## Application for Participation in the eHealth Exchange

(Rev. 10/1/2016)

INSTRUCTIONS:

**Please complete and e-mail the following information to administrator@ehealthexchange.com**

* A complete and signed Application for Participation; and
* An executed Joinder of the DURSA (version dated September 30, 2014) along with the completed contacts for notice in Appendix D.
* An executed copy of the eHealth Exchange Participant Agreement (version dated June 18, 2015)

This document serves as an application to participate in the eHealth Exchange. Those who participate in this electronic exchange of health information are known as “Participants.”

Organizations that wish to be considered for “Participant” status should complete and submit this Application for Participation. The eHealth Exchange Coordinating Committee (“Coordinating Committee”) is responsible for reviewing and acting upon Applications for Participation. The Participants have granted the Coordinating Committee this responsibility in Section 4.03 of the DURSA.

To help the Coordinating Committee fulfill its responsibility in a consistent and effective manner, the Participants have adopted an Operating Policy and Procedure for Review and Disposition of Applications ([www.ehealthexchange.com](http://www.ehealthexchange.com)). The Coordinating Committee will review the Applicant’s Application in accordance with this Operating Policy and Procedure.

All information in this Application for Participation will be used by the Coordinating Committee to determine whether the Applicant meets the eligibility requirements for participation.

If the Coordinating Committee determines that the Applicant meets the eligibility requirements for participation and has successfully completed all applicable technical testing, the Coordinating Committee will conditionally accept the Applicant as a Participant. Within 180 calendar days of the Coordinating Committee conditionally accepting the Applicant as a Participant, the Applicant must be able to begin exchanging data with other Participants.

The Applicant becomes a Participant only when: (i) the Applicant’s system is operational, in production and ready to exchange information with other Participants in production; (ii) the Applicant has installed the production Digital Credentials (i.e. production X.509 digital certificate), if applicable; and (iii) the DURSA Joinder Agreement has been countersigned. Until such time, the Applicant may not publically refer to itself as a “Participant.”

NOTE: The DURSA and Participation Agreement WILL NOT be countersigned until you are considered a Participant.

**This document is submitted this, the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_, to the eHealth Exchange Coordinating Committee by the organization listed below (“Applicant”) to become a Participant in the eHealth Exchange.**

Part I: Basic Applicant Information

|  |  |
| --- | --- |
| **Organization Name:** |  |
| **Address:** |  |
| **Web Site:**  |  |

|  |
| --- |
| **Points of Contact** |
|  | **Primary Business** | **Project** | **Technical** |
| **Name:** |  |  |  |
| **Title:**  |  |  |  |
| **Phone:** |  |  |  |
| **E-mail:** |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Legal** | **Accounting** | **Primary Breach** |
| **Name:** |  |  |  |
| **Title:**  |  |  |  |
| **Phone:** |  |  |  |
| **E-mail:** |  |  |  |
|  | **Secondary Breach** | **Other** | **Other** |
| **Name:** |  |  |  |
| **Title:**  |  |  |  |
| **Phone:** |  |  |  |
| **E-mail:** |  |  |  |

[ ]  Check here if you **DO NOT** want the eHealth Exchange to share the name of your Organization with other eHealth Exchange Participants or Applicants.

Part II: Applicant Information

|  |
| --- |
| 1. **Organization Type and Size**
 |
| [ ]  Governmental: [ ]  Federal[ ]  State (indicate the state)[ ]  LocalCheck this option if Applicant is a governmental entity, and indicate if it is a Federal, State or local agency. N/A if you receive funding from, or otherwise have a relationship with, a governmental agency but are not a governmental entity. | [ ]  Non-Governmental (Select all that apply)[ ]  Health Information Exchange Organization (HIO)[ ]  State HIO[ ]  Regional HIO[ ]  Integrated Delivery Network [ ]  Academic Institution[ ]  Vendor Intermediary[ ]  Nonprofit[ ]  Other (please describe): |
| Applicant Annual Revenue: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Please round down to the nearest million.  Governmental and Nonprofit organizations should report annual operating budget.  This information is used in determining the annual participation fee.) |
| 1. **Describe how Applicant is currently transacting health information electronically in production on a routine and on-going basis. Please include the following types of information: (*Limit 300 words)***
* the role that the Applicant plays in the exchange of data;
* whether the Applicant is exchanging data on its own behalf and/or on behalf of users or clients;
* the types of services the Applicant provides to its users or clients (e.g. technology solutions; oversight, facilitation and governance of data exchange activities); and the methods by which the Applicant is currently exchanging data.
 |
| 1. **Current use cases and types of data or transactions exchanged:**
 |
| 1. **Describe current connectivity:**

|  |  |  |
| --- | --- | --- |
|  | Types | Total # |
|[ ]  # of Hospitals  |  |
|[ ]  # of Medical Groups (e.g. ambulatory / physician practices, post-acute settings, dialysis centers, etc. |  |
|  |
| Describe geographic coverage area where you exchange data: |

 |
| 1. **Current volume:** Describe current volume of electronic exchange transactions on a monthly basis.
 |
| 1. **Technology Partner:** indicate the technology solution(s) that Applicant plans to use for participation in the eHealth Exchange.

