

**eHHR Enhanced Memorandum
of Understanding (E-MOU)**

Version Date: February 25, 2016

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eHHR Enhanced Memorandum of Understanding (E-MOU)

WITNESSETH:

WHEREAS, the Secretaries of Health and Human Resources, Public Safety, Commerce and Trade, and Transportation desire to establish the eHHR Enhanced Memorandum of Understanding (“E-MOU”) with the goal of enhancing the security of data maintained and exchanged by the participating organizations for the benefit of the Commonwealth of Virginia and individuals participating in programs operated by organizations under these Secretariats;

WHEREAS, the participating organizations can be agencies within these Secretariats, county-level offices, city offices, non-profit groups, federal agencies, authorized business partners, private entities or other associations that perform or support services for individuals participating in programs under these Secretariats;

WHEREAS, the participating organizations desire to securely exchange data as permitted or required by applicable law in order to increase the efficiency and effectiveness of programs operated by the Commonwealth of Virginia and individuals participating in such programs;

WHEREAS, the participating organizations agree to comply with this E-MOU and its supporting appendices adopted with the goal of promoting and supporting the secure exchange of data. This E-MOU is not intended to preempt in any manner or presume any statutory duties or authority granted to the participating organizations. Rather, the participating organizations enter into this E-MOU to enable their voluntary participation in the Data Exchange, as set forth below;

WHEREAS, as a condition of participating in the Data Exchange, each participating organization voluntarily agrees to sign this E-MOU; comply with all applicable law and the terms of this Agreement, and either abide by the decisions of the Coordinating Committee or unilaterally and voluntarily terminate participation in the Data Exchange.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the participating organizations hereto mutually agree to the provisions set forth in this E-MOU.

1. **Definitions.** For the purposes of this E-MOU, the following terms shall have the meaning ascribed to them below. All defined terms are capitalized throughout this E-MOU.
 - a. **Applicable Law** shall mean all applicable federal and state laws and regulations.
 - b. **Applicant** shall mean potential Partner new to the Data Exchange. On-boarding new partners shall be in accordance with Appendix 1 and Appendix 2 of this E-MOU.
 - c. **Authorization** shall have the meaning and include the requirements set forth at 45 CFR § 164.508 and include any similar but additional requirements under Applicable Law, including Virginia Code § 32.1-127.1:03(G). Authorization shall be confirmed by execution of the Uniform Authorization to Exchange Information form or some other written authorization that meets the requirements of Applicable Law that applies to the Organization providing the data.

- 49 **d. Breach** shall mean all known incidents that threaten the security of the
50 Commonwealth's databases and data communications resulting in exposure of data
51 protected by federal or state laws, or other incidents compromising the security of the
52 Commonwealth's information technology systems with the potential to cause major
53 disruption to normal organization activities.
54
- 55 **e. Changes** shall mean Developmental Changes and Compliance Changes. Changes shall be
56 managed in accordance with Appendix 5 of this E-MOU. Developmental Changes shall
57 mean changes approved by the Coordinating Committee to technical process and/or
58 technologies used to create, transmit, and consume an exchange of data. Compliance
59 Changes shall mean changes approved by the Coordinating Committee to correct
60 deficiencies in alignment with applicable laws.
61
- 62 **f. Citizen** shall mean an individual whose personal information is maintained by a Partner
63 and subject to exchange with Partners.
64
- 65 **g. Common Partner Resources** shall mean software, utilities and automated tools made
66 available for use in connection with the exchange of Data pursuant to this E-MOU and
67 which have been designated as "Common Partner Resources" by the Coordinating
68 Committee. Partners that make resources available to be shared are responsible for
69 ensuring compliance with Applicable Laws and Vendor licensing requirements.
70
- 71 **h. Commonwealth Authentication Service** (or comparable Virginia Information
72 Technologies Agency (VITA) approved credentialing service) shall mean the enterprise
73 solution developed by the Virginia Department of Motor Vehicles for the purpose of
74 validating a Citizen's identity and assigning credentials based on the Citizen's validated
75 identity.
76
- 77 **i. Data** shall have the same meaning as "personal information" set forth in Virginia Code §
78 2.2-3801 when dealing with information about a Citizen.
79
- 80 **j. Data Exchange Service** shall mean software programs that serve to securely and safely
81 share data between approved Partners. Requirements for Data Exchange Services are
82 defined in Appendix 1 and Appendix 2 of this E-MOU.
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- 84 **k. Data Request** shall mean a request for data made by one Partner to another and
85 defined by an approved E-MOU Specification.
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- 87 **l. Data, Test** shall mean Data created by a Partner in accordance with the Validation Plan
88 and used by the Partner, or by other Partners, for Testing purposes in a Test
89 environment. Test Data in a Test environment shall not contain personally identifying
90 information.
91
- 92 **m. Data Transmittal** shall mean an electronic exchange of Data between Partners using
93 agreed upon Specifications. The actions of an ITSP, including VITA, that facilitate the
94 transmittal of data shall not be deemed a Data Request.
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- 96 n. **Digital Credentials** shall mean a mechanism, such as a public-key infrastructure, that
97 enables Partners to electronically prove their identity and their authority to conduct
98 data transmittal with other Partners.
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- 100 o. **Discloser** shall mean a Partner that discloses Data to another Partner through a
101 transmittal in any format.
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- 103 p. **Dispute or Disputed Matter** shall mean any controversy, dispute, or disagreement
104 arising out of or relating to this E-MOU.
105
- 106 q. **Effective Date** shall mean the date of execution of this E-MOU, as recorded by the
107 Coordinating Committee.
108
- 109 r. **Emergent Specifications** shall mean the technical specifications that existing and/or
110 potential Partners are prepared to implement to test the feasibility of the Specifications,
111 to identify whether the Specifications reflect an appropriate capability for the Partners,
112 and assess whether the Specifications are sufficient to add as a production capability
113 available to the Partners.
114
- 115 s. **Information Technology Service Provider or ITSP** shall mean a company or other
116 organization that will support one or more Partners by providing them with
117 operational, technical, or information technology services.
118
- 119 t. **Notice or Notification** shall mean a written communication, unless otherwise specified
120 in this E-MOU, sent to the appropriate Partner's representative, at the address listed
121 with the Coordinating Committee, in accordance with the other policies and procedures
122 attached to this E-MOU.
123
- 124 u. **Operational Measures or Operational Data** shall mean information pertaining to the
125 volume and performance of Data Transmittals pursuant to this E-MOU; such as activity
126 counts, performance measures, uptime metrics, error rates, connection metrics and
127 other indicators of activity. It does not include citizen specific data.
128
- 129 v. **Partner** shall mean any participating organization that is a signatory to this E-MOU.
130
- 131 w. **Partner Access and Disclosure Policies** shall mean those policies and procedures of a
132 Partner that govern a User's ability to access, exchange, and transmit Data using the
133 Partner's System, including privacy and security policies.
134
- 135 x. **Publisher** shall mean a Partner that discloses Data to another Partner through Data
136 Exchange Service.
137
- 138 y. **User** shall mean any person who has been authorized to conduct Data Transmittal
139 through the respective Partner's System in accordance with the Partner's Access and
140 Disclosure Policies and Applicable Law.
141
- 142 z. **Specifications** shall mean the Specifications adopted by the Coordinating Committee
143 that prescribe the Data format, technical procedures, and security compliance
144 requirements needed to enable the Partners to Transmit Data. Specifications may

