon request by Participant for amendment of Protected Health Information, OneHealthPort shall amend any Protected Health Information which OneHealthPort or any Subcontractor maintains in a Designated Record Set, as directed by the Participant; provided that if OneHealthPort determines that the amendment materially interferes with the use or disclosure of the Protected Health Information for an authorized purpose on behalf of a Participant, OneHealthPort may elect instead to cease use and disclosure of the Protected Health Information altogether.

8. ADDITIONAL RESTRICTIONS ON INFORMATION. Upon request by Participant for any restrictions on the use or disclosure of Protected Health Information which are in addition to the restrictions provided for in the HIE Policies, OneHealthPort shall implement the requested restrictions for any Protected Health Information which OneHealthPort or any Subcontractor maintains in a Designated Record Set, as directed by the Participant; provided that if OneHealthPort determines that the additional restrictions materially interfere with the use or disclosure of the Protected Health Information for an authorized purpose on behalf of Participant, OneHealthPort may elect instead to cease use and disclosure of the Protected Health Information altogether.

9. ONEHEALTHPORT DISCLOSURE TRACKING AND ACCOUNTING. Upon written request by an impacted Participant within ten (10) business days OneHealthPort shall provide an Accounting of Disclosures with respect to any Individual with respect to whom OneHealthPort or any Subcontractor has disclosed Protected Health Information; provided that:

- a. OneHealthPort shall have no obligation to track or account for Disclosures of Protected Health Information which are (i) executed by use of a Service by or for the Participant or any party other than OneHealthPort, a Subcontractor or a member of OneHealthPort's or a Subcontractor's Workforce; or (ii) made for any purpose for which an Accounting of Disclosures is not required under the Privacy Rule.
 - For example, and without limiting this provision, no Accounting of Disclosures may be required:
 - For the transmission of a secure message including Protected Health Information from one HIE User to another HIE User.
 - For a Disclosure of Protected Health Information from the Sentinel Service initiated by an HIE User associated with the Participant whose messages are the subject of the Disclosure.
 - For a Disclosure of Protected Health Information from a Master Patient Index upon request of a HIE User, where the HIE User indicates the Disclosure is intended to confirm that appropriate patient records are used for Treatment of the Individual.
- b. Any such Accounting of Disclosures shall include (i) the Disclosure date, (ii) the name, Internet Protocol (IP) address of the receiving system (if applicable), and (if known) physical address of the person or entity to whom the Disclosure was made, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose(s) of the Disclosure.

10. SECURITY SAFEGUARDS. OneHealthPort shall provide for Reasonable and Appropriate Safeguards for any Protected Health Information in its possession or control, including

compliance with the Security Rule with respect to electronic Protected Health Information and the Services, and as provided in to the Security Policy, included in this Participation Agreement.

11. OBLIGATIONS OF COVERED ENTITY.

- a. *Notice of Privacy Practices.* Participant shall be responsible for ensuring that its Notice of Privacy Practices includes any notice or disclosure of its use of any Service with respect to Protected Health Information which the Participant considers necessary or appropriate. In the event the Notice of Privacy Practices establishes or includes any restrictions on the use or disclosure of Protected Health Information which are in addition to the restrictions provided for in the OneHealthPort HIE policies and procedures, Section 8 of this Business Associate Policy shall apply.
- b. *Authorization.* Participant shall be responsible for obtaining any Consent or Authorization for the use of the HIE or any Service with respect to Protected Health Information which the Participant considers necessary or appropriate. In the event a Consent or Authorization establishes or includes any restrictions on the use or disclosure of Protected Health Information which are in addition to the restrictions provided for in the OneHealthPort HIE policies and procedures, Section 8 of this Business Associate Policy shall apply.
- c. *Requests in Violation of Privacy Rule.* Participant Entity shall not request OneHealthPort to use or disclose Protected Health Information in any manner or for any purpose that would not be permissible under the Privacy or Security Rule if done by Participant.

12. TERMINATION FOR VIOLATION OF HIE BUSINESS ASSOCIATE POLICY. The Participant may terminate the Participation Agreement for a material violation of this Business Associate Policy by OneHealthPort, its subcontractors or Workforce members, as provided in the Participation Terms and Conditions.

13. COMPLIANCE RECORDS. OneHealthPort shall retain records of its security policies and procedures, Subcontractor contracts, Accountings of Disclosures, communications with Individuals, Security Incident reports, and other documentation material to its compliance with this Business Associate Policy for a period of no less than six (6) years from the later of the date on which it was created or the last date on which the document was in effect (if applicable).

14. HIPAA RECORDS ACCESS. Upon written request OneHealthPort shall make its internal practices, books and records pertaining to its use and disclosure of Protected Health Information received from, or created or received by or for OneHealthPort on behalf of the Participant available, at the Participant's expense for purposes of determining the Participant's compliance with HIPAA,

- a. If to the Participant, to an independent third-party auditor qualified to assess health information exchange operations and compliance, at OneHealthPort's offices during normal business hours, upon no less than ten (10) business days' prior notice; and
- b. If to DHHS, at a time and place designated by DHHS, subject to OneHealthPort's right to seek a time and place convenient to OneHealthPort as well as DHHS.
- c. OneHealthPort's obligation to provide access to records under this Section shall extend for the period during which it is required to maintain compliance records under Section 13, and survive the termination of the Participation Agreement for such period if applicable.



