

Q
H
I
eHealth Exchange TEFCA Terms & Conditions
Introduction & Background

The Trusted Exchange Framework and Common Agreement (TEFCA)

The 21st Century Cures Act directed the U.S. Department of Health and Human Services (HHS) Office of the National Coordinator (ONC) to, “develop or support a trusted exchange framework, including a common agreement [TEFCA] among health information networks nationally.” TEFCA establishes legal, technical, policy, and implementation requirements for participation in this framework. Key source documents for the TEFCA requirements are:

The Common Agreement (Legal Requirements): ONC and the RCE have developed and published the Common Agreement – the legal contract between each QHIN and the RCE for purposes of TEFCA participation. The Common Agreement includes terms and conditions that a QHIN is **required** to flow down to its Participants that engage in TEFCA-based exchange and to require that those terms be flowed down between QHIN Participants and their Subparticipants that engage in TEFCA-based exchange.

The QTF (Technical Requirements): The RCE has also published the QHIN Technical Framework (QTF), which focuses primarily on the technical and functional requirements for interoperability between and among QHINs. However, it also specifies certain technical standards that a QHIN must implement and enforce with the Participants and Subparticipants of the QHIN to enable the QHIN-to-QHIN exchange of health information. Per the terms of the Common Agreement, the QTF is a legally binding document.

SOPs (Procedural/Process Requirements): An initial set of Standard Operating Procedures (SOPs) has been published by the RCE, and additional SOPs are likely to be published over time. SOPs are written procedures that provide further details related to TEFCA Requirements and exchange activities. Each SOP identifies the relevant group or groups to which the SOP applies, including whether a QHIN’s Participants and/or their Subparticipants must comply with a given SOP. Per the Common Agreement, SOPs are legally binding documents with respect to those groups to which the SOP states it applies.

Additional TEFCA Requirements: Documents such as implementation guides, written protocols, FAQs, etc. may also be published from time-to-time by the RCE and/or ONC. Such documents may be informational, or they may include requirements that QHINs must implement and/or require of their QHIN Participants/Subparticipants.

Authority & Intent

Section 4.03(m) of the DURSA grants the Coordinating Committee authority to enter into agreements to broaden access to data through enhanced connectivity across platforms and networks. Pursuant to that authority, the Coordinating Committee anticipates entering into the *Common Agreement for Nationwide Health Information Interoperability*, the “Common Agreement” that is part of the Trusted Exchange Framework and Common Agreement (“TEFCA”), for purposes of the eHealth Exchange serving as a Qualified Health Information Network (QHIN).

Pursuant to Section 12.05 of the DURSA, an eHealth Exchange Participant may choose to opt-out of participation in TEFCA via the eHealth Exchange, for any reason, by providing written notification of the decision to opt out. Furthermore, a Participant may reverse its decision at any time by providing such decision to the Coordinating Committee in writing.

This process is further described in [Operating Policy & Procedure #10](#) (OPP-10).

The eHealth Exchange QHIN

The eHealth Exchange has announced its intention to seek formal designation by the RCE as a QHIN under TEFCA. An organization is not a QHIN unless/until it is so designated by the RCE. However, the eHealth Exchange also has an obligation to provide Participants with notice of the terms of any new data sharing agreement into which the Coordinating Committee may enter, as well as any specific flow-down terms to which Participants may be bound. Therefore, the TEFCA Terms & Conditions that follow *assume* designation of the eHealth Exchange as a QHIN. The Coordinating Committee or designee will notify eHealth Exchange Participants of the RCE’s designation determination with respect to the eHealth Exchange, once the Coordinating Committee receives formal notice of that determination.

QHINs are **required** to flow certain terms down to their Participants and to require Participants to flow those terms down to their Subparticipants, and so on. The vast majority of the provisions contained in the attached TEFCA Terms & Conditions are “Required Flow-Downs,” per the Common Agreement. Those provisions of the TEFCA Terms & Conditions that are not specifically identified as “Required Flow-Downs” within the Common Agreement are related to the practical implementation of TEFCA within the eHealth Exchange network and apply to all eHealth Exchange Participants that do not opt-out of participating in the eHealth Exchange QHIN in accordance with these terms.

Participation Nomenclature in the eHealth Exchange QHIN

The term “Participant” is used in both the eHealth Exchange network and under TEFCA. In addition, the definition of “Participant” under the DURSA and the definition of “Participant” under the Common Agreement are different. Complicating matters further, some Participants in the eHealth Exchange (under the DURSA’s definition) will also be Participants in TEFCA (under

the Common Agreement's definition), but others will not. This necessitates a means of distinguishing among the different types of "Participants."

To distinguish among different uses of the term "Participant(s)," the following interpretations apply in the context of the eHealth Exchange QHIN:

eHealth Exchange Participant(s) is used to refer to each/all organizations that participate in the eHealth Exchange pursuant to the DURSA. An eHealth Exchange Participant may or may not also be a TEFCA Participant, as defined below. Whether an eHealth Exchange Participant is also a TEFCA Participant depends upon whether that eHealth Exchange Participant has opted out of participation in the eHealth Exchange QHIN.

TEFCA Participant(s) is used to refer to any/all entities that meet the definition of "Participant" under the Common Agreement. This term includes entities that participate in other QHINs, as well as eHealth Exchange Participants that do not opt out of participation in the eHealth Exchange QHIN.

Participant is used to refer to the specific eHealth Exchange Participant that, by not opting out of the eHealth Exchange QHIN, is bound by the TEFCA Terms & Conditions and TEFCA Materials for purposes of TEFCA-based activities.

The following *TEFCA Terms & Conditions* are not subject to modification and are binding on all eHealth Exchange Participants that do not affirmatively opt out of participation in the eHealth Exchange QHIN by [7/31/2023].

eHealth Exchange QHIN TEFCA Terms & Conditions

The TEFCA Terms & Conditions (“TEFCA Terms”) set forth herein are binding upon eHealth Exchange Participants UNLESS AND UNTIL the eHealth Exchange Participant has affirmatively opted out of participation in the eHealth Exchange QHIN in accordance with Section 12.05 of the DURSA.

By not opting out of participation in the eHealth Exchange QHIN, “Participant” hereby agrees to be bound by the terms and conditions set forth below.

TEFCA TERMS & CONDITIONS

1. Definitions

- 1.1 **Defined Terms.** Capitalized terms used in the TEFCA Terms that are not otherwise defined in the DURSA or that have a different meaning for purposes of participation in the eHealth Exchange QHIN shall have the meaning set forth below for purposes of the activities contemplated herein. Where a definition includes one or more citations to a statute, regulation, or standard, the definition shall be interpreted to refer to such statute, regulation, or standard as may be amended from time-to-time.

Applicable Law: all federal, state, local, or tribal laws and regulations then in effect and applicable to the subject matter herein. For the avoidance of doubt, federal agencies are only subject to federal law.

Business Associate Agreement (BAA): a contract, agreement, or other arrangement that satisfies the implementation specifications described within 45 CFR § 164.504, as applicable.

Common Agreement: means the *Common Agreement for Nationwide Health Information Interoperability* that has been entered into by and between the eHealth Exchange and the RCE, including as may be amended, along with the QHIN Technical Framework (QTF), all Standard Operating Procedures (SOPs), and all other attachments, exhibits, and artifacts incorporated therein by reference.

Confidential Information:

Any information that is designated as Confidential Information by the person or entity that discloses it (a “Discloser”), or that a reasonable person would understand to be of a confidential nature, and is disclosed to another person or entity (a “Recipient”) pursuant to these TEFCA Terms. For the avoidance of doubt, “Confidential Information” does not include electronic protected health information (ePHI), as defined in these TEFCA Terms, that is subject to a Business Associate Agreement and/or other provisions of these TEFCA Terms.

Notwithstanding any label to the contrary, “Confidential Information” does **not** include any information that: (i) is or becomes known publicly through no fault of the Recipient; or (ii) is learned by the Recipient from a third party that the Recipient reasonably believes is entitled to disclose it without restriction; or (iii) is already known to the Recipient before receipt from the Discloser, as shown by the Recipient’s written records; or (iv) is independently developed by Recipient without the use of or reference to the Discloser’s Confidential Information, as shown by the Recipient’s written records, and was not subject to confidentiality restrictions prior to receipt of such information from the Discloser; or (v) must be disclosed under operation of law, provided that, to the extent permitted by Applicable Law, the Recipient gives the Discloser reasonable notice to allow the Discloser to object to such redisclosure, and such redisclosure is made to the minimum extent necessary to comply with Applicable Law.

Connectivity Services: the technical services provided by a QHIN consistent with the requirements of the then-applicable QHIN Technical Framework and pursuant to the Common Agreement and provided by the eHealth Exchange to Participant consistent with the Required Flow-Downs of the Common Agreement with respect to all Exchange Purposes.