145 include, but are not limited to, specific standards, services, and policies applicable to
146 Data Transmittal pursuant to this E-MOU. The specification requirements are attached
147 hereto as Appendix 1 and Appendix 2 , and may be amended in accordance with
148 Appendix 5. This E-MOU shall not be deemed to supersede or modify any specifications,
149 policies, standards or procedures promulgated or established by the Commonwealth's
150 Chief Information Officer pursuant to Chapter 20.1 of Title 2.2 of the *Code of Virginia*.

151
152 **aa. Subscriber** shall mean a Partner that receives Data from another Partner through a
153 Data Exchange Service.

154
155 **bb. System** shall mean the software, portal, platform, or other electronic medium controlled
156 by a Partner through which the Partner conducts its Data Transmittal related activities.
157 For purposes of this definition, it shall not matter whether the Partner controls the
158 software, portal, platform, or medium through ownership, lease, license, or otherwise.

159
160 **cc. Testing** shall mean the tests and demonstrations of a Partner's System and processes
161 used for interoperable Data Transmittal to assess conformity with the Specifications
162 and Validation Plan.

163
164 **dd. Transmit, Transmittal or Transmitting** shall mean, in varying tenses, to disclose Data
165 electronically using the Specifications.

166
167 **ee. Validation Plan** shall mean the framework for Testing and demonstrations for parties
168 seeking to become Partners. The Validation Plan is attached hereto as part of Appendix
169 1, and as amended in accordance with Appendix 5.

170
171 **2. Coordinating Committee.**

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173 **a. Formation of the Coordinating Committee.** To support secure Data Transmittal, the
174 Partners agree to establish a Coordinating Committee, which shall develop the
175 Specifications, including Emergent Specifications, with which the Partners shall comply
176 in Transmitting Data pursuant to this E-MOU.

177
178 **b. Composition of the Coordinating Committee.** The Coordinating Committee shall be
179 composed of senior leaders or their designees from each of the Partner organizations. A
180 majority of voting Committee members shall select a Committee Chairman and Vice-
181 Chairman to serve an annual term coinciding with the Effective Date of this E-MOU.
182 Nominees for Chairman and Vice-Chairman must come from voting members within the
183 agencies of the Health and Human Resources, Public Safety, Commerce and Trade, or
184 Transportation Secretariats. A Committee Chairman and Vice-Chairman can serve
185 successive terms.

186
187 **c. Staff Support for Coordinating Committee.** The Partners agree to designate support
188 staff from their own organizations as required to provide a sufficient degree of support
189 needed to carry out the activities of the Coordinating Committee as described in Section
190 3 and throughout this E-MOU.

191
192 **d. Recorder - Role.** The Recorder shall serve the Coordinating Committee by facilitating
193 and archiving requests made by the Partners. For example: administering on-boarding

194 requests from new Partners to join the Data Exchange; distributing Suspension or
195 Termination notifications to Partners; coordinating requests to amend this E-MOU and
196 administering requests to change Data Exchange Services. Unless otherwise noted in
197 this E-MOU, the Recorder shall be the primary point of contact for the Coordinating
198 Committee; receiving and sending communications on behalf of the body.