|  |
| --- |
| Vendor: |
| Product Name: |
| Version Number: |
| Additional information: |

 |
| 1. **What other organizations would you like to connect to via the eHealth Exchange?**

*Current Participant List:* [www.ehealthexchange.com](http://www.ehealthexchange.com)

|  |
| --- |
| Federal Participants:[ ]  SSA [ ]  VA [ ]  CMS [ ]  DoD  |
| Non-Federal Participants: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

 |

Part III. DURSA Flow-Down Provisions

The Data Use and Reciprocal Support Agreement (DURSA) is a comprehensive, multi-party trust agreement that is executed by all Participants in the eHealth Exchange. Please ensure that you have reviewed the DURSA in its entirety and that your organization has implemented measures needed to comply with its provisions. All Applicants, as a condition of acceptance in the eHealth Exchange, are required to comply with the provisions of the DURSA. You must have enforceable mechanisms to assure that other participating organizations or users that have access to your eHealth Exchange connection similarly comply.The following questions outlined below will help the Coordinating Committee assess what mechanisms you currently have implemented by your organization, as well as your plans to implement those which are not currently in place.

We understand that you may need to create new or modify existing legal agreements and/or policies and procedures to obligate your participating organizations and users to abide by the terms of the DURSA.Any changes must be implemented prior to the eHealth Exchange Go-Live Date. Additional guidance for each provision is provided in Attachment #1.

|  |
| --- |
| 1. **Does your organization have enforceable agreements or policies and procedures in place to obligate your participating organizations or users to comply with each of the below provisions, pursuant to Section of the DURSA?**

Question #8 is intended to clarify how your organization has implemented certain obligations in Section 15.04 of the DURSA. eHealth Exchange Participants must carry through DURSA obligations to participating organizations or users who will use your organization’s eHealth Exchange connection. Any organization or individual who is able to access and either initiate or receive messages through your eHealth Exchange connection is held to the same standards in the DURSA in order to maintain a chain of trust in the Exchange.Please provide a 1-2 sentence statement for each of the following to describe how you are enforcing compliance with your other participating organizations or users. If you need to modify your policies/procedures/agreements to comply with the provision, please describe your plan. |
| 8a. Do you have policies/procedures/enforceable agreements in place that assure that your participating organizations and/or users comply will Applicable Law? If yes, please describe. |
| 8b. Do you have policies/procedures/enforceable agreements in place that assure that your participating organizations and/or your users will reasonably cooperate with your organization regarding any issues related to the DURSA? If yes, please describe. |
| 8c. Do you have policies policies/procedures/enforceable agreements in place that assure that your participating organizations and/or your users will request, retrieve, and send data only for a Permitted Purpose defined in the DURSA (which is more restrictive than HIPAA)? If yes, please describe. |
| 8d. Do you have policies/procedures/enforceable agreements in place that assure that your participating organizations and/or your users only use data received via the eHealth Exchange in accordance with applicable law and your data retention policies. If yes, please describe. |
| 8e. Do you have policies/procedures/enforceable agreements in place that assure that your participating organizations and/or your users will report **suspected** and **confirmed** Breaches to your organization in order for you to fulfill your obligations in responding to the 1 hour / 24 hour Breach notification requirements in the DURSA (Refer to DURSA Section 14.03). A DURSA breach involves an incident which compromises the transmission of data via your eHealth Exchange connection (Refer to DURSA Section 1 (c)). If yes, please describe. |
| 8f. Do you have policies/procedures/enforceable agreements in place that assure that your participating organizations and/or your users will not disclose any passwords, certificates issued by the eHealth Exchange technical support group, or any other security measures issued to that participating organization that enables connectivity to the eHealth Exchange and / or user by your organization? If yes, please describe. |

|  |
| --- |
| 1. **Does your organization use a third party intermediary or health information exchange service provider~~)~~ to conduct the exchange of health information on your behalf, pursuant to Section 15.05 of the DURSA?**

[ ]  Yes. This organization uses a third party intermediary or health information exchange service provider who facilitates the exchange of health information on our behalf.  Please provide a 1-2 sentence statement for each question 9a – 9d to describe how you are enforcing compliance so that your third party intermediary or health information exchange service provider complies with the terms of the DURSA). If you need to modify your contracts or business agreements to comply, please describe your plan.[ ]  No. This organization does not use a third party intermediary or health information exchange service provider who facilitates the exchange of health information on our behalf. **(Proceed to Part IV)** |
| 9a. Do you have contracts or business agreements in place that assure that 3rd party intermediaries or health information exchange service providers comply with Applicable Law? If yes, please describe. |
| 9b. Do you have contracts or business agreements in place that assure that that 3rd party intermediaries or health information exchange service providers protect the privacy and security of any Message Content to which it they access? If yes, please describe. |
| 9c. Do you have contracts or business agreements in place that assure that that 3rd party intermediaries or health information exchange service providers as soon as reasonably practicable after determining that a Breach occurred, report such Breach to your organization? If yes, please describe. |
| 9d. Do you have contracts or business agreements in place that assure that that 3rd party intermediaries or health information exchange service providers to reasonably cooperate with the other Participants to the DURSA on issues related to the DURSA, under the direction of your organization? If yes, please describe. |
| [ ]  By checking this box, to the extent the Applicant needs to create new or make modifications to policies/procedures, contracts, or business agreements, etc. in order to comply with the DURSA flow-down provisions, the Applicant attests that these requirements will be implemented prior to the Go-Live Date and will be verified by eHealth Exchange staff. |