Direct Relationship: a relationship between (1) an Individual and (2) a QHIN or a TEFCA Participant or Subparticipant that arises when the QHIN, TEFCA Participant, or a Subparticipant, as applicable, offers services to the Individual in connection with one or more of the Framework Agreements, and the Individual agrees to receive such services.

Disclosure (including its correlative meanings “Disclose,” “Disclosed,” and “Disclosing”): the release, transfer, provision of access to, or divulging in any manner of TI outside the entity holding the information.

Discovery: for purposes of determining the date on which a TEFCA Security Incident was discovered, the term Discovery shall be determined consistent with 45 CFR § 164.404(a)(2) as if the TEFCA Security Incident were a breach (as defined in 45 CFR § 164.402) except that this term shall also apply to Non-HIPAA Entities.

Downstream Subparticipant: a Subparticipant that has entered into a Downstream Subparticipant Agreement to use the services of another Subparticipant (referred to as the “Upstream Subparticipant”) to send and/or receive information via QHIN-to-QHIN exchange for one or more of the Exchange Purposes.

Downstream Subparticipant Agreement: an agreement that incorporates all of the Required Flow-Downs of the Common Agreement and is between a Subparticipant (referred to as the “Upstream Subparticipant”) and one or more Subparticipants (each

a “Downstream Subparticipant”), which enables the Downstream Subparticipant(s) to use the services of the Upstream Subparticipant to send and/or receive information via QHIN-to-QHIN exchange for one or more Exchange Purposes; provided, however, that any provisions of said agreement that permit or require activities other than those required or permitted by the Common Agreement shall not be deemed part of the Downstream Subparticipant Agreement as defined herein. For example, if the agreement provides for transmission of information for reasons other than the Exchange Purposes, the provisions governing such activities shall not be deemed part of the Downstream Subparticipant Agreement as defined herein. Any Subparticipant may enter into a Downstream Subparticipant Agreement.

Electronic Protected Health Information (ePHI): has the meaning assigned to such term at 45 CFR § 160.103.

Exchange Purpose(s): means the reason, as authorized by the Common Agreement, including the Exchange Purposes SOP, for a Request, Use, Disclosure, or Response transmitted via QHIN-to-QHIN exchange as one step in the transmission. Authorized Exchange Purposes are: Treatment, Payment, Health Care Operations, Public Health, Government Benefits Determination, Individual Access Services, and any other purpose authorized as an Exchange Purpose by the Exchange Purposes SOP, each to the extent permitted under Applicable Law, under all applicable Required Flow-Down provisions of the Common Agreement, and, if applicable, under the implementation SOP for the applicable Exchange Purpose.

Framework Agreement(s): any one or combination of the Common Agreement, a Participant-QHIN Agreement, a Participant-Subparticipant Agreement, or a Downstream Subparticipant Agreement, as applicable.

Government Benefits Determination: a determination made by any federal, state, local, or tribal agency, instrumentality, or other unit of government as to whether an Individual qualifies for government benefits for any purpose other than health care (for example, Social Security disability benefits) to the extent permitted by Applicable Law. Disclosure of TI for this purpose may require an authorization that complies with Applicable Law.

Government Health Care Entity: any agency, instrumentality, or other unit of the federal, state, local, or tribal government to the extent that it provides health care services (e.g., Treatment) to Individuals but only to the extent that it is not acting as a Covered Entity.

Health Care Operations: has the meaning assigned to such term at 45 CFR § 164.501, except that this term shall apply to the applicable activities of a Health Care Provider regardless of whether the Health Care Provider is a Covered Entity.

Health Care Provider: has the meaning assigned to such term in the information blocking regulations at 45 CFR § 171.102 or in the HIPAA Rules at 45 CFR § 160.103.

HIPAA: the Health Insurance Portability and Accountability Act of 1996 codified at 42 U.S.C. § 300gg, 29 U.S.C. § 1181 *et seq.*, 42 U.S.C. § 1320d *et seq.*, and the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 codified at 42 U.S.C. § 17921 *et seq.*, and 42 U.S.C. § 17931 *et seq.*

HIPAA Rules: the regulations set forth at 45 CFR Parts 160, 162, and 164.

HIPAA Privacy Rule: the regulations set forth at 45 CFR Parts 160 and 164, Subparts A and E.

HIPAA Security Rule: the regulations set forth at 45 CFR Part 160 and Part 164, Subpart C.

Individual: one or more of the following:

- (1) An individual as defined by 45 CFR 160.103;
- (2) Any other natural person who is the subject of the information being Requested, Used, or Disclosed;
- (3) A person who legally acts on behalf of a person described in paragraphs (1) or (2) of this definition in making decisions related to health care as a personal representative, in accordance with 45 CFR 164.502(g);
- (4) A person who is a legal representative of and can make health care decisions on behalf of any person described in paragraphs (1) or (2) of this definition; or
- (5) An executor, administrator, or other person having authority to act on behalf of a deceased person described in paragraphs (1) or (2) of this section or the individual's estate under Applicable Law.

IAS Provider: Each QHIN, TEFCA Participant, and Subparticipant that offers Individual Access Services.

Individual Access Services (IAS): with respect to the Exchange Purposes definition, the services provided utilizing the Connectivity Services, to the extent consistent with Applicable Law, to an Individual with whom the QHIN, TEFCA Participant, or Subparticipant has a Direct Relationship to satisfy that Individual's ability to access, inspect, or obtain a copy of that Individual's Required Information that is then maintained by or for any QHIN, TEFCA Participant, or Subparticipant.

Individually Identifiable: refers to information that identifies an Individual or with respect to which there is a reasonable basis to believe that the information could be used to identify an Individual.

Non-HIPAA Entity (NHE): a QHIN, TEFCA Participant, or a Subparticipant that is neither a Covered Entity nor a Business Associate under HIPAA with regard to activities under the applicable Framework Agreement.

Participant: means the organization participating in the eHealth Exchange pursuant to the DURSA that has not opted out of participation in the eHealth Exchange QHIN and is, thereby, subject to these TEFCAs Terms. For the avoidance of doubt, Participant is also a “TEFCA Participant,” as later defined in this Section.

Participant-QHIN Agreement:

An agreement that incorporates all of the Required Flow-Downs of the Common Agreement and is between a QHIN and one or more TEFCAs Participants. The *TEFCA Terms & Conditions* is the Participant-QHIN Agreement for purposes of participation in the eHealth Exchange QHIN.

Participant-Subparticipant Agreement:

An agreement that incorporates all of the Required Flow-Downs of the Common Agreement and is between a TEFCAs Participant and one or more of its Subparticipants, which enables the Subparticipant(s) to use the services of the TEFCAs Participant to send and/or receive information via QHIN-to-QHIN exchange for one or more Exchange Purposes; provided, however, that any provisions of said agreement that permit or require activities other than those required or permitted by the Common Agreement shall not be deemed part of the Participant-Subparticipant Agreement as defined herein. For example, if the agreement provides for transmission of information for reasons other than the Exchange Purposes, the provisions governing such activities shall not be deemed part of the Participant-Subparticipant Agreement as defined herein.

Privacy and Security Notice: the written privacy and security notice described in Section 10.3.1 of the TEFCAs Terms.

Public Health: with respect to the definition of Exchange Purposes, a Request, Use, Disclosure, or Response permitted under the HIPAA Rules and other Applicable Law for public health activities and purposes involving a Public Health Authority, where such public health activities and purposes are permitted by Applicable Law, including a Use or Disclosure permitted under 45 CFR §164.512(b) and 45 CFR §164.514(e). For the avoidance of doubt, a Public Health Authority may Request, Use, and Disclose TI hereunder for the Exchange Purpose of Public Health to the extent permitted by Applicable Law and the Framework Agreements.

Public Health Authority: has the meaning assigned to such term at 45 CFR §164.501.

QHIN Directory: A system used by the eHealth Exchange QHIN and other QHINs to record and resolve the identifiers and endpoints of their TEFCA Participants and Subparticipants. The QHIN Directory includes a local copy of the RCE Directory.

QHIN Technical Framework (QTF): the document published by the RCE that is described in the Common Agreement and incorporated by reference therein, as may be amended, that may include: (1) technical requirements, functional requirements, and privacy- and security-related requirements for the exchange of TI between QHINs; (2) internal-QHIN functional requirements; (3) technical, privacy, and security flow-down requirements from the QHIN to the TEFCA Participants and/or Subparticipants (if any) in addition to the privacy and security Required Flow-Downs in the Common Agreement; and (4) operational requirements that enable the exchange of TI between and among QHINs.

Qualified Health Information Network (QHIN): to the extent permitted by applicable SOP(s), a health information network that is a U.S. Entity that has been designated by the RCE as a QHIN and is a party to the Common Agreement countersigned by the RCE.

RCE Directory: The individual organization entries that form the content of the RCE Directory Service.