199
200 **e. Recorder – Selection and Term.** A majority of the voting Committee members shall
201 select the Recorder from voting members within the agencies of the Health and Human
202 Resources, Public Safety, Commerce and Trade, or Transportation Secretariats. The
203 duties of the role may be delegated to a staff member of the elected Partner. The
204 Recorder serves a term of one year and can serve successive terms.

205
206 **f. Subcommittees.** The Chairman of the Coordinating Committee shall be authorized to
207 form subcommittees to support Data Transmittal pursuant to this E-MOU.
208 Subcommittees shall consist of up to one (1) representative from each of the Partner
209 organizations, as designated by the organization’s senior leader. Subcommittee
210 members may include the organization Chief Information Officers (CIO), Information
211 Security Officers (ISO) or other designee, as determined by the organization’s senior
212 leader. A Subcommittee shall consist of at least three persons.

213
214 **g. Auditor of Public Accounts and Virginia Information Technologies Agency**
215 **Representatives.** The Auditor of Public Accounts and the Chief Information Officer of
216 the Commonwealth may each appoint an ex-officio, non-voting representative to serve
217 on the Coordinating Committee.

218
219 **3. Coordinating Committee Responsibilities.** The Partners agree that the Coordinating
220 Committee will conduct the following activities:

221
222 **a.** Maintaining a list of all E-MOU Partners, their designated representative(s) and their
223 preferred contact information where they can be reached. Such contact information
224 shall be made accessible by the Coordinating Committee to all E-MOU Partners by
225 posting on a website. The Coordinating Committee shall request that VITA maintain a
226 website that is accessible to all E-MOU Partners, Members of the Coordinating
227 Committee, and any other stakeholders that the Coordinating Committee determines
228 shall have access. Initially, this information will be deployed under the eHHR site at
229 <https://dssshare.virginia.gov/sites/eHHRprogram>;

230
231 **b.** Receiving reports of Breaches, notifying Partners of Breaches, receiving confirmation
232 from Partners when the security of their Systems have been restored after Breaches,
233 and notifying Partners when all issues leading to a Breach have been resolved.
234 Notification of a Breach to the Coordinating Committee does not relieve the Partner of
235 its responsibilities under Applicable Law, including required notifications that a Breach
236 has occurred;

237
238 **c.** Suspending or terminating Partners in accordance with Appendix 3 of this E-MOU;

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240 **d.** Resolving Disputes between Partners in accordance with this E-MOU;

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242 **e.** Managing the amendment of this E-MOU in accordance with Appendix 4 of this E-MOU;

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- f. Developing, evaluating, prioritizing, and adopting Specifications, including Emergent Specifications, changes to such Specifications and the artifacts required by the Validation Plan in accordance with Appendix 1 and Appendix 2 of this E-MOU. Any Specifications developed shall be consistent with Applicable Law, any data or technical standards for information technology adopted by VITA Data Governance and any policies, procedures, and standards developed by the Commonwealth's Chief Information Officer for the protection of Data;
 - g. Maintaining a process for managing versions of the Specifications, including migration planning;
 - h. Evaluating requests for the introduction of Emergent Specifications into the Production environment used by the Partners to Transmit Data;
 - i. Coordinating with VITA Data Governance and the Commonwealth's Chief Information Officer to ensure the interoperability of the Specifications with other initiatives regarding data exchange including, but not limited to, providing input into Information Technology Resource Management policies, standards and guidelines;
 - j. Performing impartial review of Partners compliance with the Specifications as defined in Appendix 1 and Appendix 2 of this E-MOU; and
 - k. Fulfilling all other responsibilities delegated by the Partners to the Coordinating Committee as set forth in this E-MOU.
 - l. The Coordinating Committee shall meet regularly to perform their assigned responsibilities. The regular working session schedule of the Coordinating Committee will be administered by the Chairman. The Chairman may also schedule additional ad-hoc working sessions of the Coordinating Committee when time-sensitive activities must be completed before the next regularly scheduled session.

275 **4. Use of Data.**

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- a. **Permitted Purpose.** Partners shall only Transmit Data in accordance with Applicable Law. Each Partner shall require that its Users comply with this Section.
 - b. **Permitted Future Uses.** Subscribers may retain and use Data in accordance with Applicable Law and the Subscribers's record retention policies and procedures.
 - c. **Management Uses.** The Coordinating Committee may request Operational Measures from Partners, and Partners agree to provide requested measures in accordance with Applicable Law, for the purposes listed in Section 13 of this E-MOU.

