

Recognized Coordinating Entity Sessions

12/5/2019



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RCE Stakeholder Feedback Session: Common Agreement (Additional Required Terms and Conditions - ARTCs)

What are the ARTCs?

- These are broadly defined by ONC as terms and conditions, in addition to the MRTCs, that “are necessary for an effective data sharing agreement.” ONC TEFCA Draft 2 at 9.
- The RCE is responsible for working with ONC to identify the ARTCs and prepare language for these provisions that will go into the Common Agreement.

Why do we need ARTCs?

- The Common Agreement is a contract and, under long-standing legal doctrine, a contract document must include all of the terms that apply to the parties to the contract. Assures that the parties to a contract actually know what they are agreeing to and what is required of them under the contract.
- While the MRTCs are quite extensive, they are not sufficient to create a sustainable and binding legal agreement between the RCE and the organizations that seek to be QHINs.

What ARTCs do we need?

It is helpful to think about the ARTCs through the lens of what are the categories of important functions that are not addressed by the MRTCs.

These categories are:

1. Governance of the exchange activities under the Common Agreement
2. Operation of the exchange activities under the Common Agreement
3. Stability of the QHIN Network
4. Contract Administration

1. Governance of Common Agreement Exchange Activities

- The RCE is responsible for governing the exchange activities under the Common Agreement. The Common Agreement needs to recognize this and have each Signatory grant to the RCE the authority to govern. The exact nature of this governance needs to be determined.
- A strategic assessment is needed to evaluate governance for the exchange activities under the Common Agreement.
 - Consider modifying existing governing bodies or establishing a separate governing body for the exchange activities under the Common Agreement.
 - Examine changes to existing governing bodies, if any.
 - Convene stakeholders regarding the assessment so that all perspectives are considered.

2. Operation of Exchange Activities Under the Common Agreement

- Addressing certain detailed requirements in Standard Operating Procedures provides significant flexibility
- The Common Agreement will include terms that point to Standard Operating Procedures but leave the detail in the Standard Operating Procedures
- These terms may include, but may not be limited to, the following:
 - Compliance with Standard Operating Procedures
 - Application Process and Onboarding
 - Accountability
 - Cooperation
 - Confidentiality of information
 - Dispute Resolution
 - Fees

3. Stability of Common Agreement Exchange Activities

- Support the stable operation of exchange activities under Common Agreement
- Set rules around how QHINs and the RCE can suspend or terminate the Common Agreement
 - Term
 - Termination
 - Suspension

4. Contract Administration

- Critical terms to support the smooth operation of the Common Agreement
- Include “boiler plate” contract terms that are commonplace, but important, for every contract
 - Authority to execute
 - Notices
 - Governing law and jurisdiction
 - Amendment
 - Assignment
 - Force Majeure
 - Severability
 - Survival rights and obligations
 - Counterparts
 - Captions
 - Independent Parties
 - Merger clause and waiver
 - Freedom to pursue legal remedies
 - Priority
 - Time Periods
 - Cumulative remedies

Thank You!