RCE Directory Service: a technical service provided by the RCE that enables QHINs and TEFCA Participants and Subparticipants to share directory information associated with other QHINs, TEFCA Participants, and Subparticipants in order to enable the exchange of TI under the Framework Agreements. The then-current technical endpoints and other identifying information of QHINs, TEFCA Participants, and Subparticipants are included and maintained as part of the RCE Directory Service.

Recognized Coordinating Entity (RCE): the entity selected by ONC that enters into the Common Agreement with QHINs in order to impose, at a minimum, the requirements of the Common Agreement, including the SOPs and the QTF, on the QHINs and administer such requirements on an ongoing basis.

Request(s) (including its correlative uses/tenses “Requested” and “Requesting”): the act of asking for information in accordance with the applicable requirements of the Framework Agreements.

Required Flow-Down(s): the rights and obligations set forth within the Common Agreement that each QHIN is required to incorporate in its Participant-QHIN Agreements and that each QHIN is required to obligate its TEFCA Participants to

include in their Subparticipant Agreements and that QHINs must require TEFCA Participants to obligate Subparticipants to impose on their Downstream Subparticipants, if any, through their Downstream Subparticipant Agreements. Provisions of the Common Agreement containing such rights and obligations are identified in the section or applicable subsection title as “(Required Flow-Down(s)).”

Required Information:

Electronic information maintained by any QHIN, TEFCA Participant, or Subparticipant prior to or during the term of the applicable Framework Agreement:

- (i) that would be ePHI if maintained by a Covered Entity or a Business Associate; and
- (ii) regardless of whether the information is or has already been transmitted via QHIN-to-QHIN exchange.

Notwithstanding the foregoing, the following types of information are **not** Required Information:

- (a) information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; or
- (b) psychotherapy notes (as defined at 45 CFR 164.501).

Response(s) (including its correlative uses/tenses “Responded” and “Responding”): the act of providing information or the information provided in accordance with the applicable requirements of the Framework Agreements.

Standard Operating Procedure(s) or SOP(s): a written procedure published by the RCE that is adopted pursuant to the Common Agreement and incorporated by reference into the Common Agreement to provide detailed information or requirements related to the exchange activities under the Common Agreement, including all amendments thereto and any new SOPs that are adopted pursuant to the Common Agreement. SOPs will be adopted to address operational processes. Each SOP identifies the relevant group(s) to which the SOP applies, including whether TEFCA Participants and/or Subparticipants are required to comply with a given SOP. An SOP shall be deemed in effect when adopted pursuant to the change management process set forth in the Common Agreement and listed on a public website.

Subparticipant: to the extent permitted by applicable SOP(s), a U.S. Entity regardless of whether the entity is a Covered Entity or Business Associate, that has entered into either: (i) a Participant-Subparticipant Agreement to use the services of a TEFCA Participant to send and/or receive information via QHIN-to-QHIN exchange for one or more Exchange Purposes; or (ii) a Downstream Subparticipant Agreement pursuant to which the services of a Subparticipant are used to send and/or receive information via QHIN-to-QHIN exchange for one or more Exchange Purposes.

TEFCA Dispute Resolution Process: the non-binding dispute resolution process provided for in the Common Agreement that may be invoked by QHINs as set forth in the *Dispute Resolution Process SOP*.

TEFCA Information (TI): any information that is exchanged between QHINs for one or more of the Exchange Purposes pursuant to any of the Framework Agreements. As a matter of general policy, once TI is received by a QHIN, TEFCA Participant, or Subparticipant that is a Covered Entity or Business Associate and is incorporated into such recipient's system of records, the information is no longer TI and is governed by the HIPAA Rules and other Applicable Law.

TEFCA Materials: collectively, these TEFCA Terms & Conditions, the TEFCA Protocols, the TEFCA Supplements, and the TEFCA Participant/Subparticipant SOPs, each as defined in Section 4.2 of these TEFCA Terms.

TEFCA Participant(s): means any/all U.S. Entities, as permitted by an SOP, that enter into an agreement with a QHIN to participate in QHIN-to-QHIN exchange in accordance with the Required Flow-Downs of the Common Agreement.

TEFCA Security Incident(s):

- (1) An unauthorized acquisition, access, Disclosure, or Use of unencrypted TI in transit using the Connectivity Services or pursuant to any Framework Agreement between a QHIN and its TEFCA Participants, between TEFCA Participants and their Subparticipants, or between Subparticipants, but **NOT** including the following:
 - (i) Any unintentional acquisition, access, or Use of TI by a workforce member or person acting under the authority of a QHIN, TEFCA Participant, or Subparticipant, if such acquisition, access, or Use was made in good faith and within the scope of authority and does not result in further Use or Disclosure in a manner not permitted under Applicable Law and the applicable Framework Agreement.
 - (ii) Any inadvertent Disclosure by a person who is authorized to access TI at a QHIN, TEFCA Participant, or Subparticipant to another person authorized to access TI at the same QHIN, TEFCA Participant, or Subparticipant, or Organized Health Care Arrangement (as defined at 45 CFR § 160.103) in which a QHIN, TEFCA Participant, or Subparticipant participates or serves as a Business Associate, and the information received as a result of such Disclosure is not further Used or Disclosed in a manner not permitted under Applicable Law and the applicable Framework Agreement.

- (iii) A Disclosure of TI where a QHIN, TEFCA Participant, or Subparticipant has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably have been able to retain such information.
 - (iv) A Disclosure of TI that has been de-identified in accordance with the standard at 45 CFR § 164.514(a).
- (2) Other security events (e.g., ransomware attacks), as set forth in an SOP, that prevent the affected QHIN, TEFCA Participant, or Subparticipant from responding to requests for information as required under the applicable Framework Agreement or otherwise adversely affect their participation in exchange via the Connectivity Services.

United States: the 50 States, the District of Columbia, and the territories and possessions of the United States including, without limitation, all military bases or other military installations, embassies, and consulates operated by the United States government.

Unsecured: has the meaning assigned to such term at 45 CFR § 164.402 regarding PHI as if it applied to TI that is Individually Identifiable.

U.S. Entity/Entities: any corporation, limited liability company, partnership, or other legal entity that meets all of the following requirements:

- (1) The entity is organized under the laws of a state or commonwealth of the United States or the federal law of the United States and is subject to the jurisdiction of the United States and the state or commonwealth under which it was formed;
- (2) The entity's principal place of business, as determined under federal common law, is in the United States; and
- (3) None of the entity's directors, officers, or executives, and none of the owners with a five percent (5%) or greater interest in the entity, are listed on the *Specially Designated Nationals and Blocked Persons List* published by the United States Department of the Treasury's Office of Foreign Asset Control or on the Department of Health and Human Services, Office of Inspector General's List of Excluded Individuals/Entities.

Upstream Subparticipant: a Subparticipant that provides services to a Downstream Subparticipant pursuant to a Downstream Subparticipant Agreement to send and/or receive information via QHIN-to-QHIN exchange for one or more Exchange Purposes.

Use(s) (including correlative uses/tenses, such as "Uses," "Used," and "Using"): with respect to TI, means the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

2. Participant Eligibility & Subparticipant Onboarding

- 2.1 Participant Eligibility. By not opting out of participation in the eHealth Exchange QHIN, Participant represents and warrants that it meets the definition of a U.S. Entity as set forth in these TEFCA Terms. Participant further attests that it is one or more of the types of entities that is permitted to participate in TEFCA in accordance with the applicable SOP, which SOP is attached to these TEFCA Terms as **Exhibit A**, including as may be amended by the RCE.
- 2.2 Subparticipant Eligibility and Onboarding. Participant is responsible for ensuring that each organization that wishes to be a Subparticipant of Participant meets the definition of a U.S. Entity and is one or more of the types of entities that is permitted to participate in TEFCA in accordance with **Exhibit A**, including as may be amended by the RCE. Participant is responsible for the submission of Subparticipant onboarding information and, by submitting information for purposes of adding an entity to the QHIN Directory, Participant attests that such entity has also agreed to be bound by these TEFCA Terms as a Subparticipant.

3. Scope & Flow-Down Obligations.

- 3.1 Scope of TEFCA Terms. These TEFCA Terms govern Participant's use of the Connectivity Services and overall participation in the eHealth Exchange QHIN. As further set forth below, these TEFCA Terms also govern indirect participation in the eHealth Exchange QHIN by all those that ultimately request and/or receive information via the Connectivity Services vis-à-vis Participant as a Subparticipant (or as their Downstream Subparticipant).
- 3.2 Serial Flow-Down Obligations. Participant must flow these TEFCA Terms down to its Subparticipants that connect to the eHealth Exchange QHIN through Participant, if any. In addition, Participant must ensure that its Subparticipants are obligated to flow down all TEFCA Terms to their Downstream Subparticipants and that these terms are flowed down and enforced between all levels of Upstream and Downstream Subparticipants.

4. TEFCA Compliance

- 4.1 Compliance with Applicable Law and the TEFCA Terms. Participant shall comply with all Applicable Law and shall implement and act in accordance with the provisions of these TEFCA Terms, including all TEFCA Materials, which are hereby expressly incorporated into this TEFCA Terms by reference.