287 **5. System Access Policies.**

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- a. **Autonomy Principle.** Each Partner agrees to have Partner Access and Disclosure Policies. Each Partner acknowledges that Partner Access and Disclosure Policies will differ among them as a result of differing Applicable Law and business practices. Each

292 Partner agrees to be responsible for determining whether and how to Transmit Data
293 based on the application of its Partner Access and Disclosure Policies to the Data
294 contained in the Data Transmittal. Each Partner shall comply with Applicable Law, this
295 E-MOU, and all applicable Specifications in Transmittal of Data.
296

297 **b. Authentication.** Each Partner agrees to employ the Commonwealth Authentication
298 Service (or comparable VITA approved credentialing service) through which the
299 Partner, or its designee, uses the credentials issued pursuant to Section 6.a to verify the
300 identity of each User prior to enabling such User to Transmit Data.
301

302 **6. Enterprise Security.**
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304 **a. General.** Each Partner agrees to be responsible for maintaining a secure environment
305 compliant with Commonwealth policies, standards and guidelines and other Applicable
306 Law that supports the Transmission of Data in compliance with the Specifications.
307 Partners shall use appropriate safeguards to prevent use or disclosure of Data other
308 than as permitted by this E-MOU and Applicable Law, including appropriate
309 administrative, physical, and technical safeguards that protect the confidentiality,
310 integrity, and availability of that Data. Appropriate safeguards shall be those required
311 by Applicable Law related to Data security. Each Partner agrees to, as appropriate
312 under Applicable Law, have written privacy and security policies, including Access and
313 Disclosure Policies, in place with VITA or locally before the Partner's respective
314 Effective Date. To the extent permitted under Applicable Law, Partners shall comply
315 with any Specifications that define expectations with respect to enterprise security.
316

317 **b. Malicious Software.** Each Partner agrees to employ security controls that meet
318 applicable requirements defined in VITA ITRM Standards, including SEC501-07.01 (or
319 later) and VITA ITRM Guideline SEC515-00 (or later), so that Data Transmittal will not
320 introduce any viruses, worms, unauthorized cookies, trojans, malicious software,
321 "malware," or other program, routine, subroutine, or Data designed to disrupt the
322 proper operation of a System or any part thereof or any hardware or software used by a
323 Partner in connection therewith, or which, upon the occurrence of a certain event, the
324 passage of time, or the taking of or failure to take any action, will cause a System or any
325 part thereof or any hardware, software or Data used by a Partner in connection
326 therewith, to be improperly accessed, destroyed, damaged, or otherwise made
327 inoperable.
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329 **7. Equipment and Software.** In accordance with Applicable Law, each Partner shall be
330 responsible for procuring, and assuring that its Users have or have access to, all equipment
331 and software necessary for it to Transmit Data. Each Partner shall ensure that all computers
332 and electronic devices owned or leased by the Partner used to Transmit Data are properly
333 configured, including, but not limited to, the operating system, web server, and Internet
334 connectivity. Partners shall ensure that System solutions that enable Citizens to input their
335 personal data as part of the solution workflow are compliant with the Specifications.
336

337 **8. Auditing.** Each Partner shall, through its agents, employees, and independent contractors,
338 have the ability to monitor and audit all access to and use of its System related to this E-
339 MOU, for system administration, security, and other legitimate purposes. Each Partner shall
340 perform those auditing activities required by the Specifications.

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9. Specifications.

- a. **General Compliance.** Each Partner shall comply with all of the Specifications under this E-MOU, and identified hereto as Appendix 1 and Appendix 2, unless compliance would be a violation of Applicable Law.
- b. **Adoption of Specifications.** The Partners hereby acknowledge the role of the Coordinating Committee as the mechanism whereby the Partners jointly adopt new Specifications, and that the Coordinating Committee may adopt amendments to, or repeal and replacement of, the Specifications at any time, as outlined in Appendix 5 of this E-MOU. Specifications should be in compliance with the applicable template defined in Appendix 1 and Appendix 2.
- c. **Specification Amendment Process.** The Specifications shall be amended as set forth in Appendix 5 of this E-MOU.

10. Expectations of Partners.

- a. **Minimum Requirements for Partners Regarding Data Requests.**
 - 1. All Partners that make Data Requests, or allow their respective Users to make Data Requests, shall have a corresponding reciprocal duty to respond to Data Requests. A Partner shall fulfill its duty by either (i) responding to the Data Request with the requested Data, or (ii) responding with a standardized response that indicates the Data is not available or cannot be exchanged. Data Transmittals in response to Data Requests shall comply with the Specifications, this E-MOU, applicable Partner Access and Disclosure Policies, any applicable agreements between Partners and their Users, and Applicable Law. Partners must be approved to request data from the specified Data Exchange Service as defined in Appendix 1 and Appendix 2. Nothing in this E-MOU shall require a Data Transmittal that would violate Applicable Law.
 - 2. Each Partner that makes Data Requests, or allows its respective Users to make Data Requests, shall Transmit Data with all other Partners, in accordance with Sections 6, 12 and 14 of this E-MOU. If a Partner desires to stop Transmitting Data with another Partner based on the other Partner's acts or omissions in connection with this E-MOU, the Partner may temporarily stop Transmitting Data with such Partner to the extent necessary to address the Partner's concerns and to the extent allowed or required by Applicable Law. If any such cessation occurs, the Partner shall provide a Notification to the Coordinating Committee of such cessation and the reasons supporting the cessation. The Partners shall submit the Dispute leading to the cessation through the Dispute Resolution Process. If the cessation is a result of a Breach that was reported to, and deemed resolved pursuant to Appendix 6, the Partners involved in the Breach and the cessation agree to engage in the Dispute Resolution Process in an effort to attempt to reestablish trust and resolve any security concerns arising from the Breach.

