



Participation Agreement for the eHealth Exchange

This Participation Agreement for the eHealth Exchange ("Agreement") is entered into as of the last date written below ("Effective Date") by and between Healthway, Inc. (dba "The Sequoia Project"), a Virginia nonstock membership corporation, and the undersigned Participant, _____, a _____ ("Participant") (collectively "the Parties").

WHEREAS, there exists a multi-party health information exchange activity, the eHealth Exchange among agencies of the United States government and non-federal organizations that is conducted pursuant to the mechanism established under the Data Use and Reciprocal Support Agreement (the "DURSA") to which these federal agencies and non-federal organizations are signatories;

WHEREAS, the DURSA created a Coordinating Committee (the "Coordinating Committee") to govern the operations of the eHealth Exchange and the DURSA sets out the responsibilities and composition of the Coordinating Committee;

WHEREAS, the Coordinating Committee has engaged The Sequoia Project to provide support services to the eHealth Exchange;

WHEREAS, Participant either does or wants to participate in the eHealth Exchange and is a signatory to the DURSA; and

WHEREAS, pursuant to the eligibility criteria for participation in the eHealth Exchange established by the Coordinating Committee pursuant to the Data Use and Reciprocal Support Agreement (DURSA), in order for Participant to participate in the eHealth Exchange, Participant must enter into this Participation Agreement with The Sequoia Project.

NOW THEREFORE, in consideration of the premises and the exchange of promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

- 1. Relationship to the DURSA.** Participant represents and warrants that it is a signatory to the DURSA. Except as specifically set forth herein, nothing herein shall be construed to amend or supersede Participant's obligations with respect to the transaction of message content pursuant to the DURSA. Participant acknowledges and agrees that in order to participate in the eHealth Exchange, in addition to being a signatory to the DURSA, it must also enter into this Participation Agreement with The Sequoia Project.
- 2. Participation Term.** Participant agrees that the initial term of participation in the eHealth Exchange shall commence on the Effective Date and expiring on the anniversary of the Effective Date. ("Initial Term"). Following the Initial Term, Participant's payment of the then-current annual Participation Fee by the anniversary of the Effective Date ("Renewal Date") shall constitute a renewal of its participation in the eHealth Exchange, provided that Participant continues to meet all other requirements for participation in the eHealth Exchange as defined by the Coordinating Committee. In accordance with Section 4 of this

Agreement, failure to make a timely renewal payment shall be cause for suspension or termination of access to and participation in the eHealth Exchange.

3. **Participation Fee.** The Coordinating Committee has approved the establishment of a fee schedule for participation in the eHealth Exchange and has engaged The Sequoia Project for the collection of the participation fee from participants. Participant shall pay the applicable annual participation fee in accordance with the fee schedule approved by the Coordinating Committee and set forth on the eHealth Exchange website (“Participation Fee”). Participant agrees that, once paid, all Participation Fees are nonrefundable for any reason, including termination of participation in the eHealth Exchange. The Participation Fee payment for the Initial Term is due within thirty (30) calendar days following the Effective Date. Each year thereafter, The Sequoia Project will invoice Participant for the then-current annual Participation Fee. Fees not paid by the Renewal Date will bear interest at the rate of one and a half percent (1.5%) per month. Participant also agrees to pay all costs incurred by The Sequoia Project to collect amounts due pursuant to this Agreement.

4. **Suspension and Termination of Access to the eHealth Exchange.**

a. In the event that Participant fails to pay its Participation Fee by the Renewal Date, The Sequoia Project may suspend Participant’s access to and participation in the eHealth Exchange. In the event that Participant fails to pay its Participation Fee within thirty days after the Renewal Date, The Sequoia Project may terminate Participant’s access to and participation in the eHealth Exchange. During a suspension, the Participant can be reinstated upon payment of all Participation Fees, interest, and other amounts that are due. In addition to the Participation Fee and interest, The Sequoia Project may charge a reasonable renewal fee to cover its costs and overhead associated with restoring Participant’s access after suspension due to non-payment.

b. Participant acknowledges and agrees that The Sequoia Project’s right to suspend or terminate Participant’s access to and participation in the eHealth Exchange is separate and distinct from the Coordinating Committee’s rights to suspend and terminate a participant as set forth in the DURSA. The Sequoia Project is not obligated to comply with the suspension and termination provisions of the DURSA or the Operating Policies and Procedures in connection with its suspension or termination of a Participant for non-payment.