4.2 Compliance with the TEFCA Materials.

4.2.1 TEFCA Participant/Subparticipant SOPs. On the title page of each SOP, the RCE identifies the relevant group or groups to which the particular SOP applies. The QHIN Governance Committee or its designee shall be responsible for identifying which SOPs are applicable to TEFCA Participants and/or Subparticipants and shall communicate this to Participant in accordance with the process set forth in the TEFCA Protocols. Participant shall comply with all such SOPs and, if applicable to Subparticipants, shall require compliance with the same by its Subparticipants.

4.2.2 TEFCA Protocols. Participant shall comply with all TEFCA Protocols and shall require that its Subparticipants comply with applicable TEFCA Protocols.

4.2.3 TEFCA Supplements. The TEFCA Supplements specify which of the technical standards and functional requirements from the QTF must be implemented by Participant and its Subparticipants. The TEFCA Supplements also set forth the process for testing and onboarding to the eHealth Exchange QHIN. Participant shall comply with all TEFCA Supplements and, if applicable to Subparticipants, shall require compliance with the same by its Subparticipants.

4.3 Participant Responsibilities Regarding Subparticipant Compliance with TEFCA Terms. Participant shall be responsible for taking reasonable steps to confirm that all of its Subparticipants are abiding by Applicable Law and by these TEFCA Terms, including all applicable TEFCA Materials. In the event that Participant becomes aware of a material non-compliance by one of its Subparticipants, then Participant shall promptly notify the Subparticipant in writing. Such notice shall inform the Subparticipant that its failure to correct any such deficiencies within the timeframe established by Participant shall constitute a material breach of the Participant-Subparticipant Agreement, which may result in early termination of said agreement.

5. TEFCA Governance, Change Management, & the QHIN Governance Committee

5.1 TEFCA Governance. The governing approach and governance structure under TEFCA is established by the RCE and ONC and is set forth in the Common Agreement. In accordance with that approach and structure, the process through which the eHealth Exchange will engage those participating in the eHealth Exchange QHIN in TEFCA governance is set forth in the TEFCA Protocols.

5.2 TEFCA Change Management. Change management under TEFCA is established by the RCE and ONC and is set forth in the Common Agreement. All QHINs and all TEFCA Participants and Subparticipants are subject to the outcomes of the change

management process established under the Common Agreement with respect to the rights and obligations governing participation in TEFCA. **For this reason, changes to the TEFCA Terms, including the TEFCA Materials, are not governed by the change management procedure set forth in the DURSA.** The procedure for providing notification to Participant of proposed and final changes to the TEFCA Materials is set forth in the TEFCA Protocols.

- 5.3 QHIN Governance Committee. To support the distinct governance functions associated with participation in the eHealth Exchange QHIN, and to meet the QHIN governance requirements established by the RCE and ONC, there shall be a “QHIN Governance Committee” or “QGC.” The QGC shall include representatives of organizations participating in the eHealth Exchange QHIN, as set forth in the TEFCA Protocols. Participant hereby grants to the QGC the authority to administer certain governance functions pertaining to participation in the eHealth Exchange QHIN and use of the Connectivity Services as set forth in the TEFCA Protocols.

6. Cooperation and Non-Discrimination

- 6.1 Cooperation. Participant understands and acknowledges that numerous activities with respect to the Framework Agreements will likely involve the eHealth Exchange, the RCE, other QHINs and their respective TEFCA Participants and Subparticipants, as well as employees, agents, third-party contractors, vendors, or consultants of each of them. To the extent not in violation of Applicable Law, Participant shall, and shall also require that its Subparticipants, comply with the following obligations:
- (i) Respond in a timely manner, as the RCE may further specify in an SOP, to inquiries from the QHIN Governance Committee or its designee about possible issues related to the exchange of information using the eHealth Exchange Connectivity Services;
 - (ii) Participate collaboratively in discussions coordinated by the QHIN Governance Committee or its designee to address differing interpretations of requirements in these TEFCA Terms, including any of the TEFCA Materials, prior to pursuing or requesting initiation of any dispute resolution process that may be available;
 - (iii) Make reasonable efforts to notify the QHIN Governance Committee or its designee when persistent and widespread connectivity failures are occurring with Participant or its Subparticipants, so that all those affected can investigate the problems and identify the root cause(s) of the connectivity failures;

- (iv) Work cooperatively, including, without limitation, participating in contact facilitated by the QHIN Governance Committee or its designee with other QHINs or their TEFCA Participants or their Subparticipants and facilitate contact with Participant's Subparticipants, to address the root cause(s) of persistent and widespread connectivity failures;
- (v) Provide information to the QHIN Governance Committee or its designee in support of collaborative efforts to resolve issues or disputes, provided that such information is subject to the right to restrict or condition cooperation or disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information;
- (vi) Provide information to aid the efforts of the eHealth Exchange or of other QHINs or their respective TEFCA Participants or Subparticipants to understand, contain, and mitigate a TEFCA Security Incident at the request of the QHIN Governance Committee or its designee, provided that such information is subject to the right to restrict or condition cooperation or disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information; and
- (vii) Subject to the right to restrict or condition cooperation or disclosure of information in the interest of preserving privileges in any reasonably foreseeable litigation or protecting Confidential Information, disclose to the QHIN Governance Committee or its designee available information related to the following:
 - (a) cybersecurity risk information sharing programs; or
 - (b) specific, identified security flaws in the operation of Participant or its Subparticipant(s) that may require Participant or its Subparticipant(s) to take specific steps to protect the security of their information technology systems and would not otherwise fall into subsection (a).

In no case shall Participant be required to disclose any information in violation of Applicable Law. In seeking cooperation, the QHIN Governance Committee and/or its designee and Participant shall make all reasonable efforts to accommodate the other's schedules and reasonable operational concerns. The costs of cooperation to Participant shall not be charged to the eHealth Exchange, the RCE, or other QHINs. Nothing in this Section 6.1 shall modify or replace the TEFCA Security Incident notification obligations under Section 12.3 and, if applicable, Section 10.5.3 of the TEFCA Terms.

6.2 Non-Discrimination.

6.2.1 Prohibition Against Exclusivity. Neither the eHealth Exchange nor Participant shall prohibit or attempt to prohibit any of Participant's Subparticipant from joining, exchanging with, conducting other transactions with, or supporting any other networks or exchange frameworks, using services *other than* the Connectivity Services, concurrently with the services of the eHealth Exchange QHIN.

6.2.2 No Discriminatory Limits on Exchange of TI. Neither the eHealth Exchange nor Participant shall impede the exchange of information as permitted or required under the applicable Framework Agreements or limit interoperability with any TEFCA Participant or Subparticipant, or with any Individual, in a discriminatory manner. As used in this Section, a "discriminatory manner" means action that is inconsistently taken or not taken with respect to any similarly situated TEFCA Participant, Subparticipant, Individual, or group of them, whether it is a competitor, or whether it is affiliated with or has a contractual relationship with any other entity, or in response to an event. Notwithstanding the foregoing, reasonable limitations, load balancing of network traffic, or other activities, protocols, or rules shall not be deemed discriminatory to the extent that they: (i) satisfy the requirements of the exception set forth in 45 CFR 171.205; and/or (ii) are based on a reasonable and good-faith belief that the other entity or group has not satisfied or will not be able to satisfy the applicable terms for participation in QHIN-to-QHIN exchange (including compliance with Applicable Law) in any material respect.

7. Confidentiality

7.1 Confidential Information. the eHealth Exchange and Participant each agrees to use all Confidential Information received pursuant to these TEFCA Terms only as authorized in these TEFCA Terms and any applicable SOP(s) and solely for the purposes of performing its obligations under these TEFCA Terms or the proper exchange of information under the Framework Agreements and for no other purpose. Each Party may act as a Discloser and a Recipient, accordingly. A Recipient will disclose the Confidential Information it receives only to its employees, subcontractors, and agents who require such knowledge and use in the ordinary course and scope of their employment or retention and are obligated to protect the confidentiality of the Discloser's Confidential Information in a manner substantially equivalent to the terms required herein for the treatment of Confidential Information. Otherwise, a Recipient agrees not to disclose the Confidential Information received to anyone except as permitted under these TEFCA Terms.