Washington State Health Information Exchange

OneHealthPort HIE User Policy

Effective Date: 1/1/2016

This OneHealthPort HIE User Policy applies to the operation and use of the HIE Services by any Participant in the OneHealthPort HIE, and to its HIE Users.

Participants, by entry into a Participation Agreement, are authorized to designate those members of their Workforce ("HIE Users") who are each themselves authorized to access and use HIE Services for the purposes of the Participant's business activities and operations.

The Participation Terms and Conditions and the HIE Policies (included in the OneHealthPort HIE Participation Agreement) and the OneHealthPort HIE Operating Manual, are available at <http://www.onehealthport.com/contracting>; apply to all use of the OneHealthPort HIE, and use of any or all of the HIE Services may be suspended or terminated for failure to comply with them.

You, an individual HIE User, are authorized to access and use the HIE Services under the following User Policy. **PLEASE READ THIS POLICY CAREFULLY. YOUR ACCESS TO AND USE OF ANY OF THE HIE SERVICES IS SUBJECT TO THIS POLICY. IF YOU DISAGREE OR CANNOT FULLY COMPLY WITH THIS AND ALL OTHER APPLICABLE HIE POLICIES, DO NOT ATTEMPT TO ACCESS AND/OR USE ANY OF THE HIE SERVICES.**

1. Authorization to Access and Use HIE Services. In order to access or use a OneHealthPort HIE Service, you must:

- a. Be a current member of a Participant's Workforce
- b. Be designated by that Participant as an individual authorized to use the HIE Service
- c. Be authorized by that Participant to use the HIE Service to perform a function or functions on the Participant's behalf; and
- d. Use the Service as authorized by that Participant and in compliance with all applicable OneHealthPort HIE policies and procedures.

2. Suspension and Termination of Authorization to Access and Use of HIE Services. Your authorization to access and use any or all of the HIE Services may be suspended or terminated under the following conditions:

- 2.1. Your authorization to use all HIE Services will be terminated automatically effective upon termination of your Participant's Participation Agreement.
- 2.2. Upon request by your Participant your authorization to use any or all of the HIE Services may be suspended or terminated.
- 2.3. Effective upon termination of your service as a member of your Participant's Workforce, or as a contractor to the Participant.
- 2.4. Effective upon a change in your duties for or on behalf of your Participant which makes access to or use of any or all of the HIE Services inappropriate.
- 2.5. OneHealthPort may suspend your authorization to use any or all of the HIE Services without notice to you at any time OneHealthPort has reason to believe that you have used or are using any HIE Service (a) for any unlawful purpose, (b) in order to infringe or facilitate the infringement of any copyright or other intellectual property right, or (c) otherwise in violation of any OneHealthPort HIE policy or procedure.
- 2.6. OneHealthPort may terminate your authorization to use any or all of the HIE Services upon written notice to your Participant if, upon reasonable investigation, OneHealthPort determines that there is reasonable evidence demonstrating that you have (a) used any HIE Service for any unlawful purpose, (b) used any HIE

Service in order to infringe or facilitate the infringement of any copyright or other intellectual property right, (c) repeatedly violated OneHealthPort HIE policies and procedures, (d) used any HIE Service in a fashion causing or creating a material risk of harm to any HIE Service, OneHealthPort, any Services Provider, Participant or HIE User, or any third party, (e) provided materially false information for purposes of registration as a HIE User, (f) been convicted or a crime involving identity theft or a violation of HIPAA, or (g) are named as a defendant in a criminal proceeding for identity theft or a violation of HIPAA.

3. Use of HIE Services for Clinical Communications. OneHealthPort cannot guarantee the uninterrupted connectivity of any HIE Service or the transmission of any communication or transaction using any HIE Service. OneHealthPort disclaims all responsibility and liability for the use of transmitted information for diagnosis, treatment or care, including without limitation the following:

- THE USE OF ANY HIE SERVICE FOR COMMUNICATIONS OR TRANSACTIONS CONCERNING OR SUPPORTING PATIENT DIAGNOSIS, TREATMENT OR CARE IN AN EMERGENCY OR OTHER URGENT SITUATION IS ENTIRELY AT YOUR OWN RISK AND REQUIRES THE USE OF APPROPRIATE PROFESSIONAL JUDGMENT.
- THE USE OF ANY HIE SERVICE FOR COMMUNICATIONS OR TRANSACTIONS WHICH CONTROL OR ATTEMPT TO CONTROL ANY MEDICAL DEVICE OR EQUIPMENT, OR OTHER APPLICATION, DEVICE OR EQUIPMENT FOR ANY USE IN WHICH A FAILURE OF THE SERVICES COULD CAUSE DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE IS ENTIRELY AT YOUR OWN RISK AND REQUIRES THE USE OF APPROPRIATE PROFESSIONAL JUDGMENT.

4. HIE User Name and Password Management. You have been or will be issued a unique HIE User Name and password by OneHealthPort, which will be provided to you by your Participant. You are responsible for any use of your user name or password, and are required to manage and protect your user name and password as follows

- 4.1. You may not share your HIE User Name or password with any other person, or allow anyone else to use your HIE User Name or password to access or use any HIE Services.
- 4.2. You must protect your HIE User Name and password against being seen, copied or stolen by anyone.
- 4.3. If you believe anyone else may have used, learned, seen, copied or stolen your HIE User Name or password, you must notify your Participant immediately.

5. Use of Authorized Devices. You may only access and use the HIE Services from a personal computer, workstation, laptop, handheld PC, personal digital assistant ("PDA"), "smart phone" or other electronic device which has been approved for your use for that purposes by your Participant ("Authorized Device").

