

eHealth Exchange Testing Agreement

This Testing Agreement (“Agreement”) is made and entered into as of _____, 20____ (the “**Effective Date**”) by and between Healtheway, Inc., d/b/a eHealth Exchange (“**eHealth Exchange**”) and _____ (the “**Testing Entity**,” or “**TE**”). eHealth Exchange and TE may be referred to herein, individually, as a “Party” or, collectively, as the “Parties.”

1. Definitions. Capitalized terms not defined herein shall have the meaning set forth in the DURSA.

Testing Entity/TE is used in this Agreement to refer to: (i) the organization that has applied to participate in the eHealth Exchange and, as part of such process, must undergo initial testing (the “Applicant”); and/or (ii) the same organization as an eHealth Exchange Participant in the event such organization is required to undergo additional testing as a Participant, as described herein.

2. eHealth Exchange Testing Program.

- a. **Limited License.** TE is hereby granted a non-exclusive, non-transferable, non-sublicensable, revocable as set forth in Section 9, limited license to access and use the eHealth Exchange testing tools and testing materials (separately, the “Testing Tools” or the “Testing Materials” and, collectively, the “Testing Tools and Materials”) for the sole purpose of the eHealth Exchange Testing Program.
- b. **Testing Requirements.** The current eHealth Exchange Validation Plan and Testing Materials are maintained on the eHealth Exchange website, as may be modified from time to time in accordance with the DURSA.
- c. **Testing Process & Report.** TE and eHealth Exchange shall follow the process described in the eHealth Exchange Validation Plan (the “Testing Process”). The outcome of the Testing Process shall be communicated to TE by delivery of a written report (the “Testing Report”).
- d. **TE Contact.** TE shall designate a single point of contact (“SPOC”) to oversee and coordinate TE’s participation in the Testing. TE shall make available its SPOC and other personnel as necessary to effectively complete the Testing Process, as well as for review of the Test Report and to answer questions and attend meetings as reasonably required by the eHealth Exchange. TE must notify eHealth Exchange promptly in the event of a change in TE’s SPOC.

3. Testing Fees.

- a. **Testing Fees.** Applicant TE’s testing fees are set forth in **Exhibit A**. As a Participant, TE is subject to the testing fees in effect at the commencement of additional testing, if any, as described below. “Testing Fees” shall refer to those fees that are set forth in Exhibit A, for Applicant, or as may be subsequently in effect, for Participant, each as the case may be. Payment of the total Standard Testing Fee must be received in full before testing may begin. TE is not entitled to a refund of any Testing Fees, in whole or in part. Notwithstanding the foregoing, the Standard Testing Fee does not apply if, and as long as, TE is using an approved **Qualified Technology Solution (QTS) vendor** (<https://ehealthexchange.org/testing-program/validated-products/#QTS>).

b. Additional Testing. TE may practice with the testing tools on an unlimited basis. However, TE will be allowed to submit one set of test results to eHealth Exchange for evaluation as evidence of compliance for the Testing Report as a covered by the Standard Testing Fee. If TE needs to submit additional test results for review and evaluation to demonstrate its compliance after a technology transition that materially affects TE's transport architecture, TE may do so and will be charged for any additional testing hours described in Exhibit A, ***provided that*** the vendor of the new technology platform is recognized as a **Validated Product Vendor** (<https://ehealthexchange.org/testing-program/validated-products/>). If the vendor of the new technology platform is **not** recognized as a Validated Product Vendor, TE is ineligible to purchase additional testing hours and must repeat the Testing Process.

4. **In-Scope Technology**. TE represents and warrants that the technology on which TE tests in the Testing Process is the same health information exchange technology that TE will use in production to participate in eHealth Exchange. TE acknowledges that any change in technology must be reported to eHealth Exchange, and TE may be required to undergo additional testing or repeat the Testing Process, as set forth the preceding section.

5. **Ownership of Testing Tools and Materials**. Any copyrights, patent rights, trade secrets, trademarks, and/or other intellectual property in or related to the eHealth Exchange Testing Program including, but not limited to, all related materials, information, reports, processes, seals, test cases, test case runner, gateway proxy, test repository database, test case templates, configuration files, and test tool documentation that comprise the Testing Tools and Materials ("Testing IP"), are the exclusive property of eHealth Exchange or its licensors. To the extent any corrections, enhancements, improvements, derivative works, relating to the Testing IP are developed by eHealth Exchange based upon ideas or suggestions submitted by TE, TE hereby irrevocably assigns its rights to such ideas or suggestions to the eHealth Exchange or its licensors', together with all copyrights, trade secrets, patent rights, and other intellectual property rights related thereto. TE shall not challenge the validity of the eHealth Exchange's or its licensors' ownership of the Testing IP. TE shall not represent that it owns or has any rights in relation to the Testing IP other than the limited rights set forth in Section 2(a). TE shall not create any derivative work, program, or product based on or derived from the Testing IP, or use any the eHealth Exchange trade secrets, business processes, or intellectual property related to the eHealth Exchange Testing Program to create any other program or product.