8. RCE Directory

8.1 Utilization of the RCE Directory. The RCE Directory Service shall be used by QHINs, their TEFCA Participants, and their Subparticipants to create and maintain operational connectivity under the Framework Agreements. The eHealth Exchange is providing Participant with access to, and the right to use, the RCE Directory Service as contained within the eHealth Exchange's QHIN Directory on the express condition that Participant only use and disclose RCE Directory information as necessary to advance the intended use of the RCE Directory Service or as required by Applicable Law. For example, Participant is permitted to disclose RCE Directory information to the workforce members of its Subparticipant's health information technology vendor who are engaged in assisting the Subparticipant with establishing and maintaining connectivity via the Framework Agreements. Further, Participant shall not use RCE Directory information for marketing or any form of promotion of its own products and services, unless such use or disclosure is primarily part of an effort by Participant to expand, or otherwise improve, connectivity via the Framework Agreements, and any promotion of Participant's own products or services is only incidental to that primary purpose. In no event shall Participant use or disclose RCE Directory information in a manner that should be reasonably expected to have a detrimental effect on ONC, the RCE, the eHealth Exchange, other QHINs and/or their TEFCA Participants or Subparticipants, or any other individual or organization. For the avoidance of doubt, RCE Directory information is Confidential Information except to the extent such information meets one of the exceptions to the definition of Confidential Information.

9. TEFCA Exchange Activities

In addition to the requirements below, TEFCA Participants and Subparticipants may only Request information under the applicable Framework Agreement for a specific Exchange Purpose if the TEFCA Participant or Subparticipant is the type of person or entity that is described in the definition of the applicable Exchange Purpose. Such a TEFCA Participant or Subparticipant may use a Business Associate, agent, or contractor to make such a Request, Use, or Disclosure for the applicable Exchange Purpose. For example, only a Health Care Provider as described in the definition of Treatment (or a Business Associate, agent, or contractor acting on that Health Care Provider's behalf) may Request information for the Exchange Purpose of Treatment.

These TEFCA Terms specify, among other things, the reasons for which information may be Requested and transmitted from one QHIN to another QHIN. Participant and its Subparticipants should understand that, despite their participation under a Framework Agreement, the eHealth Exchange is prohibited from engaging in QHIN-to-QHIN exchange for any purpose other than an Exchange Purpose under the Common Agreement. The RCE recognizes that QHINs may participate in other health information exchange networks and TEFCA Participants and Subparticipants also likely participate in other networks, as well as

non-network-based information exchange. Neither the Common Agreement nor these TEFCA Terms, affect these other activities or the reasons for which TEFCA Participants and Subparticipants may request and exchange information within their networks and/or subject to other agreements, including, in the case of the eHealth Exchange, pursuant to the DURSA. Such activities are not in any way limited by these TEFCA Terms.

9.1 Uses. Participant may Use TI in any manner that: (1) is not prohibited by Applicable Law; (2) is consistent with Participant’s Privacy and Security Notice, if applicable; and (3) is in accordance with Sections 11 and 12 of these TEFCA Terms.

9.2 Disclosures. Participant may Disclose TI provided such Disclosure: (1) is not prohibited by Applicable Law; (2) is consistent with Participant’s Privacy and Security Notice, if applicable; and (3) is in accordance with Sections 11 and 12 of these TEFCA Terms.

9.3 Responses. Participant must support **all** Exchange Purposes and must Respond to all Exchange Purposes that are identified as “required” in the Exchange Purposes SOP, including as may be amended by the RCE. Participant must provide all Required Information that is relevant for a required Exchange Purpose, as may be further specified in an implementation SOP for the applicable Exchange Purpose, in Response to a Request transmitted via QHIN-to-QHIN exchange, unless providing the Required Information is prohibited by Applicable Law or these TEFCA Terms or if not providing the Required Information is consistent with all Applicable Law and these TEFCA Terms.

9.4.1 Exceptions to Required Responses. Notwithstanding the foregoing, Participant is **permitted but not required** to Respond to a Request transmitted via QHIN-to-QHIN exchange in the circumstances set forth below, provided the Response: (1) is not prohibited by Applicable Law; (2) is consistent with Participant’s Privacy and Security Notice, if applicable; and (3) is in accordance with these TEFCA Terms.

- (i) If Participant is a Public Health Authority;
- (ii) If Participant utilizes the Government Benefits Determination Exchange Purpose, including such an agency’s agent(s)/contractor(s);
- (iii) If the reason asserted for the Request is Individual Access Services and the information would not be required to be provided to an Individual pursuant to 45 CFR § 164.524(a)(2), regardless of whether Participant is a NHE, a Covered Entity, or a Business Associate;

- (iv) If the Requested information is not Required Information, provided such response would not otherwise violate these TEFCA Terms;
- (v) If Participant is a federal agency, to the extent that the Requested Disclosure of Required Information is not permitted under Applicable Law (e.g., it is Controlled Unclassified Information as defined at 32 CFR Part 2002, and the party requesting it does not comply with the applicable policies and controls that the federal agency adopted to satisfy its requirements); or
- (vi) If the Exchange Purpose is authorized under these TEFCA Terms but is not required at the time of the Request pursuant to the Exchange Purposes SOP.

9.4 Special Legal Requirements. If and to the extent Applicable Law requires that an Individual either consent to, approve, or provide an authorization for the Use or Disclosure of that Individual's information to Participant, such as a more stringent state law relating to sensitive health information, then Participant shall refrain from the Use or Disclosure of such information in connection with these TEFCA Terms unless such Individual's consent, approval, or authorization has been obtained consistent with the requirements of Applicable Law and Section 11 of these TEFCA Terms, including, without limitation, communicated pursuant to the process described in the TEFCA Supplements. Copies of such consent, approval, or authorization shall be maintained and transmitted pursuant to the process described in the TEFCA Supplements by whichever party is required to obtain it under Applicable Law, and Participant may make such copies of the consent, approval, or authorization available electronically to any QHIN, TEFCA Participant, or Subparticipant in accordance with the TEFCA Supplements and to the extent permitted by Applicable Law. Participant shall maintain written policies and procedures to allow an Individual to revoke such consent, approval, or authorization on a prospective basis. If Participant is an IAS Provider, the foregoing shall not be interpreted to modify, replace, or diminish the requirements set forth in Section 10 of these TEFCA Terms for obtaining an Individual's express written consent.

10. Individual Access Services

Nothing in the Privacy and Security Notice or in the Individual's written consent collected by a TEFCA Participant that is an IAS Provider pursuant to Section 10.2 and Section 10.3 may contradict or be inconsistent with any applicable provision of Sections 10 or 11.

10.1 Individual Access Services (IAS) Offering(s). Participant may elect to offer Individual Access Services to any Individual in accordance with the requirements of this section and in accordance with all other provisions of these TEFCA Terms. Nothing in this

Section 10 shall modify, terminate, or in any way affect an Individual's right of access under the HIPAA Privacy Rule at 45 CFR 164.524, where applicable. Nothing in this Section shall be construed as an exception or excuse for any conduct by Participant that meets the definition of information blocking in 45 CFR 171.103.

10.2 Individual Consent. The Individual requesting IAS shall be responsible for completing Participant's own supplied form for obtaining express consent in connection with the IAS offering, as set forth below. Participant may implement secure electronic means (e.g., secure e-mail, secure web portal) by which an Individual may submit such written consent.

10.3 Written Privacy and Security Notice and Individual Consent.

10.3.1 If Participant offers IAS, Participant must develop and make publicly available a written privacy and security notice (the "Privacy and Security Notice"). The Privacy and Security Notice must:

- (i) Be publicly accessible and kept current at all times, including updated versions;
- (ii) Be shared with an Individual prior to the Individual's use/receipt of IAS from Participant;
- (iii) Be written in plain language and in a manner calculated to inform the Individual of such privacy practices;
- (iv) Include a statement regarding whether and how the Individual's TI may be accessed, exchanged, Used, and/or Disclosed by Participant or by other persons or entities to whom/which Participant Discloses or provides access to the information, including whether the Individual's TI may be sold at any time (including the future);
- (v) Include a statement that Participant is required to act in conformance with the Privacy and Security Notice and must protect the security of the information it holds in accordance with Section 10 of these TEFCA Terms;
- (vi) Include information regarding whom the Individual may contact within Participant for further information regarding the Privacy and Security Notice and/or with privacy-related complaints;
- (vii) Include a requirement by Participant to obtain express written consent to the terms of the Privacy and Security Notice from the Individual prior to the access, exchange, Use, or Disclosure

(including sale) of the Individual's TI, other than Disclosures that are required by Applicable Law;

- (viii) Include information on how the Individual may revoke consent;
- (ix) Include an explanation of the Individual's rights, including, at a minimum, the rights set forth in Section 10.4, below;
- (x) Include a disclosure of any applicable fees or costs related to IAS including the exercise of rights under Section 10.4 of the TEFCA Terms; and
- (xi) Include an effective date.

The implementation of such Privacy and Security Notice requirements shall be in accordance with the IAS Privacy and Security Notice SOP, including as may be amended by the RCE. If Participant is a Covered Entity, then a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520 **and** meets the requirement of 10.3.1(iv) above can satisfy the Privacy and Security Notice requirements. Nothing in this Section reduces a Covered Entity's obligations under the HIPAA Rules.

10.3.2 If Participant is an IAS Provider, it must collect the Individual's written consent as required under these TEFCA Terms at the outset of the Individual's first use of the Individual Access Services and with any material change in the applicable Privacy and Security Notice.