6. Services Logoff. You must log-off any HIE Service promptly whenever you are not using the Service. Do NOT leave your Authorized Device unattended or out of your sight without logging off the HIE Service.

7. HIE User Privacy.

7.1. Monitoring of Communications and Transactions Your communications, transactions and other activities using the HIE Services may be monitored:

- a. By OneHealthPort for purposes of managing and operating the HIE Services, provided that except in case of emergency or to ensure system security OneHealthPort will not access the content of any of your communications or transactions without your Participant's authorization.
- b. By your Participant, according to your Participant's policies and practices.

7.2. Use and Disclosure of User Personal Information by OneHealthPort. In registering you as a HIE User, OneHealthPort is provided with personal information including your name. Additional personal information concerning your communications and transactions using the HIE Services may be obtained by OneHealthPort in the course of managing and operating the HIE Services. This personal information may be used and disclosed by OneHealthPort as follows:

- a. OneHealthPort may maintain, use and disclose your personal information for purposes of managing and operating the HIE Services, including but not limited to enforcing compliance with the HIE Policies.

- b. OneHealthPort may disclose your personal information to your Participant upon your Participant's request.
- c. OneHealthPort may disclose your personal information as part of an Accounting of Disclosures under HIPAA.
- d. OneHealthPort may disclose your personal information in response to legal process (such as a subpoena or court order), if required by law, or under other circumstances if OneHealthPort has reason to believe you are using or have used any HIE Service for unlawful purposes. OneHealthPort may also use or disclose your personal information if necessary to protect the rights or property of any person, or to protect individual or public health or safety.
- e. OneHealthPort may use agents or contractors for purposes permitted by the OneHealthPort HIE policies and procedures. If such agents or contractors are provided with access to your personal information, OneHealthPort will require them to protect the information consistently with this User Policy and prohibit them from using the information for any purpose other than the provision of their services to or for OneHealthPort.
- f. In the event that management and operation of any or all HIE Services is transferred to another party, your personal information may be transferred to the party assuming management and operation of the Service(s).

7.3. Protection of User Personal Information. OneHealthPort will maintain Reasonable and Appropriate Safeguards to prevent unauthorized use or disclosure of your personal information, but cannot guarantee that your personal information will never be disclosed in a manner inconsistent with this User Policy.

7.4. Participant Use and Disclosure of User Personal Information. This Section 7 of this OneHealthPort HIE User Policy is not binding upon Participants. The use and disclosure of personal information about you obtained by Participants, including your Participant, depends upon the Participant's policies and practices.

8. Prohibited Uses of HIE Services. You may not use any Service for any purpose or activity which may be illegal; may cause harm to any person's rights or property; might cause harm to individual or public health or safety; or may interfere with the effective functioning of any Service. For example, and not as a limitation, when using the HIE Services you may NOT:

- Seek to obtain, view, copy, alter, destroy, disclose or transmit any information, including Protected Health Information, unless you have been duly authorized to do so in the course of your duties for or on behalf of your Participant, and for purposes of healthcare treatment, payment, or operations.
- Violate any applicable laws or regulations, state or federal, including the privacy and security regulations issued under HIPAA and HITECH.
- Use any user name and/or password, other than one issued to you by OneHealthPort.
- Use any HIE Service in any way that could damage, disable, overburden, or impair any HIE Service or interfere with any other party's use of any HIE Service.
- Attempt to gain unauthorized access to any information, documents, records, accounts, devices, systems or networks connected to any HIE Service through hacking, password cracking, IP spoofing or any other means.
- Knowingly upload or distribute files that contain viruses, Trojan horses, worms, spyware, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage electronic data or the operation of any device or software.
- Use any HIE Service for any personal or unauthorized commercial use, surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, material or information.

- Upload, or otherwise make available, files or messages that contain images, photographs, movies, music, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) without the legal right to do so.
- Advertise or offer to sell or buy any goods or services for any business purpose.
- Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.
- Restrict or inhibit any Participant or other HIE User from using any HIE Service.
- Harvest or otherwise collect information about Participants and HIE Users, including e-mail addresses, or about individuals whose information is maintained or available through any HIE Service.

9. Liability Disclaimers.

THE INFORMATION INCLUDED IN OR AVAILABLE THROUGH THE HIE SERVICES MAY INCLUDE INACCURACIES OR TYPOGRAPHICAL ERRORS, AND CHANGES MAY BE MADE PERIODICALLY. ONEHEALTHPORT AND/OR ITS SERVICES VENDORS MAY MAKE IMPROVEMENTS AND/OR CHANGES IN THE HIE SERVICES AND RELATED POLICIES AT ANY TIME.

ONEHEALTHPORT AND/OR ITS SERVICES VENDORS MAKE NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, AND ACCURACY OF THE INFORMATION CONTAINED IN OR AVAILABLE THROUGH THE HIE SERVICES FOR ANY PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SUCH INFORMATION IS PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. ONEHEALTHPORT AND/OR ITS SERVICES VENDORS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THIS INFORMATION, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ONEHEALTHPORT AND/OR ITS SERVICES VENDORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE HIE SERVICES, WITH THE DELAY OR INABILITY TO USE THE HIE SERVICES OR RELATED SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION OBTAINED THROUGH THE HIE SERVICES, OR OTHERWISE ARISING OUT OF THE USE OF THE RELATED WEB SITE(S), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF ONEHEALTHPORT OR ANY OF ITS SERVICES VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.