389 **b. Users and Information Technology Service Provider (ITSPs).** Each Partner shall
390 require that all of its Users and ITSPs Transmit Data only in accordance with the terms
391 and conditions of this E-MOU, including without limitation those governing the
392 authorization, use, confidentiality, privacy, and security of Data.
393

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395 **11. Specific Duties of a Partner When Transmitting Data.** Whenever a Partner Transmits
396 Data to another Partner or User, the Transmitting Partner shall comply with:

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398 **a. Submittal of Data.** Transmit Data in compliance with Applicable Law, this E-MOU, the
399 applicable Partner Access and Disclosure Policies, and the applicable Specifications.
400

401 **b. Authorization.** If Applicable Law requires an Authorization from the individual who is
402 the subject of the Data in order to exchange the Data, the requesting Partner shall
403 provide an Authorization that meets all requirements of Applicable Law.
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405 **12. Privacy and Security.**

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407 **a. Applicability of Privacy and Security Regulations.** To maintain the privacy,
408 confidentiality, and security of Data, each Partner shall comply with Applicable Law,
409 Applicable Partner Access and Disclosure Policies, the Specifications, and this E-MOU.
410

411 **b. Safeguards.** In accordance with Sections 7, 8 and 9, Partners shall use reasonable and
412 appropriate administrative, physical, and technical safeguards and comply with the
413 Specifications to protect Data and to prevent use or disclosure of Data other than as
414 permitted by Section 4 of this E-MOU.
415

416 **c. Breach Notification.** Partners shall report to the Commonwealth's Chief Information
417 Officer all known incidents that threaten the security of the Commonwealth's databases
418 and Data communications resulting in exposure of Data protected by federal or state
419 laws, or other incidents compromising the security of the Commonwealth's information
420 technology systems with the potential to cause major disruption to normal organization
421 activities. Such reports shall be made to the Chief Information Officer within 24 hours
422 from when the Partner discovered or should have discovered the occurrence. Partners
423 shall also comply with any Applicable Law regarding Breaches, including Virginia Code §
424 18.2-186.6 and 32.1-127.1:05. Policies and Procedures for Breach Notification have
425 been provided in Appendix 6.
426

427 **d. Conflict of Obligations.** This Section shall not be deemed to supersede a Partner's
428 obligations (if any) under relevant security incident, breach notification or
429 confidentiality provisions of Applicable Law.
430

431 **e. Conflict of Compliance.** Compliance with this Section shall not relieve Partners of any
432 other security incident or Breach reporting requirements under Applicable Law
433 including, but not limited to, those related to Citizens.
434

435 **13. Responsibilities of the Partners.** Each Partner hereby agrees to the following:
436

- 437 a. **Data Requested by the Coordinating Committee.** Except to the extent prohibited by
438 Applicable Law, each Partner has provided, and agrees to continue to provide, the
439 Coordinating Committee with all Operational Measures reasonably requested by the
440 Coordinating Committee and needed by the Coordinating Committee to discharge its
441 duties under this E-MOU or Applicable Law. Any Operational Measures provided by a
442 Partner to the Coordinating Committee shall be responsive and accurate. Each Partner
443 agrees to provide Notice to the Coordinating Committee if any Operational Measures
444 provided by the Partner to the Coordinating Committee materially change. Each Partner
445 agrees to cooperate in the confirmation or other verification of the completeness and
446 accuracy of any Operational Measures provided. At any time, each Partner agrees to
447 cooperate with the Coordinating Committee in such requests, given reasonable prior
448 Notice. If a Partner cannot in good faith provide Operational Measures as requested by
449 the Coordinating Committee, the Partner may ask for relief from the request as defined
450 in the Dispute Resolution Process.
451
- 452 b. **Execution of the E-MOU.** Each Partner shall execute this E-MOU and return an
453 executed copy of this E-MOU to the Coordinating Committee. In doing so, the Partner
454 affirms that it has full power and authority to enter into and perform this E-MOU and
455 has taken whatever measures necessary to obtain all required approvals or consents in
456 order for it to execute this E-MOU. The representatives signing this E-MOU on behalf of
457 the Partners affirm that they have been properly authorized and empowered to enter
458 into this E-MOU on behalf of the Partner. The organization's senior leader shall be the
459 representative authorized to sign on behalf of the Partner organization.
460
- 461 VITA shall maintain the E-MOU documents in an on-line, printable, version-controlled
462 location that is accessible to all Partners, Members of the Coordinating Committee, and
463 any other stakeholders that the Coordinating Committee determines require access.
464
- 465 c. **Compliance with this E-MOU.** Except to the extent prohibited by Applicable Law, each
466 Partner shall comply fully with all provisions of this E-MOU.
467
- 468 d. **Agreements with Users.** Each Partner shall have established agreements with each of its
469 Users that require the User to, at a minimum: (i) comply with all Applicable Law; (ii)
470 reasonably cooperate with the Partner on issues related to this E-MOU; (iii) Transmit Data
471 only for a permitted purpose and in accordance with Applicable Law; (iv) use Data received
472 from another Partner or User in accordance with the terms and conditions of this E-MOU
473 and Applicable Law; (v) within 24 hours after determining that a Breach occurred, User will
474 report such Breach to the Partner who in turn will report to the Commonwealth's Chief
475 Information Officer in accordance with state policy and 2.2-603(G) *Code of Virginia*; and (vi)
476 refrain from disclosing to any other person any passwords or other security measures
477 issued to the User by the Partner. Notwithstanding the foregoing, for Users who are
478 employed by a Partner or who have agreements with the Partner which became effective
479 prior to the Effective Date, compliance with this Section may be satisfied through written
480 policies and procedures that address items (i) through (vi) of this Section so long as the
481 Partner can document that there is a written requirement that the User must comply with
482 the policies and procedures.
483
- 484 e. **Agreements with Vendors.** To the extent that a Partner uses vendors in connection
485 with the Partner's Transmittal of Data, each Partner affirms that it has established