Part IV: Technical Eligibility Requirements

**Select which eHealth Exchange use cases and corresponding eHealth Exchange specifications Applicant will support in production via the eHealth Exchange.**

[ ]  Lookup and Retrieve Documents (Query) (for treatment, transitions of care and/or Social Security eligibility)

[ ]  Access Consent Policy – required to transact with the SSA (optional use case that enables a participant to send additional policies to restrict access in connection with the message)

[ ]  Deferred Messaging for Patient Discovery (optional use case that enables a participant to defer the actual processing of patient discovery requests in lieu of responding immediately)

[ ]  Direct Secure Messaging

[ ]  FHIR

[ ]  Immunization Use Case – this is a push of immunization data for treatment purposes

[ ]  Authorized Release of Information – Individual Access to Health Information (e.g. via a Personal Health Record)

[ ]  PDMP (Treatment sub-use case)

[ ]  Electronic Lab Reporting (Use case, in support of public health)

[ ]  Syndromic Surveillance (Use case, in support of public health)

**Content – please indicate what content types you will support in production**

[ ]  HL7, v. 2.5.1 (HITSP C-32)

[ ]  Consolidated (C-CDA)

[ ]  Unstructured documents

[ ]  Other: Please specify

*NOTE: After being accepted as a Participant, the Applicant/Participant can implement additional Transaction Pattern(s) in accordance with Operating Policy and Procedure #3: Participation Changes, Suspension and Termination (*[www.ehealthexchange.com](http://www.ehealthexchange.com)*).*

Part V: Attestations

As an Applicant to the eHealth Exchange, please attest (by checking each box) that the following statements are true and accurate.

[ ]  Applicant is a valid business in good standing or a governmental agency, operating in the United States;

[ ]  Applicant meets all solvency and financial responsibility requirements imposed on the Applicant be applicable statutes and regulatory authorities;

[ ]  Applicant is an organization or agency that oversees and conducts, on its own behalf and/or on behalf of its Participant Users, electronic transactions or exchanges of health information among groups of persons or organizations;

[ ]  Applicant has the organizational infrastructure and legal authority (through statutes, regulations, organizational agreements, contracts or binding policies) to comply with the obligations in the DURSA and to require its Participant Users to comply with applicable requirements of the DURSA;

[ ]  Applicant intends to Transact information with other Participants for a Permitted Purpose;

[ ]  Applicant has sufficient financial, technical and operational resources to support the testing and operation of transactions among Participants;

[ ]  In the event that resource issues arise, Applicant agrees to communicate and coordinate with the eHealth Exchange Coordinating Committee regarding Applicant’s situation.

[ ]  In Applicant is not aware of any information that would preclude the Applicant from fully complying with the provisions of the DURSA;

[ ]  Along with this Application, Applicant will submit the signed DURSA Joinder Agreement (Attachment 7 of the DURSA, with Attachment 4 – Contacts for Notice), and the eHealth Exchange Participation Agreement;

[ ]  Applicant will begin exchanging health information with other Participants within one hundred twenty (180) days following the date Applicant is conditionally accepted by the Coordinating Committee as a Participant. If Applicant anticipates not meeting the 180-day deadline, Applicant shall request (in writing) an extension from the Coordinating Committee;

[ ]  The information contained in this Application for Participation is true and accurate. Applicant will notify the Coordinating Committee if the information contained herein is discovered to be, or later becomes, inaccurate and Applicant will provide additional information as reasonably requested by the Coordinating Committee. (This obligation to submit accurate information continues until such time as the Applicant becomes a Participant, at which time the Applicant/Participant will be bound by the DURSA.)

**[Signature Page Follows]**

Part VI: eHealth Exchange Participant Testing Services Agreement

This **eHealth Exchange Participant Testing** **Agreement** (this “**Agreement**”) is made and entered into as of \_\_\_\_\_\_\_\_\_, 201\_\_ (the “**Effective Date**”) by and between Healtheway, Inc. (dba The Sequoia Project) (“**The Sequoia Project**”), a Virginia non-stock, membership corporation and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Applicant**”), a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(INSERT TYPE OF LEGAL ENTITY AND STATE OF DOMICILE). Each of The Sequoia Project and Applicant shall be referred to in this Agreement as a Party or collectively as Parties.