Washington State Health Information Exchange

Security Policy

Effective Date: 1/1/2016

This OneHealthPort HIE Security Policy is published by OneHealthPort and applies to the operation and use of the HIE Services by any Participant in the OneHealthPort HIE.

This Security Policy applies to all OneHealthPort HIE Participants and HIE Users, and is subject to the applicable Participation Agreement and the OneHealthPort HIE Participation Terms and Conditions. The Participation Terms and Conditions are included in this Participation Agreement.

The following obligations and requirements are intended to provide for the security of the HIE Services, transactions conducted using the HIE Services, and of the information maintained, stored or transmitted by, through or in the HIE Services.

1. SECURITY OF HIE SERVICES. OneHealthPort shall comply with, or if applicable obtain reasonable assurances that Subcontractors comply with, the Security Rule with respect to the HIE Services and any Protected Information maintained or stored or in transmission through the HIE Services, or otherwise in the possession or control of OneHealthPort or any Subcontractor for purposes of the OneHealthPort HIE, provided that OneHealthPort may implement supplemental or more stringent safeguards which OneHealthPort deems appropriate in OneHealthPort's reasonable discretion.

2. PARTICIPANT SECURITY ADMINISTRATION. The Participant shall comply with the Security Rule in managing and administering access to and use of the HIE Services from its Facilities or otherwise using its Information Systems or Authorized Devices, including but not limited to the following:

- a. *HIE User Clearance.* Policies and procedures providing for reasonable and appropriate determination of the access privileges of HIE Users.
- b. *HIE User Authorization.* Policies and procedures for authorizing, and suspending and terminating the authorization of its HIE Users who are authorized to access and use any of the HIE Services and obtain or disclose Protected Information through the HIE Services, on behalf of the Participant.
- c. *HIE User Access Limitations.* Policies and procedures requiring HIE Users to limit their access to and use of the HIE Services and Protected Information available through the HIE Services to the Minimum Necessary (except for Treatment purposes), and consistent with applicable federal and state law and the HIE Policies.

- d. *Acceptable Use Management.* Acceptable use management services for the Participant's Information System(s) and Workstations by any HIE User of the Participant's Information System(s) or Workstations.
- e. *Access Controls.* Administrative, physical and technical access control Safeguards to prevent parties not authorized as HIE Users by the Participant from using the Participant's Information System(s) to seek or obtain access to any of the HIE Services, Protected Information available through the HIE Services, or any other Information System, and to detect and respond to any such unauthorized activity.
- f. *Workstation and Device Management.* Policies and procedures for the authorization and secure operation and disposal of all Authorized Devices which the Participant permits its HIE Users to use in order to access any HIE Service. OneHealthPort may limit or prohibit the use of certain types of device as Authorized Devices, for example smartphones, if their security has not been adequately demonstrated to OneHealthPort's satisfaction in its sole discretion.
- g. *Protected Information Lifecycle.* Policies and procedures governing the retention, inclusion in records and disposal or destruction of Protected Information obtained by or through any Service.
- h. *HIE User Training.* Appropriate and adequate training to all HIE Users in the requirements of applicable federal and state laws, the OneHealthPort HIE policies and procedures and all applicable Schedules.
- i. *Sanctions for Violations.* Sanctions and disciplinary procedures for the Participant's HIE Users and other members of the Participant's Workforce and any other person subject to the Participant's authority, for accessing or using any HIE Service in violation of applicable federal or state laws, any HIE policy, procedure or Schedule, or the Participant's policies, procedures or technical controls implemented for purposes of access to and use of the HIE Services.
- j. *Audit Trails.* Audit logs for transactions in which any Protected Information is transmitted to or from any of the HIE Services and the Participant's Information System(s) or Authorized Devices.
- k. *Software Management.* Patch management, change management and updating policies and procedures for hardware and software included in the Participant's Information System(s) and Authorized Devices which may be used to access any HIE Service.
- l. *Malware Protection.* Anti-virus and other anti-malware software or other applications intended to identify, prevent the download of, disable, uninstall or otherwise affect any computer virus, worm, "Trojan horse," spyware, or other potentially harmful software in or accessing Participant's Information System(s) or Authorized Devices, and/or using them to access any HIE Service, or the Information System of any party.
- m. *Limited Access to the Prescription Monitoring Program (PMP) of the Washington State Department of Health.* Policies and procedures to restrict access to the PMP through HIE Services to only those persons who are authorized such access under RCW 70.225.040, RCW 70.225.050, and Chapter 246-470 WAC. Such persons must either be licensed to prescribe or dispense controlled substances or be licensed health care providers authorized by a prescriber, the access must be for the purpose of providing medical or pharmaceutical care for their patients, and such persons must have been accepted as registered users by the PMP.

n. Any other Safeguard OneHealthPort has determined is Reasonable and Appropriate to protect (a) any Service, (b) the Information System or Authorized Devices of any party, or (c) any information, including but not limited to Protected Information, subject to review by the Community Oversight Organization.

3. SECURITY INCIDENTS AND BREACHES. OneHealthPort, all Participants and all HIE Users shall comply with the following Security Incident and Breach Response Policies:

3.1 **Definitions.** The following definitions shall apply for purposes of this Section 3.

3.1.1 *Access Attempts.* Information Systems are the frequent target of probes, scans, “pings” and other activities which may or may not indicate threats, whose sources may be difficult or impossible to identify and whose motives are unknown, and which do not result in access to any Information System or Protected Health Information (“Access Attempts”).