486 agreements with each of its vendors, including ITSPs, that require the vendor to, at a
487 minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of any
488 Data to which it has access; (iii) as soon as reasonably practicable after determining that
489 a Breach occurred, report such Breach to the Partner; and (iv) reasonably cooperate
490 with the other Partners to this E-MOU on issues related to this E-MOU, under the
491 direction of the Partner. These agreements include, but are not limited to, Memoranda
492 of Understanding between Partners and the Virginia Information Technologies Agency.
493

494 **f. Creation of Test Data.** Certain Partners may agree to create Test Data to be used by
495 other Partners for testing. Any Test Data shall not contain personally identifying
496 information. Test Data shall be created in accordance with the Validation Plan and used
497 only within a Test environment.
498

499 **g. Accuracy of Data.** When Transmitting Data, each Partner hereby represents that at the
500 time of Transmittal, the Data it provides is (a) an accurate representation of the Data
501 contained in, or available through, its System, (b) sent from a System that employs
502 security controls that meet VITA standards so that the Data are intended to be free from
503 malicious software in accordance with Section 7.b, and (c) provided in a timely manner
504 and in accordance with the Specifications.
505

506 **h. Use of Data.** Each Partner shall use Data transmitted to it only in accordance with the
507 provisions of this E-MOU or as permitted or required by Applicable Law.
508

509 **i. Compliance with Laws.** Each Partner shall fully comply with all Applicable Law.
510

511 **14. Treatment of Data.**
512

513 **a. Hold in Confidence.** Each Subscriber agrees to hold all personally identifying Data in
514 confidence and agrees that it shall not, during the term or after the termination of this E-
515 MOU, redisclose to any person or entity, nor use for its own business or benefit, any
516 such Data obtained by it in connection with this E-MOU, unless such use or redisclosure
517 is permitted by the terms of this E-MOU and permitted or required by Applicable Law.
518

519 **15. Disclaimers.**
520

521 **a. Reliance on a System.** Each Partner acknowledges and agrees that: (i) the Data
522 provided by, or through, its System is drawn from numerous sources, (ii) the Data is
523 specific to the point in time when drawn, and (iii) it can only confirm that, at the time of
524 the Data Transmittal the Data are an accurate representation of Data contained in, or
525 available through, its System. Nothing in this E-MOU shall be deemed to impose
526 responsibility or liability on a Partner related to the clinical accuracy, content or
527 completeness of any Data provided pursuant to this E-MOU. The Partners acknowledge
528 that other Partners' Digital Credentials may be activated, suspended or revoked at any
529 time or the Partner may suspend its participation; therefore, Partners may not rely
530 upon the availability of a particular Partner's Data.
531

532 **b. Carrier lines.** All Partners acknowledge that the Transmittal of Data between Partners
533 is to be provided over various facilities and communications lines, and Data shall be
534 transmitted over local exchange and Internet backbone carrier lines and through

535 routers, switches, and other devices (collectively, "carrier lines") owned, maintained,
536 and serviced by third-party carriers, utilities, and Internet service providers, all of
537 which may be beyond the Partners' control. Provided a Partner uses reasonable security
538 measures, no less stringent than those directives, instructions, and specifications
539 contained in this E-MOU and the Specifications and Applicable Law, the Partners
540 assume no liability for or relating to the integrity, privacy, security, confidentiality, or
541 use of any Data while it is transmitted over those carrier lines, which are beyond the
542 Partners' control, or any delay, failure, interruption, interception, loss, Transmittal, or
543 corruption of any Data or other information attributable to Transmittal over those
544 carrier lines which are beyond the Partners' control. Use of the carrier lines is solely at
545 the Partners' risk and is subject to all Applicable Law. If a Breach occurs and it is
546 determined that it happened because of a Carrier issue, the Partner responsible for the
547 Data being transmitted is the responsible party for the Breach Notification.
548

549 **16. Term, Addition, Suspension, Reinstatement and Termination.**

- 550
- 551 **a. Term.** The initial term of this E-MOU shall be for a period of one year commencing on
552 the Effective Date. Upon the expiration of the initial term, this E-MOU shall
553 automatically renew for successive one-year terms unless terminated pursuant to this
554 Section.
555
- 556 **b. Addition.** On-boarding new partners shall be in accordance with Appendix 1 and
557 Appendix 2 of this E-MOU.
558
- 559 **c. Suspension, Reinstatement or Termination.** Suspensions, Reinstatements and
560 Terminations of Partners shall be in accordance with Appendix 3 of this E-MOU.
561
- 562 **d. Effect of Termination.** Upon any termination of this E-MOU for any reason, the
563 terminated party shall cease to be a Partner and thereupon and thereafter neither that
564 party nor its Users shall have any rights to participate in the Data Exchange. In the event
565 a Partner fails to comply with the policies, standards and guidelines of the Coordinating
566 Committee, or abide by the decisions of the Coordinating Committee, the Coordinating
567 Committee may revoke a Partner's Digital Credentials, which will terminate the
568 Partner's participation in the Data Exchange. Once the Coordinating Committee revokes
569 the Partner's Digital Credentials, the Coordinating Committee shall provide Notice of
570 such revocation to the remaining Partners. In the event that any Partner(s) is
571 terminated, this E-MOU will remain in full force and effect with respect to all other
572 Partners. Any Partner terminated from this E-MOU shall consider executing alternate
573 data sharing agreements and where required by applicable law, shall do so.
574