**RECITALS**

**WHEREAS,** The Sequoia Project is organized as a non-profit corporation to provide operational support to the eHealth Exchange (formerly referred to as the Nationwide Health Information Network Exchange);

**WHEREAS**, eHealth Exchange Participant Testing Program tests compliance for health information exchange (HIE) standards as required by the eHealth Exchange Coordinating Committee for onboarding to the eHealth Exchange network;

**WHEREAS**, The Sequoia Project operates the Participant Testing Program for eHealth Exchange;

**WHEREAS,** Applicant wishes to have its HIE system qualify as a Participant on the eHealth Exchange.

**THEREFORE**, in consideration of the mutual agreements of the Parties as set forth in this Agreement and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties do agree as follows:

1. **Definitions**
	1. “**Applicant’s HIE Technology**” means the health information exchange technology submitted by Applicant to the Coordinating Committee for the purpose of completing the Testing Process and demonstrating compliance with the Specifications.
	2. “**Data Use and Reciprocal Support Agreement**” means the legal, multi-party trust agreement that is entered into voluntarily by all entities, organizations and Federal agencies that desire to engage in electronic health information exchange with each other using an agreed upon set of Specifications.
	3. “**eHealth Exchange Participant Testing Program**” means the program of Testing as described herein and in the eHealth Exchange Validation Plan, as defined in the DURSA.
	4. “**HIT**” means health information technology.
	5. “**Specifications**” means the system requirements adopted for the eHealth Exchange.
	6. “**Specification Version**” means a set of Testing Program items (Specifications and Test Materials) that are associated with the eHealth Exchange Participant Testing Program, as described in the eHealth Exchange Validation Plan. For example, as of November 2013, the two Specification Versions are the 2010 Version eHealth Exchange Specifications and the 2011 Version eHealth Exchange Specifications.
	7. “**SPOC**” means Applicant’s designated single point of contact who will oversee and coordinate Applicant’s participation in the Participant Testing Program and respond to The Sequoia Project inquiries as necessary during each phase of the Testing Process.
	8. **“Test Materials”** means the set of testing requirements that must be successfully demonstrated and validated to comply with the Specifications. This may include, but is not limited to test cases, test scenarios, conformance checklists, etc.
	9. “**Testing Date**” means the date on which Applicant’s HIE Technology is issued a Testing Report.
	10. “**Testing Fee**”means the fee payable at the time of application by Applicant for the evaluation of Applicant’s HIE Technology for the testing process. The amount of the Testing Fee is set forth in Exhibit A attached hereto and may be modified for future programs.
	11. “**Testing Process**” means the process followed by The Sequoia Project as defined in the Operating Policies and Procedures and Validation Plan to evaluate the compliance of the Applicant’s HIE Technology with the Specifications and Test Materials and indicated on the Testing Report.
	12. “**Test Report**” means a written report issued by The Sequoia Project that documents the outcomes of the Testing Process; that is, the Applicant’s compliance with the Specifications and Test Materials.
	13. “**Testing**”means validation of Applicant’s HIE Technology that indicates that the Applicant’s HIE Technology is in compliance with the Specifications and Test Materials.
	14. “**Web Site**” means the eHealth Exchange web site at www.ehealthexchange.com.
2. **Testing Process**
	1. **Application Process**. Applicant and The Sequoia Project shall follow the process described in the eHealth Exchange Operating Policies and Procedures for the submission, review and processing of Applicant’s application for Testing of Applicant’s HIE Technology.
	2. **Testing Process**. Applicant and The Sequoia Project shall follow the process described in the eHealth Exchange Operating Policies and Procedures and Validation Plan.
	3. **Testing Outcome**. The outcome of the Testing Process shall be communicated to Applicant by delivery of a Test Report.
	4. **Appeal Procedures**. Applicant may appeal the findings in a Test Report only if the Applicant failed testing and Applicant believes, in good faith, that The Sequoia Project rendered an incorrect decision about the technology compliance based upon how the technology was validated during the test due to perceived bias or error and that, as a result the Test Report does not accurately reflect the compliance of the Applicant’s HIE technology with the Specifications and Test Materials based upon how the Applicant’s HIE Technology was validated by The Sequoia Project. The Parties agree that neither of them will make any public statements or disclosures about Applicant’s appeal during or after the appeal except as required by law.
3. **Fees**
	1. **Standard Testing Fee**. Applicant shall pay the “**Testing Fee**” set forth on Exhibit A attached hereto. Payment of the total Testing Fee must be received in full by The Sequoia Project before processing of the application will begin.
	2. **Standard Time for Testing.** Applicants will have sixty (60) calendar days from the application acceptance date to complete the entire Testing Process. If Applicant has not completed its Testing within this 60 day time period, The Sequoia Project may require an additional fee equal to 15% of the Testing Fee to complete the Testing Process. The Sequoia Project may, in its sole discretion, agree to extensions if unexpected delays occur as a result of The Sequoia Project’s efforts.
	3. **Additional Sets of Test Results**. Applicants may practice with the testing tools on an unlimited basis. However, Applicants will be allowed to submit two (2) sets of test results to The Sequoia Project for evaluation as evidence of compliance for the Final Testing Report as a covered by the Standard Testing Fees. If Applicant needs to submit additional test results for review and evaluation to demonstrate its compliance, it may do so for an additional fee (“Retest Fee”) set forth on Exhibit A attached hereto.
	4. **Refunds.** Applicant is not entitled to a refund of any Testing Fees except Applicant shall receive a refund of 85% of the Testing Fee where (i) the Applicant’s application is incomplete and the Applicant is unable to resolve all deficiencies in the application to The Sequoia Project’s satisfaction; or (ii) the eHealth Exchange Coordinating Committee fails to accept the Applicant’s application for any reason. Applicant may reapply at any time in the future by resubmitting its application and the full Testing Fee.
4. **The Sequoia Project Responsibilities**
	1. Test Summary Report**.** Upon completion of the Testing, Applicant will be provided with a Test Report by The Sequoia Project. A copy of the report will be sent to the Coordinating Committee for their use in the eHealth Exchange onboarding process.