3.1.2 *Security Incidents.* A “Security Incident” is defined under the Security Rule as the attempted or successful unauthorized access, use, disclosure, modification, or destruction of electronic Protected Health Information or interference with the system operations of the HIE Services, but for purposes of this Policy does not include an Access Attempt.

3.1.3 *Unauthorized Use or Disclosure.* An Unauthorized Use or Disclosure, is any Access, Use or Disclosure of Protected Health Information which is not permitted under the HIE Participation Agreement or Participation Terms and Conditions or HIE Policies.

3.1.4 *Breach.* A Breach is:

a. Any acquisition, Access, Use or Disclosure of Protected Health Information in a manner not permitted under the Privacy Rule which compromises the security or privacy of the Protected Health Information, provided that “Breach” does not include:

- Any unintentional acquisition, Access, or Use of Protected Health Information by a Workforce member or person acting under the authority of a Covered Entity or a Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further Use or Disclosure in a manner not permitted under the Privacy Rule;
- Any inadvertent Disclosure by a person who is authorized to access Protected Health Information at a Covered Entity or Business Associate to another person authorized to access the Protected Health Information at the same Covered Entity or Business Associate, Organized Health Care Arrangement in which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
- A disclosure of Protected Health Information where a Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably have been able to retain such information.

b. An acquisition, Access, Use or Disclosure of Protected Health Information which does not meet any of the criteria for exclusion from the definition of “Breach” unless it is determined that there is a low probability that the Protected Health Information has been compromised based on a risk assessment of at least the following factors:

- The nature and extent of the Protected Health Information involved, including the types of identifiers and the likelihood of re-identification;

- The unauthorized person who used the Protected Health Information or to whom the disclosure was made:
- Whether the Protected Health Information was actually acquired or viewed: and
- The extent to which the risk to the Protected Health Information has been mitigated.

3.1.5 **System Security Breach.** A System Security breach is the unauthorized acquisition of electronic Protected Information including personally identifiable information, as defined under the laws of the State of the Individual's residence, which triggers an obligation to notify affected Individuals and/or State agencies.

3.2. **Monitoring**

3.2.1. *HIE Services Monitoring.* OneHealthPort shall be responsible for monitoring or providing for the monitoring of all activity in the HIE Services, and in any Information System used to host, operate or manage a HIE Service, and at Facilities where equipment used to host, operate or manage the HIE Services is located.

3.2.2. *Participant Monitoring.* Each Participant shall be responsible for monitoring activity on its Information System(s), on its Workstations and other Authorized Devices, and at its Facilities.

3.3. **Reporting of Security Incidents and Unauthorized Use or Disclosure.**

3.3.1 *Notification of Access Attempts.* Access Attempts are recorded in various system logs, and fall under the definition of "Security Incident" in the Security Rule. Because Access Attempts fall under the definition of Security Incident OneHealthPort is required to report them to Participants. At the same time OneHealthPort's reporting and the Participant's review of information about Access Attempts would be materially burdensome to both parties without reducing risks to Information Systems or Protected Health Information.

Therefore, provided that OneHealthPort ensures that there is appropriate review of logs and other records of Access Attempts, and investigates events where it is not clear whether or not an apparent Access Attempt was successful, this provision shall serve as OneHealthPort's notice to the Participant that Access Attempts occur and are anticipated to continue occurring with respect to the systems providing the HIE Services. By using the HIE Services the Participant acknowledges this notification, and that OneHealthPort shall not be required to provide further notification of Access Attempts unless they constitute Security Incidents.

3.3.2. *OneHealthPort Reporting.* OneHealthPort shall report to the Participant any Security Incident, Unauthorized Use or Disclosure of Protected Health Information, or System Security breach of which it becomes aware which affects, or may affect, Protected Information of the Participant, as provided in the HIE Operating Manual.

3.3.3. *Participant Reporting.* Each Participant shall report to OneHealthPort any Security Incident (not including Access Attempts) or Unauthorized Use or Disclosure of Protected Health Information of which it becomes aware, which may affect or involve the use or access to any HIE Service. Participants may report Security Incidents and Unauthorized Use or Disclosure incidents of Protected Health Information to OneHealthPort at hie@onehealthport.com.

3.3.4. *HIE User Reporting.* All HIE Users shall report to their Participant any Security Incident (not including Access Attempts, unless required by Participant policy) or Unauthorized Use or

Disclosure of Protected Health Information which they become aware, which may affect or involve the use or access to any HIE Service

3.4. Security Incident and Unauthorized Use or Disclosure Investigation.

3.4.1. *OneHealthPort Investigation.* OneHealthPort shall investigate any Unauthorized Use or Disclosure and any Security Incident which may affect or have affected any HIE Service or any Information System used to host, operate or manage a HIE Service, or any Protected Information maintained, stored or in transmission or processing in a HIE Service, promptly upon receiving notice from a Participant or other information which reasonably indicates the potential occurrence of a such an event. OneHealthPort shall document the results of each such investigation. OneHealthPort shall provide for reasonable periodic reporting of Security Incident and Unauthorized Use or Disclosure information to the Participant, and shall promptly report any Security Incident or Unauthorized Use or Disclosure to Participant which presents or indicates a potentially material threat to the Participant's Protected Information, Information System(s) or Authorized Devices, or which may constitute a Breach or System Security Breach.

