

RSNA Image Share Validation Program Testing Agreement

This **RSNA Image Share Program Testing Agreement** (this “**Agreement**”) is made and entered into as of _____, 2017 (the “**Effective Date**”) by and between Healthway, Inc. d/b/a The Sequoia Project (“**The Sequoia Project**”), a Virginia non-stock, membership corporation and _____ (“**Applicant**”), a _____. Each of The Sequoia Project and the 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 Radiological Society of North America (RSNA) Image Share Validation Program;

WHEREAS, the RSNA Image Share Validation Program tests information technology products for compliance with health information exchange (HIE) standards related to image exchange;

WHEREAS, The Sequoia Project provides administrative and operational support for the RSNA Image Share Validation Program;

WHEREAS, Applicant wishes to have Applicant’s Image Share Technology validated as compliant with the Specifications.

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

- a. “**Applicant’s Image Share Technology**” means the health information exchange image share technology submitted by Applicant to The Sequoia Project for the purpose of completing the Testing Process and demonstrating compliance with the Specifications.
- b. “**HIT**” means health information technology.
- c. “**RSNA Image Share Validation Program**” means The Sequoia Project’s program of Testing as described herein and in the RSNA Image Share Test Materials.
- d. “**Sample Messages**” means transactions generated by the Applicant’s Image Share Technology that accurately reflect the type of data exchanged between and among RSNA Image Share Participants. Sample Messages shall not contain PHI.
- e. “**Specifications**” means technical documentation which describes the system requirements adopted by the Sequoia Project for the RSNA Image Share Validation Program.
- f. “**Test Material Version**” means a set of Testing Materials that are used in the RSNA Image Share Validation Program. One single Test Material Version will be used in any cycle of testing in the RSNA Image Share Validation Program. The Test Material Version may be updated in successive cycles of testing. Each Test Material Version shall be uniquely identified with an incrementing numerical designation
- g. “**POINT OF CONTACT**” means Applicant’s designated single point of contact who will oversee and coordinate Applicant’s participation in the RSNA Image Share Validation Program and respond to The Sequoia Project inquiries as necessary during each phase of the Testing Process.
- h. “**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, procedures for conducting the testing process, etc.

RSNA Image Share Validation Program Testing Agreement

- i. “**Testing Date**” means the date on which Applicant’s Image Share Technology is issued a Testing Report.
- j. “**Testing Fee**” means the fee payable at the time of application by Applicant for the evaluation of Applicant’s Image Share 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.
- k. “**Testing Process**” means the process followed by The Sequoia Project as defined in the R S N A Image Share Test Materials to evaluate the compliance of the Applicant’s Image Share Technology with the Specifications and Test Materials and indicated on the Testing Report.
- l. “**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 applicable Specifications and Test Materials.
- m. “**Testing**” means validation of Applicant’s Image Share Technology that indicates that the Applicant’s Image Share Technology is in compliance with the Specifications and Test Materials.
- n. “**Web Site**” means The Sequoia Project's web site at www.sequoiaproject.org.

2. Testing Process

- a. **Application Process.** Applicant and The Sequoia Project shall follow the process described in the RSNA Image Share Test Materials for the submission, review and processing of Applicant’s application for Testing of Applicant’s Image Share Technology.
- b. **Testing Process.** Applicant and The Sequoia Project shall follow the process described in the RSNA Image Share Test Materials.
- c. **Testing Outcome.** The Sequoia Project shall determine the outcome of the Testing Process and such determination shall be communicated to Applicant by delivery of a Test Report.
- d. **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 Testing Process due to perceived bias or error and that, as a result the Test Report does not accurately reflect the compliance of the Applicant’s Image Share technology with the applicable Specifications and Test Materials based upon how the Applicant’s Image Share Technology was validated by The Sequoia Project. The Parties agree that neither of them will make any public statements or disclosures about Applicant’s Testing Outcome that is the subject of an appeal at any time except as required by law.