6. **DISCLAIMER OF WARRANTIES**. THE TESTING TOOLS AND MATERIALS ARE PROVIDED "AS IS," AND "AS AVAILABLE," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EHEALTH EXCHANGE DISCLAIMS ANY WARRANTY OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: (i) MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (ii) NONINFRINGEMENT; (iii) THAT THE TESTING TOOLS WILL PERFORM IN A MANNER THAT IS ERROR-FREE OR FREE FROM VULNERABILITIES AND/OR THAT TESTING MATERIALS WILL BE ERROR-FREE; (iv) THAT THE AVAILABILITY OF THE TESTING TOOLS AND/OR TESTING MATERIALS WILL BE UNINTERRUPTED OR THAT ERRORS OR INTERRUPTIONS WILL BE CORRECTED; AND/OR (v) THAT SUCCESSFUL COMPLETION OF THE TESTING PROCESS WILL ENABLE TE TO COMPLY WITH ANY THIRD-PARTY AGREEMENTS AND/OR GOVERNMENTAL PROGRAMS OR INCENTIVES.

7. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE OF TE'S SYSTEM OR LOSS OF DATA OR PROFITS OR FOR BUSINESS INTERRUPTION, OR FOR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES) ARISING OUT OF OR IN CONNECTION WITH THIS ADDENDUM OR THE USE, PERFORMANCE, OR OPERATION OF THE TESTING TOOLS AND/OR TESTING MATERIALS, WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. EHEALTH EXCHANGE'S TOTAL CUMULATIVE LIABILITY TO TE FROM ALL CAUSES OF ACTION ARISING OUT OF THIS ADDENDUM, AND ON ALL THEORIES OF LIABILITY, WILL BE LIMITED TO, AND WILL NOT EXCEED, THE TESTING FEES PAID FOR THE TESTING THAT IS UNDERWAY WHEN SUCH CLAIM OF LIABILITY ARISES. **NOTWITHSTANDING THE FOREGOING, THIS SECTION SHALL NOT APPLY IF AND TO THE EXTENT TE IS, OR HAS APPLIED AS, A GOVERNMENTAL PARTICIPANT, AS DEFINED IN THE DURSA, AND IS PROHIBITED BY LAW FROM LIMITING ITS RIGHT TO RECOVER DAMAGES. NOR SHALL THE LANGUAGE ABOVE BE INTERPRETED AS A WAIVER OF SUCH RIGHT BY ANY SUCH GOVERNMENTAL PARTICIPANT/APPLICANT.**

8. Term. This Agreement shall commence on the Effective Date and remain in effect until terminated as provided herein.

9. Termination. This Agreement shall terminate automatically upon termination of TE's participation in eHealth Exchange. This Agreement is separately terminable while TE is an applicant as set forth below.

a. By TE. TE may terminate this Agreement at any time prior to receiving a Testing Report by providing written notice to eHealth Exchange at administrator@ehealthexchange.org.

b. By eHealth Exchange. eHealth Exchange may terminate this Agreement immediately upon notice to TE if TE: (i) remains in material breach of this Agreement after being notified of the breach and failing to cure the same within thirty (30) days; or (ii) breaches a material provision of this Agreement where such breach is not capable of remedy.

TESTING ENTITY

Signature: _____

Printed Name: _____

Title: _____

Date: _____

HEALTHWAY, INC., d/b/a eHealth Exchange

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A - eHealth Exchange Testing Fees

Testing Program Components & Standard Rates

Smoke Test Cases	\$11,000
Security Test Cases	\$8,000
Content Testing	Included in Annual Participation Fee

Standard Testing Fee:

1. If TE is using an eHealth Exchange Validated Product (<https://ehealthexchange.org/testing-program/validated-products/>), TE is **only** required to complete the Smoke Test Cases and **not** the Security Test Cases.
2. The Standard Testing Fee assumes eHealth Exchange will not spend more than ten (10) hours of staff time on the Testing Process. **If eHealth Exchange must spend more than ten (10) hours of staff time, TE agrees to pay the Testing Assistance Rate set forth below.**
3. Content Testing (<https://ehealthexchange.org/testing-program/content-testing/>) is required for any/all organization(s) that respond to queries with document content. There is no separate fee for Content Testing; however, staff time assisting with Content Testing is counted towards the 10-hour allotment under the Standard Testing Fee and may be subject to the TA Rate.

Testing Assistance (TA) Rate: If eHealth Exchange must spend more than ten (10) hours of staff time on the Testing Process, TE agrees to pay eHealth Exchange \$180 per hour above the first ten (10) hours included in the Standard Testing Fee. Such supplemental hours must be purchased in minimum blocks of four (4) hours. The TA Rate will be invoiced as TE requests supplemental assistance, with payment due in full within thirty (30) days of invoicing.

Payment Options:

1. **ACH or Wire (PREFERRED):** Instructions will be provided in the Testing Fees invoice, or you may contact accounting@ehealthexchange.org.
2. Check (Accepted): Checks payable to eHealth Exchange to eHealth Exchange, 8300 Boone Boulevard, Suite 500, Vienna, Virginia 22182.

Credit Card payments are **not** accepted.

You may, if you wish, also pay the eHealth Exchange participation fees at this time. Payment of the participation fees may either be made in conjunction with the Standard Testing Fee or separately prior to going into production on eHealth Exchange. Annual participation fees are detailed in the eHealth Exchange Participation Agreement.