10.4 Individual Rights. Individuals have, and must be clearly informed of, the following rights:

- (i) The right to require that **all** of their Individually Identifiable information maintained by Participant as an IAS Provider be deleted unless such deletion is prohibited by Applicable Law; provided, however, that the foregoing shall not apply to Individually Identifiable information contained in audit logs.
- (ii) The right to an export of their Individually Identifiable information in a computable format, including the means to interpret such information.

The rights described in this Section 10.4 shall control over any inconsistent provisions in Section 11.

10.5 Additional Security Requirements for IAS Providers. In addition to meeting the applicable security requirements set forth in Section 12, if Participant is an IAS Provider, it must further satisfy the requirements below.

10.5.1 Scope of Security Requirements. If Participant is an IAS Provider, it must comply with the applicable security requirements set forth in the TEFCA Terms and applicable security SOPs for **all** Individually Identifiable information they hold, regardless whether such information is TI.

10.5.2 Encryption. If Participant is an IAS Provider, it is required to encrypt **all** Individually Identifiable information held by Participant, both in transit and at rest, regardless whether such data are TI.

10.5.3 TEFCA Security Incident Notice to Affected Individuals. Each IAS Provider must notify each Individual whose TI has been or is reasonably believed to have been affected by a TEFCA Security Incident involving the IAS Provider. Such notification must be made without unreasonable delay and in no case later than sixty (60) days following Discovery of the TEFCA Security Incident. The notification required under this section must be written in plain language and shall include, to the extent possible:

- (i) A brief description of what happened, including the date of the TEFCA Security Incident, if known, and the date of its Discovery;
- (ii) A description of the type(s) of Unsecured TI involved in the TEFCA Security Incident (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- (iii) Any steps Individuals should take to protect themselves from potential harm resulting from the TEFCA Security Incident;
- (iv) A brief description of what the IAS Provider involved is doing to investigate the TEFCA Security Incident, to mitigate harm to Individuals, and to protect against any further TEFCA Security Incidents; and
- (v) Contact procedures for Individuals to ask questions or learn additional information related to the TEFCA Security Incident, which shall include a telephone number (toll-free), e-mail address, and website with contact information and/or a contact form for the IAS Provider.

To the extent an IAS Provider is already required by Applicable Law to notify an Individual of an incident that would also be a TEFCAs Security Incident, this section does not require duplicative notification to that Individual.

10.6 Survival for IAS Providers. The following minimum provisions and their respective minimum time periods shall continue to apply to an IAS Provider and survive expiration or termination of the applicable Framework Agreement under which Individual Access Services were provided for the time periods and to the extent described below.

10.6.1 The following Section 10 provisions shall survive the expiration or termination of the applicable Framework Agreement until expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under Subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual for whom Individual Access Services were provided, even if the information to which the provisions apply is not ePHI:

- (i) The terms of the consent under Section 10.2, Individual Consent, and the terms of the Privacy and Security Notice under Section 10.3.1, which sets forth requirements that apply to the Privacy and Security Notice;
- (ii) Section 10.3.2, which requires an IAS Provider to collect the Individual's written consent with respect to any material change in the applicable Privacy and Security Notice;
- (iii) Section 10.4, Individual Rights; and
- (iv) Section 10.5, Additional Security Requirements for IAS Providers.

10.6.2 Section 10.5.3, TEFCAs Security Incident Notice to Affected Individuals, shall survive for a period of six (6) years following the expiration or termination of the applicable Framework Agreement.

10.7 Provisions that Apply to Subcontractors and Agents of IAS Providers. To the extent that an IAS Provider uses subcontractors or agents with respect to the provision of such Individual Access Services, the IAS Provider shall include in a written agreement with each such subcontractor or agent a requirement to comply with the following:

- (i) To act in accordance with each of the applicable consents required of the IAS Provider under Section 10.2;
- (ii) To act in accordance with each of the IAS Provider's applicable written Privacy and Security Notices pursuant to Section 10.3;

- (iii) To act in accordance with Section 10.4 when directed to do so by the IAS Provider;
- (iv) With respect to the information for which the subcontractor or agent provides services to Participant in its role as an IAS Provider, the agent or subcontractor shall implement the applicable security requirements set forth in Sections 12.1 and 12.2 of these TEFCA Terms and the applicable security SOPs for **all** such Individually Identifiable information, regardless whether such information is TI, to the same extent as they apply to Participant.
- (v) To encrypt **all** Individually Identifiable information both in transit and at rest, regardless whether such data are TI pursuant to Section 10.5.2; and
- (vi) To notify the IAS Provider for which it provides services with respect to each Individual whose TI has been or is reasonably believed to have been affected by a TEFCA Security Incident involving the subcontractor or agent in the manner and within the timeframe specified pursuant to Section 10.5.3.

Each agreement between Participant and a subcontractor or agent with respect to the provision of IAS shall also provide that subsections (i) through (v) above shall continue in effect after termination or expiration of such agreement at least until expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual to whom the information relates. Each such agreement shall also provide that subsection (vi) above shall survive for at least six (6) years following the termination or expiration of such agreement.

11. Privacy

- 11.1 Compliance with the HIPAA Privacy Rule. If Participant is a NHE (but not to the extent that it is acting as an entity entitled to make a Government Benefits Determination under Applicable Law, a Public Health Authority, or a Government Health Care Entity), then it shall comply with the provisions of the HIPAA Privacy Rule listed below with respect to all Individually Identifiable information that Participant reasonably believes is TI as if such information is Protected Health Information and Participant is a Covered Entity. Such compliance shall be consistent with Section 4 of these TEFCA Terms.

- 11.1.1 From 45 CFR § 164.502, General Rules:

- Subsection (a)(1) – Dealing with permitted Uses and Disclosures, **but only to the extent Participant is authorized to engage in the activities described in this subsection of the HIPAA Privacy Rule for the applicable Exchange Purpose.**
- Subsection (a)(2)(i) – Requiring Disclosures to Individuals
- Subsection (a)(3) – Business Associates
- Subsection (a)(5) – Dealing with prohibited Uses and Disclosures
- Subsection (b) – Dealing with the minimum necessary standard
- Subsection (c) – Dealing with agreed-upon restrictions
- Subsection (d) – Dealing with deidentification and re-identification of information
- Subsection (e) – Dealing with Business Associate contracts
- Subsection (f) – Dealing with deceased persons’ information
- Subsection (g) – Dealing with personal representatives
- Subsection (h) – Dealing with confidential communications
- Subsection (i) – Dealing with Uses and Disclosures consistent with notice
- Subsection (j) – Dealing with Disclosures by whistleblowers

11.1.2 45 CFR § 164.504, Organizational Requirements.

11.1.3 45 CFR § 164.508, Authorization Required. Notwithstanding the foregoing, the provisions of Sections 10.2 and 10.3 shall control and this Section 11.1.3 shall not apply with respect to an IAS Provider that is a NHE.

11.1.4 45 CFR § 164.510, Uses and Disclosures Requiring Opportunity to Agree or Object. Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.510(3) - Emergency circumstances; provided, however, that an IAS Provider is not prohibited from making such a Disclosure if the Individual has consented to the Disclosure pursuant to Section 10 of these TEFCA Terms.

11.1.5 45 CFR § 164.512, Authorization or Opportunity to Object Not Required. Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.512(c) - Standard: Disclosures about victims of abuse, neglect or domestic violence, § 164.512 Subsection (d) - Standard: Uses and disclosures for health oversight activities, and § 164.512 Subsection (j) - Standard: Uses and disclosures to avert a serious threat to health or safety; provided, however, that an IAS Provider is not prohibited from making such a

Disclosure(s) if the Individual has consented to the Disclosure(s) pursuant to Section 10 of these TEFCA Terms.

11.1.6 From 45 CFR § 164.514, Other Requirements Relating to Uses and Disclosures:

- Subsections (a)-(c) – Dealing with de-identification requirements that render information **not** Individually Identifiable for purposes of this Section 11 and TEFCA Security Incidents
- Subsection (d) – Dealing with minimum necessary requirements
- Subsection (e) – Dealing with Limited Data Sets

11.1.7 45 CFR § 164.522, Rights to Request Privacy Protections.

11.1.8 45 CFR § 164.524, Access of Individuals, except that an IAS Provider that is a NHE shall be subject to the requirements of Section 10 with respect to access by Individuals for purposes of IAS and not this Section 11.1.8.

11.1.9 45 CFR § 164.528, Accounting of Disclosures.