3.4.2. *Participant Investigation.* Each Participant shall investigate any reported Security Incident or Unauthorized Use or Disclosure involving access to or use of any HIE Service (a) from or by use of Participant's Information System or any other equipment or device of Participant, Authorized or otherwise, (b) by use of a user name and/or password issued to a HIE User of the Participant, or (c) by an HIE User of the Participant contrary to any OneHealthPort HIE policy or procedure, promptly upon receiving notice from OneHealthPort or other information which reasonably indicates the occurrence of such an event. The Participant shall document the results of each such investigation. The Participant shall permit OneHealthPort to review such documentation on a reasonable basis, and shall promptly report to OneHealthPort any Security Incident or Unauthorized Use or Disclosure which presents or indicates a potentially material threat to any HIE Service or any other Participant's Protected Information, Information System(s) or Workstations or other equipment or devices, or which may constitute a Breach or a System Security Breach.

3.5. Security Incident Mitigation and Remediation. All affected parties shall share information about the results of their Security Incident investigations, and cooperate in determining and implementing measures to mitigate the harmful effects of any given incident and prevent other incidents of the same type, to the extent practicable.

3.5.1. *Law Enforcement Notification.* Any party may notify appropriate law enforcement agencies in the event it believes a Security Incident which affects it is a crime or the result of criminal activity.

3.6. Breach Notification.

3.6.1 *Breach Determination.* The Covered Entity whose Protected Information is affected by an Unauthorized Use or Disclosure shall make the final determination whether the event constitutes a Breach under Federal law, and shall be responsible for determining whether it constitutes a System Security Breach under any State law. Any other affected party may also make such a determination, at its discretion.

3.6.2. If OneHealthPort determines that a Security Incident or Unauthorized Disclosure constitutes a Breach or System Security Breach under Federal or State law, OneHealthPort shall immediately notify the Participant of this determination

3.6.2 Breach Notification.

- a. Each affected Participant which has a direct provider-patient, plan-member or entity-customer relationship with potentially affected individuals shall have primary responsibility for their notification, if required by law or elected by the Participant.
- b. Each affected Participant is primarily responsible for notification of regulatory authorities, if required by law or elected by the Participant.
- c. Any notification to potentially affected individuals or to regulatory authorities shall be deemed notification as well by OneHealthPort (and any affected Subcontractor, if applicable) and each shall be identified as a notifying party, unless such party directs otherwise in writing.
- d. In the event an affected Participant elects not to or fails to timely notify potentially affected individuals or regulatory authorities as provided above, and OneHealthPort reasonably determines that it may be required to give such notification by law, OneHealthPort may give such notification at its discretion.

4. **ONEHEALTHPORT REMEDIES FOR PARTICIPANT SECURITY MANAGEMENT FAILURE.**

In the event that OneHealthPort determines that a failure by a Participant to comply with Section 2 of this Security Policy creates a material vulnerability potentially affecting (a) an HIE Service, b) the Information System or any other equipment or device of any party, or (c) any information, including but not limited to Protected Information, OneHealthPort shall promptly notify the Participant and may, at OneHealthPort's reasonable discretion, suspend or limit access to and/or use of some or all of the HIE Services by some or all of the Participant's HIE Users, and/or to or from the Participant's Information Systems and/or Authorized Devices), as OneHealthPort may determine is reasonably prudent. Such a failure by the Participant shall be deemed a Curable Breach, provided that upon receipt of notice of such a breach the Participant shall use its best efforts to come into compliance with this Security Policy. Upon the Participant's demonstration to OneHealthPort that the Participant is in compliance with this Security Policy OneHealthPort shall terminate the suspension or limitation unless other information available to OneHealthPort indicates that the material vulnerability continues. In the event of a continuing failure to come into compliance by the Participant, OneHealthPort may proceed to terminate the Participation Agreement as provided in the Participation Terms and Conditions.

5. **PARTICIPANT REMEDIES FOR HIE SERVICES SECURITY MANAGEMENT FAILURE.**

In the event that the Participant determines that a failure by OneHealthPort to comply with Section 1 of this Security Policy creates a material vulnerability potentially affecting (a) the Participant's Information System or (b) any information, including but not limited to Protected Information, accessible in or through the Participant's Information System, the Participant shall promptly notify OneHealthPort and may, at the Participant's sole discretion, suspend or limit access to and/or use of any or all of the Services by some or all of the Participant's HIE Users, and/or from the Participant's Information System(s), as the Participant may determine is reasonably prudent in order to mitigate the vulnerability. Such a failure by OneHealthPort shall be deemed a Curable Breach, provided that upon receipt of such notice OneHealthPort shall use its best efforts to come into compliance with this Security Policy. Upon OneHealthPort's demonstration to the Participant that OneHealthPort is in compliance with this Security Policy the Participant shall terminate the suspension unless other information available to the Participant indicates that the material vulnerability continues. The Participant

shall not be liable for any fees payable for any of the Services during any period of suspension under this Section, or for any reactivation fees following such suspension.



Washington State Health Information Exchange

HIE Glossary

Effective Date: 1/1/2016

The following Glossary provides definitions of terms used in the Washington State Health Information Exchange Participation Agreement and related HIE Policies and Schedules.