**The eHealth Exchange Coordinating Committee has sole authority to determine whether an Applicant has satisfied the requirements to become an eHealth Exchange Participant. Successful completion of Testing does not guarantee that an Applicant will be accepted by the Coordinating Committee as a Participant.**

* 1. **Test Requirements**. The Sequoia Project will post on its web site the current eHealth Exchange Validation Plan and Test Materials, as modified from time to time in accordance with the DURSA.
1. **Applicant Responsibilities**
	1. **eHealth Exchange Participant Testing Program** . Applicant shall perform all of Applicant’s obligations specified for all phases of the eHealth Exchange Participant Testing Program,in accordance with this Agreement and the eHealth Exchange Validation Plan and Test Materials which are incorporated by reference into this Agreement.
	2. **SPOC**. Applicant shall designate a SPOC, and make available during the Testing Process its SPOC and other Applicant personnel as necessary to effectively complete the Testing, as well as for review of the Test Report and any other elements contained in any other testing methods used in the eHealth Exchange Participant Testing Programand to answer questions and attend meetings as required by The Sequoia Project. Applicant will notify The Sequoia Project promptly in the event of a change in the SPOC for Applicant’s HIE Technology.
2. **Ownership of Materials**. Applicant acknowledges that any copyrights, patent rights, trade secrets, trademarks and other intellectual property in or related to eHealth Exchange Participant Testing Program including, but not limited to, all related materials, information, reports, processes, seals, test cases, test case runner, gateway proxy, test repository database, test case templates, configuration files, and test tool documentation (“The Sequoia Project IP”), are the exclusive property of The Sequoia Project or its licensors. To the extent any corrections, enhancements, improvements, derivative works, relating to The Sequoia Project IP are developed by The Sequoia Project based upon ideas or suggestions submitted by Applicant, Applicant hereby irrevocably assigns its rights to such ideas or suggestions to The Sequoia Project, together with all copyrights, trade secrets, patent rights and other intellectual property rights related thereto. Applicant shall not challenge the validity of The Sequoia Project’s ownership of such The Sequoia Project IP. Applicant shall not represent that it owns or has any rights in relation to The Sequoia Project IP. Applicant shall not apply for registration of any trademark, business name or company name that incorporates any name or logo the same as, substantially similar to or deceptively similar to any The Sequoia Project or eHealth Exchange marks without the prior written consent of The Sequoia Project. Applicant shall not create any derivative work, program or product based on or derived from The Sequoia Project IP, or use any The Sequoia Project trade secrets, business processes, or intellectual property related to the eHealth Exchange Participant Testing Program to create any other program or product.
3. **Confidentiality**
	1. **Confidential Information**. Confidential Information furnished by either party under this Agreement is provided solely for use in the eHealth Exchange Participant Testing Program and both parties desire to ensure the safeguarding of such information and limit its distribution. “**Confidential Information**” shall include the following:
		1. Applicant’s HIE Technology documentation and technical information submitted to The Sequoia Project by Applicant under this Agreement;
		2. Test Reports (exclusive of reports sent to the Coordinating Committee as described in the Validation Plan);
		3. Item-by-item compliance results for Applicant’s HIE Technology developed during the course of any Testing Process or Appeal; and
		4. Any other non-public information that is disclosed by one party (the “**Disclosing Party**”) to the other (the “**Recipient**”), whether before or after the execution of this Agreement, provided that such information is marked in writing as “Confidential” or “Proprietary.”
	2. **Exclusions**. Irrespective of any marking, Confidential Information shall not include:
		1. Applicant’s company name, and contact information for Applicant’s representatives;
		2. Item-by-item compliance results, when de-identified as to Applicant, and aggregated statistically with corresponding compliance results from other applicants;
		3. Information that is, or subsequently becomes, generally available to the public through no act or fault of the Recipient;
		4. Information that was in the possession of the Recipient prior to its disclosure;
		5. Information that was lawfully acquired by the Recipient from a third party who was not under an obligation of confidentiality to the Disclosing Party; or
		6. Information that was independently developed by the Recipient by personnel without access to the Confidential Information.
	3. **Disclosure and Use Restrictions**. Except as otherwise provided herein, the Recipient shall:
		1. retain in confidence all Confidential Information, using at least the same degree of care in safeguarding the Disclosing Party’s Confidential Information as it uses in safeguarding its own confidential information, subject to a minimum standard of reasonable diligence and protection;
		2. use and disclose Confidential Information only in the course of performing its obligations pursuant to this Agreement; and
		3. disclose Confidential Information within its organization only to those of its employees, faculty, agents or subcontractors who both have a need to know such information for the Recipient’s performance under this Agreement and have a legal duty to protect it comparable to that of the Recipient.
	4. **Injunctive Relief**. Each party recognizes and acknowledges that any use or disclosure of the Confidential Information of the other party in a manner inconsistent with the provisions of this Agreement may cause such other party irreparable damage for which remedies at law may be inadequate, and each party agrees that in any request to a court of competent jurisdiction by such other party for injunctive or other equitable relief seeking to restrain such use or disclosure, it will not maintain that such remedy is not appropriate under the circumstances.
4. **Limitation of Liability; Right of Action**
	1. EXCEPT WITH RESPECT TO THE CONFIDENTIALITY OBLIGATIONS IN SECTION 8 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT OR BY STATUTE OR OTHERWISE) TO THE OTHER OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE LOSS, DAMAGES OR EXPENSES (INCLUDING LOST PROFITS OR SAVINGS).
	2. No claim or cause of action, regardless of form, arising out of or related to the eHealth Exchange Participant Testing Program, this Agreement, or the breach thereof, or any other dispute between The Sequoia Project and Applicant may be brought in an arbitral, judicial, or other proceeding by any party more than one year after the cause of action has accrued, regardless of any statute, law, regulation, or rule to the contrary (“**Limitation Period**”). The Limitation Period shall commence the day after the day on which the cause of action accrued. Failure to institute a proceeding within the Limitation Period will constitute an absolute bar and waiver of the institution of any proceedings, whether in arbitration, court, or otherwise, with respect to such cause of action. A cause of action that has become time-barred may not be exercised by way of counter claim or relied upon by way of exception.
5. **Warranties; Disclaimer**.
	1. Applicant warrants and represents that it has the full power and authority to execute the application to participate in eHealth Exchange and to enter into this Agreement and that any representative of Applicant who signed the Testing application or signs this Agreement had or has full power and authority to do so on behalf of Applicant.
	2. Applicant warrants and represents that the information submitted to The Sequoia Project in the Testing application, Applicant’s Test Report, any other documentation or information provided by Applicant to The Sequoia Project is, to the best of Applicant’s knowledge, accurate and complete.
	3. Applicant warrants and represents that the Applicant’s HIE Technology is the same health information exchange technology that will be used by Applicant in production to participate in eHealth Exchange.
	4. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT: (a) NEITHER PARTY MAKES NOR WILL BE DEEMED TO MAKE OR HAVE MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW); AND, (b) EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, TITLE, DESIGN, NON-INFRINGEMENT, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OR USAGE IN TRADE.
6. **Term and Termination**
	1. **Term**. This Agreement shall commence on the Effective Date and terminate upon termination of the Applicant’s participation in eHealth Exchange, unless terminated earlier in accordance with Sections 10(b) or 10(c).
	2. **Termination by Applicant**. Applicant may terminate this Agreement at any time prior to receiving a Test Report by providing written notice to The Sequoia Project of its intent to so terminate this Agreement. Applicant will not be entitled to a refund of any Testing Fees paid prior to termination except as set forth in Section 3(d).
	3. **Termination by The Sequoia Project.** The Sequoia Project may terminate this Agreement with immediate effect by giving notice to Applicant if:
		1. Applicant is in material breach of any of the terms and conditions of this Agreement and fails to remedy such breach within 30 days after receiving notice of such breach; or
		2. Applicant breaches a material provision of this Agreement where such breach is not capable of remedy.
7. **Notices**. Any formal notice or other significant communication given pursuant to this Agreement must be in writing and shall be deemed to have been received either (a) upon personal delivery (or refusal thereof) to the party for whom intended, (b) on the date receipt is confirmed by a courier service or the United States Post Office (sent certified mail, return receipt requested), in each case addressed to such party at the address specified below (or such other address designated by notice to the other party).