11.1.10 From 45 CFR § 164.530, Administrative Requirements:

- Subsection (a) – Dealing with personnel designations
- Subsection (b) – Dealing with training
- Subsection (c) – Dealing with safeguards
- Subsection (d) – Dealing with complaints
- Subsection (e) – Dealing with sanctions
- Subsection (f) – Dealing with mitigation
- Subsection (g) – Dealing with refraining from intimidating or retaliatory acts
- Subsection (h) – Dealing with waiver of rights
- Subsection (i) – Dealing with policies and procedures
- Subsection (j) – Dealing with documentation

11.2 Written Privacy Policy. Participant must develop, implement, make publicly available, and act in accordance with a written privacy policy describing its privacy practices with respect to Individually Identifiable information that is Used or Disclosed pursuant to these TEFCA Terms. Participant can satisfy the written privacy policy requirement by including applicable content consistent with the HIPAA Rules into its existing privacy policy, except as otherwise stated herein with respect to IAS Providers. This written privacy policy requirement does not supplant the HIPAA Privacy Rule obligations of a Covered Entity to post and distribute a Notice of Privacy Practices that meets the

requirements of 45 CFR § 164.520. If Participant is a Covered Entity, then this written privacy practices requirement can be satisfied by its Notice of Privacy Practices.

12. Security

- 12.1 Security Controls. Participant shall implement and maintain appropriate security controls for TI that are commensurate with risks to the confidentiality, integrity, and/or availability of the TI. If Participant is a NHE, it shall comply with the HIPAA Security Rule provisions with respect to all Individually Identifiable information that Participant reasonably believes is TI as if such information were Protected Health Information and Participant were a Covered Entity or Business Associate. Participant shall further comply with any additional security requirements that may be set forth in an SOP applicable to Participants.
- 12.2 TI Outside the United States. Participant shall not Use TI outside the United States or Disclose TI to any person or entity outside the United States except to the extent such Use or Disclosure is permitted or required by Applicable Law and except to the extent the Use or Disclosure is conducted in conformance with the HIPAA Security Rule, regardless of whether Participant is a Covered Entity or Business Associate. Participant shall evaluate the risks of any extraterritorial Uses and/or Disclosures of TI, if applicable, as part of an annual security assessment and prior to any new or substantially different type of non-U.S. Use(s) or Disclosure(s). Such security assessment shall include a risk assessment to evaluate whether the Uses or Disclosures of Individually Identifiable information that is reasonably believed to be TI by or to persons or entities outside the United States satisfies the requirements of the HIPAA Security Rule. The foregoing does not modify or eliminate any provision of Applicable Law that does not permit Participant to Disclose Individually Identifiable information to a person or entity outside the United States or that imposes conditions or limitations on such Disclosure.
- 12.3 TEFCA Security Incident Notification.
 - 12.3.1 Reporting to the eHealth Exchange. As soon as reasonably practicable, but not more than five (5) calendar days after determining that any TEFCA Security Incident may have occurred, Participant shall provide notification to the QHIN Governance Committee or its designee of the suspected TEFCA Security Incident. Such notification must include sufficient information for the QHIN Governance Committee and others affected to understand the nature and likely scope of the TEFCA Security Incident. Participant shall supplement the information contained in the notification as it becomes available and cooperate with the QHIN Governance Committee or its designee and, at the direction of the QHIN Governance Committee, with the RCE and with other

QHINs and TEFCA Participants and Subparticipants that are likely impacted by the TEFCA Security Incident.

12.3.2 Reporting to Subparticipants. Participant shall report any TEFCA Security Incident experienced by or reported to Participant to all of Participant's Subparticipants. Such notification shall be in accordance with the timing and content requirements stated in Section 12.3.1.

12.3.3 Vertical Reporting of TEFCA Security Incident(s). Participant shall require that each Subparticipant with which it has entered into a Participant-Subparticipant Agreement:

- (i) Report any TEFCA Security Incident experienced by or reported to the Subparticipant to Participant and to the Subparticipant's Downstream Subparticipants in accordance with the timing and content requirements stated in Section 12.3.1;
- (ii) Require that each Subparticipant with which Participant enters into a Participant-Subparticipant Agreement require that its Downstream Subparticipants report any TEFCA Security Incident experienced by or reported to the Downstream Subparticipant to the Upstream Subparticipant and to its own Downstream Subparticipants, in accordance with the timing and content requirements stated in Section 12.3.1.
- (iii) Notify the QHIN Governance Committee or its designee of any TEFCA Security Incident reported to Participant by one of its Subparticipants.

13. Suspension & Termination

13.1 Flow-Down Rights to Suspend

13.1.1 Suspension Rights Granted to RCE. Participant understands and acknowledges that the RCE has certain authority to suspend the right of any QHIN, TEFCA Participant, Subparticipant, or Downstream Subparticipant to engage in any QHIN-to-QHIN exchange activities. Participant specifically acknowledges and agrees that the RCE has the right to suspend the right of Participant, any of its Subparticipants, and/or any of their Downstream Subparticipants to engage in any exchange activities using the eHealth Exchange Connectivity Services if: (a) there is an alleged violation of these TEFCA Terms or other Framework Agreement or of Applicable Law by the respective party/parties; (b) there is a cognizable threat to the security of information that the RCE reasonably

believes is TI transmitted pursuant to these TEFCA Terms or other such Framework Agreement or to the infrastructure of the respective party, the eHealth Exchange, or the RCE; or (c) such suspension is in the interests of national security as directed by an agency of the United States government.

13.1.2 Suspension Rights Granted to the eHealth Exchange. Participant acknowledges and agrees that the eHealth Exchange has the same authority as the RCE to suspend the right of Participant and/or of any level of Subparticipant that is listed in the eHealth Exchange QHIN Directory under Participant, no matter how far removed, to engage in any activities using the eHealth Exchange Connectivity Services if any of the circumstances described in subsections 13.1.1 (a)-(c) above occur with respect to Participant and/or any/all level(s) of Subparticipant(s) that is/are listed in the eHealth Exchange QHIN Directory under Participant.

- (i) the eHealth Exchange *may* exercise such right to suspend based on the QHIN Governance Committee's determination that any of the circumstances described in subsections 13.1.1 (a)-(c) above occurred with respect to Participant or any level of Subparticipant listed in the eHealth Exchange QHIN Directory under Participant.
- (ii) the eHealth Exchange ***must*** exercise such right to suspend if directed to do so by the RCE based on the RCE's determination that suspension is warranted based on any of the circumstances described in subsections 13.1.1 (a)-(c) above with respect to Participant or any level of Subparticipant listed in the eHealth Exchange QHIN Directory under Participant.

13.1.3 Suspension Rights Granted to Participant. In each of its Participant-Subparticipant Agreements, Participant shall ensure that each Subparticipant agrees and acknowledges that, in addition to the suspension authority of the RCE in Section 13.1.1 and the eHealth Exchange in Section 13.1.2, Participant also has the authority to suspend its Subparticipants' and/or any/all level(s) of their Downstream Subparticipants' right to engage in any activities that utilize the eHealth Exchange Connectivity Services if any of the circumstances described in Subsections 13.1.1 (a)-(c) above occur with respect to such Subparticipant or Downstream Subparticipant.

- (i) Participant *may* exercise such right to suspend based on its own determination that any of the circumstances described in Subsections 13.1.1 (a)-(c) above occurred with respect to Subparticipant and/or any of its Downstream Subparticipants.

- (ii) Participant **must** exercise such right to suspend if directed to do so by the QHIN Governance Committee or its designee. If the suspension is at the direction of the QHIN Governance Committee or its designee, Participant is required to effectuate such suspension as soon as practicable and not longer than within twenty-four (24) hours of the QHIN Governance Committee or its designee having directed the suspension, unless the QHIN Governance Committee permits a longer period of time in which to effectuate the suspension.

13.1.4 Suspension Rights Granted to Subparticipant. To the extent that a Subparticipant of Participant has Downstream Subparticipants, Participant shall require Subparticipant to reserve the same rights of suspension with respect to the Subparticipant's Downstream Subparticipants that Participant has with respect to such Subparticipant pursuant to Section 13.1.3.

13.2 Flow-Down Rights to Terminate.

13.2.1 Termination of QHIN Participation by Subsequent Opt-Out. Participant may terminate its participation in the eHealth Exchange QHIN, at any time, by providing the QHIN Governance Committee or designee at least thirty (30) days' written notice that Participant wishes to opt out of continued participation in the eHealth Exchange QHIN. Opting out of participation in the eHealth Exchange QHIN shall have no effect on Participant's participation in the eHealth Exchange with respect to any non-TEFCA activities, and all other agreements between Participant and the eHealth Exchange, including but not limited to the DURSA, shall remain in full force and effect.

13.2.2 Termination Rights Granted to RCE. Participant understand and acknowledges that the RCE has certain authority to terminate the right of any QHIN, TEFCA Participants, Subparticipant, or Downstream Subparticipant to engage in any QHIN-to-QHIN exchange activities. Participant specifically acknowledges and agrees that the RCE has the right to terminate the right of Participant, any of its Subparticipants, and/or any of their Downstream Subparticipants to engage in any exchange activities using the eHealth Exchange Connectivity Services if: (a) there is an alleged violation of these TEFCA Terms or other Framework Agreement or of Applicable Law by the respective party/parties; (b) there is a cognizable threat to the security of information that the RCE reasonably believes is TI transmitted pursuant to these TEFCA Terms or other such Framework Agreement or to the infrastructure of the respective party, the eHealth Exchange, or the RCE; or (c)

such suspension is in the interests of national security as directed by an agency of the United States government.