575 **17. Dispute Resolution Process.**

- 576
- 577 **a. General.** If any Dispute arises between Partners, those Partners agree to commence
578 efforts to resolve such dispute in good faith via a designated subcommittee of the
579 Coordinating Committee. The subcommittee will be formed by the Coordinating
580 Committee within seven (7) business days after written notification of the Dispute. Any
581 Partner may submit written notification of a Dispute to the Coordinating Committee. If
582 the Disputed Matter has not been resolved by the subcommittee within thirty (30) days
583 after first having been referred to the subcommittee (or at any earlier time, if requested

584 by Partners who are parties to the Dispute), such Dispute may be referred to the
585 Chairman of the Coordinating Committee for resolution. Should the Chairman be a
586 leader of a Partner involved in the Dispute, the Chairman will recuse himself and defer
587 Dispute oversight duties to the Vice-Chairman. If a Disputed Matter is referred to the
588 Chairman and such Disputed Matter has not been resolved within thirty (30) days after
589 such Dispute was first referred to the Chairman (or such longer period as agreed to in
590 writing by the Partners who are parties to the Dispute), then the Disputed Matter shall
591 be simultaneously escalated to the Secretaries of the involved parties for resolution. If
592 the Secretaries cannot agree on a resolution for the Disputed Matter, then the
593 Secretaries may escalate the Dispute and consult with the Governor's Chief of Staff for
594 final resolution. Notwithstanding the provisions of this Section, at any time any
595 participant may unilaterally choose to voluntarily suspend or terminate their
596 participation in the Data Exchange in lieu of following the Dispute Resolution Process.
597

- 598 **b. Activities during Dispute Resolution Process.** Pending resolution of any Dispute
599 under this E-MOU, the Partners agree to fulfill their responsibilities in accordance with
600 this E-MOU, unless the Partner voluntarily suspends its right to Transmit Data, is
601 suspended by the Coordinating Committee, or exercises its right to cease Transmitting
602 Data.
603
- 604 **c. Implementation of Agreed Upon Resolution.** If, at any point during the Dispute
605 Resolution Process, all of the Partners to the Dispute accept a proposed resolution of the
606 Dispute, the Partners agree to implement the terms of the resolution in the agreed upon
607 timeframe.
608
- 609 **d. Disputes between a Partner and the Coordinating Committee.** If any Dispute arises
610 between a Partner and the Coordinating Committee, such Disputed Matter is escalated
611 to the Secretaries of the involved parties for resolution. If the Secretaries cannot agree
612 on a resolution for the Disputed Matter, then the Secretaries may escalate the Dispute
613 and consult with the Governor's Chief of Staff for final resolution. Notwithstanding the
614 provisions of this Section, at any time any Partner may unilaterally choose to voluntarily
615 suspend or terminate their participation in the Data Exchange in lieu of following the
616 Dispute Resolution Process.
617
- 618 **e. Dispute Resolution before Suspension.** Partners agree to address differences using
619 this Dispute Resolution Process as their initial method to resolve disagreements with
620 other Partners. A good faith effort should be made proactively to resolve differences
621 between Partners before the Coordinating Committee will consider interceding to
622 Suspend a Partner for failing to fulfill their E-MOU defined duties.
623

624 **18. Notices.**

- 625
- 626 **a.** All Notices to be made under this E-MOU shall be given in writing to the authorized
627 Partner's representative at the address listed with the Coordinating Committee, and
628 shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date
629 indicated on the return receipt, when sent by the United States Postal Service Certified
630 Mail, return receipt requested; and (iii) if by facsimile telecommunication or other form
631 of electronic Transmittal, upon receipt when the Notice is directed to a facsimile
632 telecommunication number or electronic mail address listed with the Coordinating

633 Committee and the sending facsimile machine or electronic mail address receives
634 confirmation of receipt by the receiving facsimile machine or electronic mail address.