3. Fees

- a. **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.
- b. **Additional Sets of Test Results.** Applicants may practice with the Test Materials or other testing tools on an unlimited basis and for an unlimited timeframe. 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 covered by the 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 (“Additional Result Review Fee”) set forth on Exhibit A attached hereto.
- c. **Refunds.** Applicant is not entitled to a refund of any Testing Fees except Applicant shall receive a refund of 85% of the Testing Fee paid by the Applicant 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)

RSNA Image Share Validation Program Testing Agreement

The Sequoia Project fails to accept the Applicant's application for Testing 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

- a. **Test Summary Report.** Upon completion of the Testing, The Sequoia Project will determine whether Applicant successfully completed and passed Testing and will provide Applicant with a Test Report.
- b. **Test Requirements.** The Sequoia Project will post on its web site the current RSNA Image Share Test Materials, as modified from time to time.
- c. **Complaint Process.** The Sequoia Project shall establish and maintain a process by which third parties may submit to The Sequoia Project complaints regarding a validated product's potential non-compliance with the Test Materials Version for which it was validated.
- d. **Periodic Review of Sample Messages.** In addition to The Sequoia Project's right to respond to suspected non-compliance, The Sequoia Project has the right to request and review Sample Messages exchanged via Applicant's Image Share Technology in a test environment for conformance and interoperability as well as related audit log data as it pertains to Sample Messages.
- e. **Response to suspected non-compliance.** If The Sequoia Project believes, either as the result of a review pursuant to section 4(d) above or learning of a complaint, that Applicant's Image Share Technology (including, but not limited to, Applicant's Image Share Technology system configuration, architecture, components, and Sample Messages produced by Applicant's Image Share Technology) is not functioning in material compliance with the Test Materials Version for which it was validated, The Sequoia Project shall inform Applicant of such belief and request that Applicant, within a reasonable time, (i) verify that Applicant's Image Share Technology remains in compliance with the applicable Specifications by submitting a written attestation of compliance, or (ii) explain the reasons for non-compliance and propose a plan for remedying such non-compliance. If The Sequoia Project (in its reasonable discretion) is not satisfied with the information Applicant provides in response to such request, The Sequoia Project may inform Applicant that its Image Share Technology is non-compliant with the Specifications and request that Applicant submit Applicant's Image Share Technology for additional Testing in accordance with Section 5(c).

5. Applicant Responsibilities

- a. **RSNA Image Share Validation Program.** Applicant shall perform all of Applicant's obligations specified for all phases of the RSNA Image Share Validation Program, in accordance with this Agreement and the applicable RSNA Image Share Test Materials.
- b. **POINT OF CONTACT.** Applicant shall designate a POINT OF CONTACT, and make available during the Testing Process its POINT OF CONTACT 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 RSNA Image Share Validation Program and 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 POINT OF CONTACT for Applicant's Image Share Technology.
- c. **Retesting Upon a Finding of Non-Compliance.** Upon receipt of the notice provided pursuant to section 4(e) above, Applicant shall have (30) days to either (i) pay the then applicable Fees for Testing, undergo Testing of the allegedly non-compliant Applicant Image Share Technology and submit a set of test results to The Sequoia Project for the allegedly non-compliant Applicant Image Share Technology; or (ii) provide notice of termination of this Agreement to The Sequoia Project, which termination shall be effective no later than the thirty-first day following Applicant's original receipt of notice of such non-compliance. If during such thirty-day period, Applicant fails to pay the applicable Fees for Testing, undergo Testing, and submit a set of test results or provide notice of termination, The Sequoia Project may terminate this

RSNA Image Share Validation Program Testing Agreement

Agreement effective immediately upon notice to Applicant of such termination. The fees set forth in Sections 3(b) and 3(c) shall also apply to any such Testing of allegedly non-compliant Applicant Image Share Technology.

- d. **Cooperation with Periodic Review.** Applicant shall fully cooperate with The Sequoia Project and Applicant's customers for any periodic reviews of Sample Messages that The Sequoia Project performs.