**For Applicant:**

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**For Healtheway, Inc. (dba The Sequoia Project):**

8300 Boone Boulevard, Suite 500

Vienna, VA 22182

Attn: eHealth Exchange Program Director

1. **General**
	1. **Non-Disclosure of Applicant Status**. Except as specifically provided in the Validation Plan, without Applicant’s prior written approval (which may be given by email), The Sequoia Project shall not: (i) advertise or otherwise name Applicant as a participant in the eHealth Exchange Participant Testing Program; nor (ii) publicly disclose the results of Applicant’s participation in the eHealth Exchange Participant Testing Program, except in de-identified form. The foregoing limitations shall not prohibit The Sequoia Project from sharing informing about Applicant or its Testing with the eHealth Exchange Coordinating Committee.
	2. **Force Majeure**. Neither party shall be responsible for any delays or failures in performance due to circumstances beyond its reasonable control, including, without limitation, failures of computers, computer-related equipment, hardware or software.
	3. **Severability**. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be modified to the minimum extent necessary to achieve the purpose originally intended, if possible, and the remaining provisions of this Agreement shall remain in full force and effect and enforceable.
	4. **Survival of Rights and Obligations**. All Sections, which by their nature are meant to survive this Agreement, shall survive expiration or termination of this Agreement.
	5. **Governing Law, Forum and Jurisdiction**. In the event of a dispute between the parties, the applicable Federal and State conflicts of law provisions that govern the operations of the parties shall determine governing law.
	6. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding agreement when each party shall have executed one counterpart.
	7. **Captions**. Captions appearing in this Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions of this Agreement.
	8. **Independent Parties**. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between Applicant and The Sequoia Project. Except as specifically set forth herein, neither party shall have the power to control the activities and operations of, or contractually bind or commit, the other party and their status with respect to one another is that of independent contractors.
	9. **No Third Party Beneficiary**. Nothing contained in this Agreement will be deemed to create, or be construed as creating, any third party beneficiary right of action upon any third party or entity whatsoever, in any manner whatsoever.
	10. **Assignment.** None of this Agreement, any of the rights hereunder nor any resulting certification shall be assignable by Applicant whether by operation of law or otherwise without the express written approval of The Sequoia Project.
	11. **Entire Agreement; Waiver**. This Agreement contains the entire understanding of the parties with regard to the subject matter contained herein and may not be amended except by mutual written agreement. The failure of either party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach, nor shall any delay by either party to exercise any right under this Agreement operate as a waiver of any such right.

**[Signature Page Follows]**

***[Signature Page to eHealth Exchange Application and Participant Testing Services Agreement]***

|  |  |  |
| --- | --- | --- |
| **For: [Applicant Name]** |  | **For HEALTHEWAY, INC. (dba The Sequoia Project)** |
|  |  |  |  |  |
| Date: |  |  | Date: |  |
| Signature: |   |  | Signature: |  |
| Printed Name: |  |  | Printed Name: |  |
| Title: |  |  | Title: |  |

**Exhibit A**

**Fee Schedule**

**Standard Testing Fees**

**2010 Participants**

Smoke Test Cases1 No charge

**2011 Participants**

Smoke Test Cases1 $11,000

Security Test Cases $8,000

**Content**2 $3,000

Notes:

1. The 2011 specifications are required for Applicants with systems that were not previously validated under the prior onboarding program and others who use systems that support the 2011 specifications. Applicants that are using an eHealth Exchange Validated Product (<http://sequoiaproject.org/ehealth-exchange/testing-overview/ehealth-exchange-validated-products/>) are only required to complete the 2011 Smoke Tests. **The standard testing fees do not apply for Applicant’s using an approved Qualified Technology Solution (QTS) vendor.**
2. Content testing options include Basic C32, Bridge C32 or C-CDA. Applicants may choose more than one option but individual fees are applied for each option chosen. Content testing is waived if Applicant uses a product that was certified for the 2011 or 2014 edition of EHR certification for Stage 1 or Stage 2 meaningful use.
3. The above testing fees are currently in effect.  The fees are current under evaluation to assess whether additional clarifications or refinements are necessary.

**Additional Fees:**

|  |  |
| --- | --- |
|  |  |
| Timeframe Extension (beyond 60 days) | 15% of testing fee |
| Retest Fee (per test result) | $2,000 |
|  |  |

**Payment Options:**

1. Mail checks (payable to The Sequoia Project) to:
	1. The Sequoia Project 8300 Boone Boulevard, Suite 500, Vienna, VA 22182
2. For ACH & Wire instructions: Send a request to administrator@ehealthexchange.com.
3. To request an Invoice: Send a request to administrator@ehealthexchange.com.

Note: You may, if you wish, also pay the eHealth Exchange participation fees at this time.  Payment of the participation fees can either be made in conjunction with the testing fees or separately once you are ready to go into production on the eHealth Exchange. Annual participation fees are detailed in the eHealth Exchange Participation Agreement.

**Attachment 1 - Onboarding Resources and DURSA Guidance**

**Onboarding Resources**

The below resources are available to assist you in completing the application package. These resources can be found on the Onboarding page of the eHealth Exchange website at [www.ehealthexchange.com:](http://www.ehealthexchange.com:)

* eHealth Exchange Participant Testing Program Process provides a step-by-step overview of the onboarding and testing process
* Onboarding Overview – a presentation that provides an overview of the onboarding process
* DURSA Webinar Presentation & Recorded Audio: This presentation provides a detailed walkthrough of the DURSA including the overall context and a review of the DURSA provisions
* DURSA Policy Assumptions

**DURSA Flow-Down Provision Guidance**

The DURSA requires that your organization, your users, your participating organizations and your technology partners if there are any, comply with the DURSA Provisions. The following represents additional clarifications to help applicants answer question #8 on the application.