635
636 **19. Miscellaneous/General.**

- 637
- 638 **a. Governing Law.** This E-MOU shall be governed by and construed in accordance with
639 the laws of the Commonwealth of Virginia.
- 640
- 641 **b. Amendment.** An amendment of the E-MOU may be recommended by agreement of at
642 least two-thirds of the Coordinating Committee. All Partners agree to sign an
643 amendment adopted in accordance with the provisions of this Section or terminate
644 participation in accordance with Appendix 3. Partners shall have the right to challenge a
645 Coordinating Committee recommendation to amend the E-MOU, with the challenge
646 being considered a Disputed Matter and resolved based on the Dispute Resolution
647 Process described in this E-MOU. Notwithstanding the provisions of this Section and
648 Appendix 3, at any time any Partner may unilaterally chose to voluntarily suspend or
649 terminate their participation in the Data Exchange in lieu of signing an amendment to
650 this E-MOU.
- 651
- 652 **c. Entire E-MOU.** This E-MOU, together with all Appendices and Attachments, constitutes
653 the entire agreement.
- 654
- 655 **d. Validity of Provisions.** In the event that any Section, or any part or portion of any
656 Section of this E-MOU, is determined to be invalid, void or otherwise unenforceable,
657 each and every remaining Section or part or portion thereof shall remain in full force
658 and effect.
- 659
- 660 **e. Priority.** In the event of any conflict or inconsistency between a provision in the body of
661 this E-MOU and any attachment hereto, the terms contained in the body of this E-MOU
662 shall prevail.
- 663
- 664 **f. Headings.** The headings throughout this E-MOU are for reference purposes only, and
665 the words contained therein may in no way be held to explain, modify, amplify, or aid in
666 the interpretation or construction of meaning of the provisions of this E-MOU. All
667 references in this instrument to designated "Sections" and other subdivisions are to the
668 designated Sections and other subdivisions of this E-MOU. The words "herein," "hereof,"
669 "hereunder," and other words of similar import refer to this E-MOU as a whole and not
670 to any particular Section or other subdivision.
- 671
- 672 **g. Relationship of the Partners.** Nothing in this E-MOU shall be construed to create a
673 partnership, relationship, or joint venture among the Partners. Neither the Coordinating
674 Committee nor any Partner shall have any authority to bind or make commitments on
675 behalf of another Partner for any purpose, nor shall any such Partner hold itself out as
676 having such authority. No Partner shall be held liable for the acts or omissions of
677 another Partner.
- 678

- 679 **h. Effective Date.** With respect to the first two Partners to this E-MOU, the Effective Date
680 shall be the date on which the second Partner executes this E-MOU. For all Partners
681 thereafter, the Effective Date shall be the date that the Partner executes this E-MOU.
682
- 683 **i. Counterparts.** This E-MOU may be executed in any number of counterparts, each of
684 which shall be deemed an original as against the Partner whose signature appears
685 thereon, but all of which taken together shall constitute but one and the same
686 instrument.
687
- 688 **j. Third-Party Beneficiaries.** There shall exist no right of any person to claim a beneficial
689 interest in this E-MOU or any rights occurring by virtue of this E-MOU.
690
- 691 **k. Force Majeure.** A Partner shall not be deemed in violation of any provision of this E-
692 MOU if it is prevented from performing any of its obligations by reason of: (a) severe
693 weather and storms; (b) earthquakes or other disruptive natural occurrences; (c) power
694 failures; (d) nuclear or other civil or military emergencies; (e) terrorist attacks; (f) acts
695 of legislative, judicial, executive, or administrative authorities; or (g) any other
696 circumstances that are not within its reasonable control. This Section shall not apply to
697 obligations imposed under Applicable Law.
698
- 699 **l. Time Periods.** Any of the time periods specified in this E-MOU may be changed
700 pursuant to the mutual written consent of the Coordinating Committee and the affected
701 Partner(s).

20. Version History

Number	Date	Author(s)	Comment
1	07/05/2012	Matt Cobb, Ashley Colvin, Joe Grubbs, Mike Wirth	Original version of the document ready for the POC
2	07/23/2012	Mike Wirth	Edits and updates based on the POC meeting
3	07/27/2012	Mike Wirth	Finished POC edits, packaged for a peer review with HHR and VITA.
4	08/07/2012	Mike Wirth	Finalized additional comments from VITA and DSS; prepared for OAG review.
5	11/2/2012	Mike Wirth	Updates based on OAG feedback
6	11/8/2012	Mike Wirth	Received peer review comments from Matt Cobb; made additional edits.
7	1/22/2013	Mike Wirth	Continued work on integrating Appendix content into base E-MOU document to streamline overall material.
8	3/7/2013	Mike Wirth	Updated with peer review comments on new sections. Added material for Appendix A.
9	6/4/2013	Mike Wirth	Resolved CISO comments.
10	11/1/2013	Mike Wirth	Updated with OAG feedback
11	12/31/2013	OAG Mike Wirth	Processed recent comments from OAG; produced cleaner copy for additional OAG review.
12	2/14/2014	OAG Mike Wirth	Additional OAG edits
13	4/2/14	Mike Wirth	Produced clean copy post OAG review
14	5/16/14	Belinda Willis	Cosmetic change only; inserted page break on page 9 of Appendices
15	10/24/14	Beth Ferrara	Fixed typo in Attachment A to

			Appendix 5: Changed “now aligned” to “not aligned”
16	4/29/2015	Mike Wirth Beth Ferrara	Work on adding additional types of partners (other secretariats, NGOs, commercial entities, local counties and cities. Administrative simplifications in the Appendicies and Attachments.
17	12/21/2015	Russell Sarbora	Add language to support Subcommittee size of 3 – n members. Modify Appendix 2 (New Subscriber Requirements) to support Subcommittee approval of New Subscriber Requirements on-boarding workflow/activities.
18	2/17/2016	Beth Ferrara	Incorporated edits and comments from Allyson Tysinger (OAG).
19	2/22/2016	Beth Ferrara	Made three minor clarifications from Allyson Tysinger (OAG).
20	2/25/2016	Russell Sarbora	Treat VITA’s role as an ITSP and not a data exchange Partner; Modify escalation process for Dispute Resolution