6. Ownership of Materials.

- a. Applicant acknowledges that any copyrights, patent rights, trade secrets, trademarks and other intellectual property in or related to the RSNA Image Share Validation 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 "The Sequoia Project IP"), are the exclusive property of The Sequoia Project or its licensors. To the extent any corrections, enhancements, improvements, or 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 RSNA 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 RSNA Image Share Validation Program to create any other program or product.
- b. Nothing shall prevent Applicant from (i) making changes to Applicant's Image Share Technology to conform it to the requirements of the testing program or (ii) make such changes available to Applicant's customers. Any corrections, enhancements, improvements, or derivative works created by Applicant to Applicant's Image Share Technology in order to conform to any RSNA Image Share Validation Program requirement shall be and shall remain the Applicant's exclusive property and The Sequoia Project shall not represent or claim any copyright, patent right or any other intellectual property right related thereto.

7. **The RSNA Image Share Validation Seal.** Upon notification by The Sequoia Project to Applicant of successful completion of Testing, Applicant shall be entitled to designate Applicant's Image Share Technology as compliant with the Specifications and "RSNA Image Share Validated" (the "Validation"). The Sequoia Project will provide to Applicant a digital version of a seal signifying such Validation (the "Seal"). The Sequoia Project grants to Applicant a nonexclusive, non-assignable and nontransferable license to use and display the Seal as described herein. Applicant shall not use or display the Seal, the Validation or anything similar thereto for any software other than the version of Applicant's Image Share Technology that successfully completed the Testing. When displaying the Validation, the Validation should be used in such a way that there is no implication of endorsement by The Sequoia Project. When displaying the Seal, Applicant shall not alter or modify the digital version provided by The Sequoia Project. Applicant is authorized to display and use the Seal and Validation as set forth herein in any and all marketing materials for the Applicant's Image Share Technology. These rights are not transferable to any other entity or any other program or software produced by Applicant. Upon request, Applicant shall provide to The Sequoia Project samples of Applicant's use of the Seal and Validation. Applicant's failure to appropriately use the Validation, in the sole and absolute discretion of The Sequoia Project, may result in termination of its right to use the Validation.

8. Confidentiality

- a. **Confidential Information.** Confidential Information furnished by either party under this Agreement is provided solely for use in the RSNA Image Share Validation Program and both parties desire to ensure the safeguarding of such information and limit its distribution. "**Confidential Information**" shall include the

RSNA Image Share Validation Program Testing Agreement

following:

- i. Applicant's Image Share Technology documentation and technical information submitted to The Sequoia Project by Applicant under this Agreement;
 - ii. Test Reports;
 - iii. Item-by-item compliance results for Applicant's Image Share Technology developed during the course of any Testing Process or Appeal; and
 - iv. 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."
- b. **Exclusions.** Irrespective of any marking, Confidential Information shall not include:
- i. Applicant's company name, and contact information for Applicant's representatives;
 - ii. Item-by-item compliance results, when de-identified as to Applicant, and aggregated statistically with corresponding compliance results from other applicants;
 - iii. Information that is, or subsequently becomes, generally available to the public through no act or fault of the Recipient;
 - iv. Information that was in the possession of the Recipient prior to its disclosure;
 - v. 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
 - vi. Information that was independently developed by the Recipient by personnel without access to the Confidential Information.
- c. **Disclosure and Use Restrictions.** Except as otherwise provided herein, each Party shall:
- i. 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;
 - ii. use and disclose Confidential Information only in the course of performing its obligations pursuant to this Agreement; and
 - iii. 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.
- d. **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.

9. Limitation of Liability; Right of Action

RSNA Image Share Validation Program Testing Agreement

- a. 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).
- b. No claim or cause of action, regardless of form, arising out of or related to the RSNA Image Share Validation 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.

10. Warranties; Disclaimer.

- a. Applicant warrants and represents that it has the full power and authority to execute the application for Testing 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.
- b. 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.
- c. Applicant warrants and represents that the Applicant’s Image Share Technology is the same health information exchange technology that will be used by Applicant’s customers in production to exchange images.
- d. 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.