The Coordinating Committee is looking for a 1-2 sentence statement for each provision, which explains how you obligate your participating organizations and/or users who will access your eHealth Exchange connection. The questions below each provision should be used to help you to answer Question #8 on the application.

1. **Users must comply with all applicable law**
	* How does your organization obligate its users (or participants if you are an HIE/HIO) to comply with applicable law?  For example:
		+ Does your organization have policies (e.g. Human Resources, etc.) or employment agreements that obligate employees or contract staff to comply with Applicable Law?
		+ Do your contracts / arrangements with medical staff obligate them to comply with applicable law?
2. **Users must reasonably cooperate with your organization regarding any issues related to the DURSA**
	* Your legal counsel should review the DURSA carefully to understand your organization’s obligations in the DURSA and to assure you have appropriately implemented the applicable “flow-down” applicable provisions to your users or other participating organizations.   For example:
		+ 12.02 must comply with terms of DURSA, including use, confidentiality, privacy and security of Message Content.  Participant shall appropriately discipline users who fail to act accordingly.
		+ Cooperate with reporting and responding to DURSA Breaches (which are defined differently than HIPAA breaches)
	* How will you obligate your users to meet specific provisions in the DURSA, such as:  Sections 5.01, 12.02, 13.01, etc.
		+ For example, do your policies (e.g. Human Resources, etc.) or employment agreements obligate employees or contract staff to cooperate with you to comply with Applicable Law and your obligations under the DURSA?
		+ Do your contracts / arrangements with medical staff obligate them to cooperate with you so that you can satisfy
3. **Only transmit data for permitted purposes defined in the DURSA, which are more narrow than what is permitted in HIPAA**

*(NOTE: We understand that some organizational policy limits use of the system to treatment purposes only, which is consistent with the Permitted Purposes in the DURSA.  Please note this on your application if this is true for your organization)*

* Does your organization have a policy, consistent with the DURSA, to ensure that users will only request data or submit data via the eHealth Exchange connection for only those purposes outlined in the HIPAA Permitted Purposes definition?
* Participants may NOT use eHealth Exchange connectivity for any purpose EXCEPT those specified in the definition of Permitted Purposes in the DURSA.
* The permitted purposes in the DURSA are more stringent than HIPAA, particularly the DURSA definition of TPO:
	+ Treatment - Treatment of the individual who is the subject of the Message.  Not for treatment purposes for other patients or for general treatment purposes by the Health Care Provider.
	+ Payment activities of a Health Care Provider
		- As it relates to the individual who is the subject of the Message. For example, this could be in response to or to support a claim for reimbursement submitted by a Health Care Provider to a Health Plan.
	+ Limited Healthcare Operations
		- Healthcare operations of the Covered Entity submitting the data or when another organization submits the data on another Covered Entity’s behalf.
		- Healthcare operations of a Health Care Provider who receives the message and has an established Treatment relationship with the individual who is the subject of the Message.  This is limited to those Health Care Operations listed in paragraphs (1) or (2) of the definition of Health Care Operations in 45 C.F.R. § 164.501 or health care fraud and abuse detection or compliance of such Health Care Provider
	+ Public Health Activities and Reporting
	+ Any Purpose to Demonstrate Meaningful Use
	+ Uses and Disclosures Pursuant to an Authorization
1. **Only use data received from your Organization or other Exchange Participants in accordance with the terms and conditions of the DURSA**
* The ultimate recipient of records received (i.e. a copy of another Participant’s records), may incorporate that data into its records and retain that information in accordance with Applicable Law and the recipient’s record retention policies and procedures.
1. **Appropriately report Breaches (as defined in the DURSA) within the 1 hour / 24 hour timeframes as specified in the DURSA.**

*(NOTE:  The reportable breaches in the DURSA are different than those that must be reported for HIPAA.   Breaches are defined very narrowly to apply to inappropriate access/use/disclosure as it relates to the transmission of data with other eHealth Exchange Participants). For details, refer to the DURSA definition of Breach.*

* Participants are required to notify the eHealth Exchange Coordinating Committee and other impacted Participants of DURSA Breaches within specific timeframes:
	+ Within 1 hour of ***suspected*** Breach, participants are required to notify the CC and other impacted Participants
	+ Within 24 hours of ***confirmed*** Breach, notify the CC, take steps to mitigate the Breach, and implement corrective action plans to prevent such Breaches in the future

*NOTE: The difference between the 1 hour and 24 hour notification will depend on how long it takes your organization to complete the analysis required to confirm that there was a breach.  The 24 hour notification begins once this confirmation has been made.*

1. **Refrain from disclosing to anyone, any passwords or other tokens issued to that user/partner by your Organization, as well as the digital certificates issued for the eHealth Exchange.**
	* Participants should have a policy or procedure that requires users/participants to protect any passwords and any other security tokens that grant system access or enable the exchange of data with other eHealth Exchange participants.