Defined Term	Citation (if applicable)	Definition
Access	45 CFR § 164.524; RCW 70.02.080	An Individual's right to inspect and obtain a copy of Protected Information about that Individual, held by or for a Participant.
Accounting of Disclosures	45 CFR § 164.528; RCW 70.02.020(b)	The set of information which a Covered Entity is required to provide an Individual upon request with respect to Disclosures of their Protected Health Information, including and limited to that information required under 45 CFR § 164.528.
Administrator		An individual member of a Participant's Workforce, who has been designated and authorized by the Participant to be a point of contact for OneHealthPort for issues under the HIE Policies, and to be responsible for the Participant's compliance with the HIE Policies.
Authorization	45 CFR § 164.508; RCW 70.02.030	A written document signed by an Individual which gives another person permission to use or disclose Protected Information about that Individual.
Authorized Device		A Workstation which is of a type authorized for use with the Services offered by OneHealthPort, and has been specifically identified in writing by a Participant as a device one or more of the Participant's HIE Users is permitted to use with one or more of the Services. An Authorized Device may, but need not be, part of a Participant's Information System.
Business Associate	45 CFR § 164.103	A person performing a function or activity on behalf of a Covered Entity which involves that person obtaining, using or disclosing Protected Health Information on behalf of that Covered Entity, as defined under HIPAA and HITECH.
Carrier Lines		The local network and Internet backbone carrier lines and through routers, switches, and other devices owned, maintained, and serviced by third-party telecommunications carriers, utilities, and Internet service providers, which are used to access and use the Services.

Community Oversight Organization		The role of the Community Oversight Organization is to help ensure that the HIE Lead Organization operates the HIE in the public interest, including review and oversight of pricing; privacy and security policies; and HIE accessibility.
Comptroller General		The Comptroller General of the United States.
Consent	45 CFR § 164.506(b)	A written document signed by an Individual which gives another person permission to use or disclose Protected Information about that Individual. See Authorization
Covered Entity	45 CFR § 160.103	A health care provider, health care clearinghouse or health plan, as defined under HIPAA and HITECH.
Criminal Conviction		(1) A judgment of conviction entered against the entity or individual by a federal, state or local court, regardless of whether an appeal is pending or the judgment of conviction or other record relating to criminal conduct has been expunged; (2) a finding of guilt against the individual or entity that has been accepted by a federal, state or local court; (3) a plea of guilty or nolo contendere by the individual or entity that has been accepted by a federal, state or local court; or (4) the entering into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.
Curable Breach		A breach by a party of the Participation Agreement, any HIE Policy or any Schedule, which can be cured by action of the breaching party.
Designated Record Set	45 CFR § 164.103	A group of records maintained by or for a Covered Entity that is used, in whole or in part, by or for the Covered Entity to make decisions about the Individual(s) to whom they apply. This includes but is not limited to medical and billing records of health care providers, and enrollment, payment, claims adjudication, and case or management records of health plans.
DHHS		The United States Department of Health and Human Services.
Disclose, Disclosure	45 CFR §160.103	Any release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
Health Care Operations	45 CFR § 164.103; RCW 70.02.010(8)	Any of the various activities performed by or for Covered Entities included under the HIPAA definition of this term.
HIE		The HIE is the Washington State Health Information Exchange, and means the set of health information exchange-related services provided through the HIE Lead Organization designated by the State of Washington Health Care Authority, under the oversight of the Community Oversight Organization. Participants in the HIE may use the HIE to exchange health information with other HIE Participants.
HIE Business Associate Policy	45 CFR §§ 164.502(e), .504(e); HITECH §§	The policy published by the HIE Lead Organization which provides the terms and conditions required by HIPAA and HITECH for a Business Associate Contract, which applies

	13401(a), 13404(a)	whenever the HIE Lead Organization acts as a Business Associate to a Covered Entity in providing a Service. The HIE Business Associate Policy is published as part of the OneHealthPort HIE Participation Agreement.
HIE Lead Organization	RCW 41.05.036, .039	The entity designated by the Washington State Health Care Authority to develop processes, guidelines, and standards for the Washington State Health Information Exchange, and implement methods for the secure exchange of clinical information.
HIE Participation Terms and Conditions		The HIE policy published by the HIE Lead Organization which provides the general terms and requirements for access to and use of the Services by Participants. The HIE Participation Terms and Conditions are published as part of the OneHealthPort HIE Participation Agreement.
HIE Policy		One of the policies to which Participants agree as a condition to use of the Services. The HIE Policies are published in the OneHealthPort HIE Participation Agreement.
HIE Security Policy		The HIE Policy published by OneHealthPort which provides the terms and requirements for security for the Services by OneHealthPort and by Participants. The HIE Security Policy is published as part of the OneHealthPort HIE Participation Agreement.
HIE Service		A health information exchange-related service offered as part of the Washington State Health Information Exchange, under a Schedule published by the HIE Lead Organization.
HIE User		An individual who is a member of a Participant's Workforce, whose duties on behalf of the Participant include functions or activities involving the use of one or more Services on behalf of the Participant, who has been authorized and is currently authorized by the Participant to use such Service(s) on its behalf, and has a valid User Name and password issued for that purpose.
HIE User Name		The unique identifier issued to an authorized HIE User, by or for the HIE Lead Organization, used for access to and use of one or more Services.
HIE User Policy		The policy published by the HIE Lead Organization which provides the terms and requirements for use of the Services by HIE Users. The HIE User Policy is published as part of the OneHealthPort HIE Participation Agreement.
HIPAA		The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules
HIPAA-Regulated Services		Any Service for which OneHealthPort or a Services Vendor acting under contract with OneHealthPort has access to, uses or discloses Protected Health Information except on a random or infrequent, non-routine basis.
HITECH		The Health Information Technology for Economic and Clinical Health Act (HITECH Act or "The Act") is part of the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA contains incentives related to health care