11. Term and Termination

- a. **Initial Validation Period.** The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of two (2) years (the “Initial Validation Period”), unless earlier terminated in accordance with this Section 11. Following the Initial Validation Period, the Parties may extend the term of this Agreement for additional two (2) year terms in accordance with Section 11(b) (each an “Additional Validation Period”).
- b. **Additional Validation Periods.** At least ninety (90) days prior to the end of the Initial Validation Period or any Additional Validation Periods, Applicant must pay the then applicable Fees for Testing, undergo Testing of Applicant’s then current Image Share Technology and submit a set of test results to The Sequoia Project for Applicant’s then current Image Share Technology (the “Retesting”). The fees set forth in Sections 3(b) and 3(c) shall also apply to any such Retesting. All Testing will be conducted in accordance with the specific RSNA Image Share Test Materials in effect at the time of testing and this Agreement. Should Applicant fail to successfully complete or pass Retesting prior to the end of the then current Initial Validation Period or Additional Validation Period, The Sequoia Project may (I) terminate this Agreement at the end of such

RSNA Image Share Validation Program Testing Agreement

Period; or (ii) renew this Agreement contingent upon Applicant instituting a remediation plan acceptable to The Sequoia Project and successfully completing and passing Retesting in a timeframe to be determined by The Sequoia Project, in its sole discretion.

- c. **Termination by Applicant.** Applicant may terminate this Agreement at any time by providing sixty (60) days prior written notice to The Sequoia Project. Applicant will not be entitled to a refund of any Testing Fees paid prior to termination except as set forth in Section 5(c). Applicant may also terminate this Agreement in accordance with Section 5(c).
- d. **Termination by The Sequoia Project.** The Sequoia Project may terminate this Agreement with immediate effect in accordance with Section 5(c) or by giving notice to Applicant if:
 - i. 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
 - ii. Applicant breaches a material provision of this Agreement where such breach is not capable of remedy.
- e. **Effect of Termination.** Upon termination of this Agreement for any reason, Applicant shall (i) immediately remove the Seal and Validation from all electronic media, (ii) immediately discard all materials bearing the Seal or Validation, and (iii) cease future use of the Seal and Validation. Within ten (10) business days of termination of this Agreement, Applicant shall confirm to The Sequoia Project, in writing, that it has complied with subsections (i) and (ii) of this Section. The Sequoia Project will remove Applicant's Image Share Technology from its list of The Sequoia Project Validated software products.

12. 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 or (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 The Sequoia Project, Inc.:

8300 Boone Boulevard, Suite 500
Vienna, VA 22182
Attn: Mariann Yeager, CEO

13. General

- a. **Non-Disclosure of Applicant Status.** Except as specifically provided in the Product Test Cases, 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 RSNA Image Share Validation Program; nor (ii) publicly disclose the results of Applicant's participation in the RSNA Image Share Validation Program, except in de-identified form. Notwithstanding the foregoing, upon Applicant's successful completion of Testing, The Sequoia Project is permitted to include the Applicant's Image Share Technology in the list of RSNA Image Share Validated software products.
- b. **Force Majeure.** Neither party shall be responsible for any delays or failures in performance due to

RSNA Image Share Validation Program Testing Agreement

circumstances beyond its reasonable control, including, without limitation, failures of computers, computer-related equipment, hardware or software.

- c. **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.
- d. **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.
- e. **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.
- f. **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.
- g. **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.
- h. **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.
- i. **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.
- j. **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.
- k. **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.

Applicant

Healthway, Inc. (dba, The Sequoia Project)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

RSNA Image Share Validation Program Testing Agreement

Exhibit A Fee Schedule

Testing Fees for Additional Product Validation or Retesting (Effective 03/31/17)

First Testing Bundle: \$20,000.00

Each Additional Testing Bundle: \$2,000

Types of Bundles:

- XDS-I Document Source / Document Consumer
- XDS-I Registry and Repository
- XCA-I Gateway
- RSNA PHR

NOTE: Maximum of \$26,000 per participant for each testing cycle.

Additional Fees

Additional Result Review Fee (per test result) \$2,000