5. **Notices.** All notices required hereunder shall be in writing and sent to the Participant’s representative designated below at the address set forth below or to such addresses as such Participant’s representative may later specify by written notice to the CEO of the Sequoia Project.

NAME OF PARTICIPANT’S REPRESENTATIVE
DESIGNATED TO RECEIVE NOTICES: _____
PARTICIPANT’S NAME: _____
ADDRESS: _____
EMAIL: _____
TELEPHONE NUMBER: _____

If Participant’s representative does not update his or her contact information, then Participant waives any right to receive any notice.

6. **Governing Law.** This Agreement shall be construed and controlled by the laws of the Commonwealth of Virginia, without reference to conflict of laws principles. Notwithstanding the foregoing, if Participant is a Federal agency, then this Agreement shall be construed and controlled by all applicable Federal laws.
7. **Jurisdiction and Venue.** The Parties agree that all disputes between Participant and The Sequoia Project that arise in any way out of or in connection with this Agreement shall be heard exclusively in, and The Sequoia Project and Participant irrevocably consent to jurisdiction and venue in, an appropriate Federal court or state court located in the Commonwealth of Virginia. Notwithstanding the foregoing, if Participant is a Federal agency, then any dispute between Participant and The Sequoia Project shall be heard in the appropriate United States District Court or other Federal court that is legally permitted to preside over such matters.
8. **Complete Agreement; No Waiver.** This Agreement sets forth the entire understanding of The Sequoia Project and the Participant and supersedes all prior agreements and understandings with respect to its subject matter, unless otherwise stated in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.
9. **Amendment.** So long as the Coordinating Committee has approved an amendment to this Agreement, this Agreement may be amended by The Sequoia Project by providing notice to Participant at least thirty (30) days before any such amendment takes effect and the terms of the amended Agreement will be effective with respect to Participant unless Participant provides its notice of termination within thirty (30) days of the notice of amendment.
10. **No Third Party Beneficiaries.** This Agreement is entered into for the benefit of the Parties and not for the benefit of any third party, except the Coordinating Committee.
11. **Compliance with Laws.** Notwithstanding anything contained in this Agreement to the contrary, the obligations of the Parties will be subject to all applicable laws, regulations and orders, present and future, of any governmental authority having jurisdiction over the Parties. It is the intention of the Parties that this Agreement will comply with all applicable laws and regulations.
12. **General Construction.** As used in this Agreement, the plural form and singular form each shall be deemed to include the other in all cases where such form would apply. "Includes" and "including" are not limiting, and "or" is not exclusive.
13. **Independent Contractors.** The relationship of The Sequoia Project and the Participant established by this Agreement is that of independent contractors. This Agreement does not give The Sequoia Project or the Participant the power to direct and control the day-to-day activities of another; constitute The Sequoia Project, the Participant, any other participant in the eHealth Exchange or any member of The Sequoia Project as partners, joint ventures, co-owners, principal agent(s), or otherwise as participants in a joint or common undertaking; or allow The Sequoia Project or the Participant to create or assume any obligation on behalf of another for any purpose whatsoever.
14. **Warranty of Signature.** This Agreement must be signed by a representative of the Participant that is authorized to commit the Participant to all of the terms of this Agreement.

By signing this Agreement, the person signing represents and warrants that he or she has been authorized by the respective Participant to enter into the obligations set forth in this Agreement and has read and understood this Agreement.

Participant's Name: _____

By: _____

Name: _____

Title: _____

Date: _____

Acceptance:

This Participation Agreement is accepted as of this ____ day of _____, 20__.

Healthway, Inc., (dba, The Sequoia Project) a Virginia corporation

By: _____

Name: _____

Title: _____

Date: _____

eHealth Exchange Participant Fee Schedule

6/19/15

Annual Revenue*	Annual Participation Fee
Less than \$1 Million	\$4,750
\$1 Million to less than \$10 Million	\$9,950
\$10 Million or more	\$19,900

*eHealth Exchange network fees are based upon a participant's annual healthcare revenue. For governmental agencies and non-profit organizations, annual participation fees are based upon annual operating costs instead of annual revenue.