13.2.3 Termination Rights Granted to the eHealth Exchange. Participant acknowledges and agrees that the eHealth Exchange has the same authority as the RCE to terminate the right of Participant and/or of any level of Subparticipant that is listed in the eHealth Exchange QHIN Directory under Participant, no matter how far removed, to engage in any activities using the eHealth Exchange Connectivity Services if any of the circumstances described in subsections 13.2.2 (a)-(c) above occur with respects to Participant and/or any level(s) of Subparticipant(s) that is/are listed in the eHealth Exchange QHIN Directory under Participant.

- (iii) the eHealth Exchange *may* exercise such right to terminate based on the QHIN Governance Committee's determination that any of the circumstances described in subsections 13.2.2 (a)-(c) above occurred with respect to Participant or any level of Subparticipant listed in the eHealth Exchange QHIN Directory under Participant.
- (iv) the eHealth Exchange **must** exercise such right to terminate if directed to do so by the RCE based on the RCE's determination that termination is warranted based on any of the circumstances described in subsections 13.2.2 (a)-(c) above with respect to Participant or any level of Subparticipant listed in the eHealth Exchange QHIN Directory under Participant.

13.2.4 Termination of QHIN Participation by the QHIN Governance Committee. The QHIN Governance Committee may terminate Participant's participation in the eHealth Exchange QHIN for the reasons and with the notice set forth below.

- (i) Effective upon written notice to Participant in the event Participant has been suspended in accordance with Section 13.1 and: (a) the QHIN Governance Committee determines that Participant's acts or omissions created an imminent threat or were likely to cause irreparable harm to another party or to the Connectivity Services; (b) the QHIN Governance Committee determines that the cause for the suspension is not reasonably capable of being cured; or (c) Participant's suspension is not lifted within sixty (60) days of taking effect.
- (ii) Effective upon written notice to Participant in the event of Participant's material breach or default of these TEFCA Terms or other TEFCA Materials, where such breach or default has not been sufficiently cured

by Participant within thirty (30) days of the QHIN Governance Committee's notice to Participant of the breach or default.

13.2.5 Other Bases for Termination of QHIN Participation. The additional bases for termination set forth below shall have no effect on Participant's participation in the eHealth Exchange with respect to any non-TEFCA activities, and all other agreements between Participant and the eHealth Exchange, including but not limited to the DURSA, shall remain in full force and effect.

(i) In the event the eHealth Exchange ceases its QHIN operations, termination of Participant's participation in the eHealth Exchange QHIN shall coincide with the effective date of the eHealth Exchange's cessation of QHIN-to-QHIN exchange under the Common Agreement. In the event that the cessation of QHIN operations is initiated by the eHealth Exchange, Participant shall receive at least thirty (30) days' prior written notice of the same. In the event the RCE terminates the Common Agreement with the eHealth Exchange, the QHIN Governance Committee shall provide Participant with as much notice as practicable.

(ii) The RCE has the authority to terminate the Common Agreement and effectively cease supporting TEFCA operations in the event there is insufficient funding for the RCE to continue supporting such operations and there is no successor RCE. In the event of such termination of the Common Agreement by the RCE, the QHIN Governance Committee shall provide Participant with written notice of the same at least one hundred and twenty (120) days prior to the effective date of cessation of TEFCA operations.

13.2.6 Termination of Participation in the eHealth Exchange. Termination of Participant's participation in the eHealth Exchange, for any reason and by either party, shall automatically terminate Participant's participation in the eHealth Exchange QHIN with no further action by either party.

13.2.7 Communication of Termination and Effects. Participant shall be solely responsible for communicating any termination under Section 13.2, including any downstream effects thereof, to Participant's Subparticipants.

13.3 Dispute Resolution Paths Under this Section. The following dispute resolution provisions are only applicable to Participant and do not flow down to Subparticipants.

13.3.1 TEFCA Dispute Resolution Petition. In the event that the RCE suspends Participant's participation in QHIN-to-QHIN exchange, including where the RCE requires that the eHealth Exchange QHIN suspend Participant's use of the

Connectivity Services, Participant shall have the right to petition the QHIN Governance Committee to give approval for the eHealth Exchange's QHIN representative to work with Participant to initiate the TEFCA Dispute Resolution Process on behalf of Participant. Participant must submit its written petition, describing Participant's basis for disputing its suspension by the RCE, to the QHIN Governance Committee within ten (10) calendar days of such suspension. The QHIN Governance Committee shall provide a written response to Participant within fourteen (14) calendar days of receipt of Participant's petition. If the QHIN Governance Committee approves the petition, the matter may proceed facilitated by the eHealth Exchange's QHIN representative or designee and must adhere to the TEFCA Dispute Resolution Process.

13.3.2 QHIN Dispute Resolution Process. In the event that the QHIN Governance Committee suspends Participant's use of the Connectivity Services pursuant to Section 13.1.2(i) or terminates Participant's participation in the eHealth Exchange QHIN pursuant to Section 13.2.2, Participant may initiate a dispute as set forth below.

14. QHIN Participation Disputes

14.1 Dispute Resolution Process. Participant shall adhere to the Dispute Resolution Process set forth in the DURSA, *except* that the following types of disputes shall not be escalated to the Coordinating Committee and may, instead, be escalated to the QHIN Governance Committee: (a) disputes between Participant and another eHealth Exchange QHIN Participant that arise exclusively out of the use of the Connectivity Services; and/or (b) disputes between Participant and the eHealth Exchange QHIN pertaining to the interpretation and/or enforcement of the TEFCA Materials, including disputes involving suspension of Participant's use of the Connectivity Services or termination of Participant's participation in the eHealth Exchange QHIN as set forth in Section 13.3.2 of these TEFCA Terms.

15. Order of Precedence

15.1 Order of Precedence for Participants. In the event of any conflict or inconsistency between or among Applicable Law, these TEFCA Terms, and any other terms and conditions, the following shall be the order of precedence to the extent of such conflict or inconsistency for purposes of activities governed by these TEFCA Terms: (i) Applicable Law; (ii) the provisions of these TEFCA Terms that are Required Flow-Downs under the Common Agreement; (iii) the TEFCA Supplements; (iv) to the extent applicable, the SOPs; (v) the TEFCA Protocols; and (vi) any other terms and conditions

agreed to by the parties. For the avoidance of doubt, the DURSA shall continue to take precedence over the foregoing for exchange activities that do not utilize the Connectivity Services and over any/all other eHealth Exchange activities that are not subject to these TEFCA Terms.

- 15.2 Flow-Down Order of Precedence. In the event of any conflict or inconsistency between or among Applicable Law, the Participant-Subparticipant Agreement, and any other terms and conditions, the following shall be the order of precedence to the extent of such conflict or inconsistency for Subparticipants of the eHealth Exchange QHIN: (i) Applicable Law; (ii) the provisions of the Participant-Subparticipant Agreement that are Required Flow-Downs under the Common Agreement; (iii) to the extent applicable, the TEFCA Supplements; (iv) to the extent applicable, the SOPs; (v) to the extent applicable, the TEFCA Protocols; and (vi) any other terms and conditions agreed to by the parties. For the avoidance of doubt, the provisions of the DURSA that Participant is required to flow down shall continue to take precedence over the foregoing for exchange activities that do not utilize the Connectivity Services and over any/all other eHealth Exchange activities that are not subject to these TEFCA Terms.

16. Survival

- 16.1 Survival for Participants and Subparticipants. The following sections of these TEFCA Terms shall survive expiration or termination of Participant's participation in the eHealth Exchange QHIN as more specifically provided below. Further, Participant shall include at least the following survival provisions in all of its Participant-Subparticipant Agreements and require that such provisions also be included as minimum survival provisions and minimum survival time periods in all Downstream Subparticipant Agreements.

16.1.1 Section 7.1, Confidential Information, shall survive for a period of six (6) years following the expiration or termination of the applicable Framework Agreement;

16.1.2 Section 11, Privacy, to the extent that Participant or its Subparticipant(s) is/are subject to Section 11, said Section shall survive the expiration or termination of the applicable Framework Agreement until the expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under Subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual to whom the information covered by Section 11 relates;

16.1.3 Section 12.1, Security Controls, Section 12.1 shall survive the expiration or termination of the applicable Framework Agreement until the expiration of the time period specified in the definition of PHI at 45 CFR § 160.103 under

Subsection 2(iv) of such definition, i.e., fifty (50) years after the death of the Individual to whom the information covered by Section 12.1 relates.

16.1.4 The requirements of Section 12.3.3, Vertical Reporting of TEFCA Security Incident(s), shall survive for a period of six (6) years following the expiration or termination of the applicable Framework Agreement.

End of TEFCA Terms & Conditions