		information technology in general (e.g. creation of a national health care infrastructure) and contains specific incentives designed to accelerate the adoption of electronic health record (EHR) systems among providers.
Individual	45 CFR § 160.103; RCW 70.02.010(12)	A person who is the subject of Protected Health Information, including but not limited to a patient who receives or has received health care.
Information System	45 CFR § 164.304	An interconnected set of information resources under the management control of a single entity, including hardware, software, information, data, applications, communications, and people.
Marks		Logos, trademarks and service marks.
Minimum Necessary	45 CFR § 164.502(b)	The set of Protected Health Information which is the minimum data set necessary for purposes of the function or activity for which it is obtained, used or disclosed.
More Stringent	45 CFR § 160.202	A standard or requirement which (1) permits an Individual greater rights of access or amendment of Protected Health Information, (2) provides requirements that narrow the scope or duration, increase the privacy protections afforded under a Consent or Authorization, (3) provides for the retention or reporting of more detailed information or for a longer duration, or (4) otherwise provides greater privacy protection for the individual who is the subject of the individually identifiable health information.
Notice of Privacy Practices	RCW 45 § 164.520; RCW 70.02.120	A notification published by a Covered Entity or other party which gives an Individual notice of the Uses and Disclosures of Protected Information which that party may make, as well as the Individual's rights and the party's duties with respect to that information.
OneHealthPort		OneHealthPort, Inc., the HIE Lead Organization.
Participant		An entity which has entered into and is currently subject to a Participation Agreement. Participants may also be referred to as "Trading Partners".
Privacy Rule	45 CFR Part 164, Subpart E	The HIPAA privacy regulations.
Protected Health Information	45 CFR § 160.103	The information protected by the HIPAA Privacy Rule. "Protected Health Information" means individually identifiable health information which is transmitted or maintained in any medium, and excludes information in education records covered by the Family Educational Right and Privacy Act or described at 20 U.S.C. 1232g(a)(4)(B)(iv).
Protected Information	45 CFR § 160.103; RCW 70.02.010(7); RCW 19.255.010; RCW 42.56.590	Protected Information includes Protected Health Information, as well as "health care information" and "personal information" which is protected under Washington State law.
Reasonable and Appropriate Safeguard	45 CFR Part 164, Subpart C; RCW 70.02.150	Protections for Protected Information consistent with the requirements of the Security Rule and applicable Washington State law.
Required by Law	45 CFR § 164.103;	A mandate contained in law that compels a party to make

	RCW 70.02.050(2)	a Use or Disclosure of Protected Information and that is enforceable in a court of law, including but not limited to court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
Required Hardware and Software		Hardware and software which is required in order to access and use a Service.
Schedule		A document published by or for the HIE Lead Organization which describes a Service and includes information about services levels and fees for the Service.
Security Breach	45 CFR § 164.102; RCW 19.255.010(4); RCW 42.56.010(1)	The acquisition, access, Use, or Disclosure of Protected Information in a manner not permitted by the Privacy Rule, or RCW 19.255 or RCW 42.56 if applicable, which compromises the security or privacy of the Protected Information.
Security Incident	45 CFR § 164.304	The attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
Security Rule	45 CFR Part 164, Subpart C	The HIPAA security regulations.
Service		A technical or administrative service offered by the HIE Lead Organization, as described and under the conditions published in a Schedule.
Services Vendor		A person who provides one or more Services, or elements of a Service.
State of Washington Health Care Authority	RCW 41.05.036, .039	The administrator of the State of Washington Health Care Authority is responsible for designating the HIE Lead Organization, for reviewing the work and progress of the HIE Lead Organization, and for collaborating with the HIE Lead Organization in reporting to the Washington State Legislature with respect to the Washington State Health Information Exchange.
Subcontractor		A person providing services to or for, or performing functions on behalf of OneHealthPort which involve obtaining, use or disclosure of Protected Health Information, including but not limited to Services Vendors providing HIPAA-Regulated Services.
Unauthorized Use or Disclosure of Protected Information		Any Use or Disclosure of Protected Information by any party which that party is prohibited from making under federal or state law, any HIE Policy, or any policy of a Participant which applies to that party.
Use	45 CFR § 160.103	Any sharing, employment, application, utilization,

		examination, or analysis of Protected Information within an entity which maintains that information.
OneHealthPort HIE Operating Manual		The documentation published by the HIE Lead Organization, which provides administrative and technical requirements and guidance for use of the Services.
OneHealthPort HIE Participation Agreement		The OneHealthPort Health Information Exchange Participation Agreement, as published and amended by the HIE Lead Organization from time to time.
Washington State Health Information Exchange	RCW 41.05.039	A statutory, contractual, administrative and technical infrastructure implemented in the State of Washington to improve patient access to and control of their own health care information, and implement methods for the secure exchange of clinical data as a means to promote continuity of care, quality of care, patient safety and efficiency in medical practices.
Workforce	45 CFR § 160.103	Any employee, volunteer, trainee, independent contractor or other person whose conduct on behalf of a Participant is under the direct control of that Participant, whether or not they are paid by the Participant.
Workstation	45 CFR § 164.304	Any electronic computing device, including a laptop or desktop computer, smartphone, or any other device that performs similar functions, and electronic media stored in its immediate environment.

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