

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

**Version Date: November 2, 2015**

## **List of Appendices and Attachments**

Appendix 1	New Publisher Requirements
Appendix 2	New Subscriber Requirements
Appendix 3	Procedures for Suspending a Partner or Terminating a Partner.
Appendix 4	Process to Amend the eHHR Enhanced MOU
Appendix 5	Change Process for Data Exchange Services
Appendix 6	Procedures for Breach Notification
Attachment A	Publisher Requirements Template for Data Exchange Services
Attachment B	Subscriber Requirements Template for Data Exchange Services

# eHHR Enhanced Memorandum of Understanding (E-MOU)

WITNESSETH:

WHEREAS, the Secretaries of Health and Human Resources, Public Safety, Commerce and Trade, Technology, 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 policies, standards, and guidelines of the Partners and the Coordinating Committee; and either abide by the decisions of the Coordinating Committee or chose to unilaterally and voluntarily terminate their 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.

- 50 d. **Breach** shall mean all known incidents that threaten the security of the  
51 Commonwealth's databases and data communications resulting in exposure of data  
52 protected by federal or state laws, or other incidents compromising the security of the  
53 Commonwealth's information technology systems with the potential to cause major  
54 disruption to normal organization activities.  
55
- 56 e. **Changes** shall mean Developmental Changes and Compliance Changes. Changes shall be  
57 managed in accordance with Appendix 5 of this E-MOU.  
58
- 59 f. **Citizen** shall mean an individual whose personal information is maintained by a  
60 participating organization and subject to exchange with participating organizations.  
61
- 62 g. **Common Partner Resources** shall mean software, utilities and automated tools made  
63 available for use in connection with the exchange of Data pursuant to this E-MOU and  
64 which have been designated as "Common Partner Resources" by the Coordinating  
65 Committee. Partners that make resources available to be shared are responsible for  
66 ensuring compliance with Applicable Laws and Vendor licensing requirements.  
67
- 68 h. **Commonwealth Authentication Service** (or comparable Virginia Information  
69 Technologies Agency (VITA) approved credentialing service) shall mean the enterprise  
70 solution developed by the Virginia Department of Motor Vehicles for the purpose of  
71 validating a Citizen's identity and assigning credentials based on the Citizen's validated  
72 identity.  
73
- 74 i. **Data** shall have the same meaning as "personal information" set forth in Virginia Code §  
75 2.2-3801 when dealing with information about a Citizen.  
76
- 77 j. **Data Exchange Service** shall mean software programs that serve to securely and safely  
78 share data between approved Partners. Requirements for Data Exchange Services are  
79 defined in Appendix 1 and Appendix 2 of this E-MOU.  
80
- 81 k. **Data Request** shall mean a request for data made by one Partner to another and  
82 defined by an approved E-MOU Specification.  
83
- 84 l. **Data, Test** shall mean Data created by a Partner in accordance with the Validation Plan  
85 and used by the Partner, or by other Partners, for Testing purposes in a Test  
86 environment. Test Data in a Test environment shall not contain personally identifying  
87 information.  
88
- 89 m. **Data Transmittal** shall mean an electronic exchange of Data between Partners using  
90 agreed upon Specifications.  
91
- 92 n. **Digital Credentials** shall mean a mechanism, such as a public-key infrastructure, that  
93 enables Partners to electronically prove their identity and their authority to conduct  
94 data transmittal with other Partners.  
95
- 96 o. **Discloser** shall mean a Partner that discloses Data to another Partner through a  
97 transmittal in any format.  
98

- 99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147
- p. **Dispute or Disputed Matter** shall mean any controversy, dispute, or disagreement arising out of or relating to this E-MOU.
  - q. **Effective Date** shall mean the date of execution of this E-MOU, as recorded by the Coordinating Committee.
  - r. **Emergent Specifications** shall mean the technical specifications that existing and/or potential Partners are prepared to implement to test the feasibility of the Specifications, to identify whether the Specifications reflect an appropriate capability for the Partners, and assess whether the Specifications are sufficient to add as a production capability available to the Partners.
  - s. **Information Technology Service Provider or ITSP** shall mean a company or other organization that will support one or more Partners by providing them with operational, technical, or information technology services.
  - t. **Notice or Notification** shall mean a written communication, unless otherwise specified in this E-MOU, sent to the appropriate Partner’s representative, at the address listed with the Coordinating Committee, in accordance with the other policies and procedures attached to this E-MOU.
  - u. **Operational Measures or Operational Data** shall mean information pertaining to the volume and performance of Data Transmittals pursuant to this E-MOU; such as activity counts, performance measures, uptime metrics, error rates, connection metrics and other indicators of activity. It does not include citizen specific data.
  - v. **Partner** shall mean any organization that is a signatory to this E-MOU.
  - w. **Partner Access and Disclosure Policies** shall mean those policies and procedures of a Partner that govern a User’s ability to access, exchange, and transmit Data using the Partner’s System, including privacy and security policies.
  - x. **Publisher** shall mean a Partner that discloses Data to another Partner through Data Exchange Service.
  - y. **User** shall mean any person who has been authorized to conduct Data Transmittal through the respective Partner’s System in accordance with the Partner's Access and Disclosure Policies and Applicable Law.
  - z. **Specifications** shall mean the Specifications established by Applicable Law or adopted by the Coordinating Committee that prescribe the Data content, technical, and security requirements needed to enable the Partners to Transmit Data. Specifications may include, but are not limited to, specific standards, services, and policies applicable to Data Transmittal pursuant to this E-MOU. The specification requirements are attached hereto as Appendix 1 and Appendix 2 , and may be amended in accordance with Appendix 5. This E-MOU shall not be deemed to supersede any Partner’s obligations (if any) to comply with Specifications promulgated or established by the Secretary of Technology and the Commonwealth’s Chief Information Officer pursuant to § 2.2-225 and § 2.2-2007 of the *Code of Virginia*.

148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196

- aa. Subscriber** shall mean a Partner that receives Data from another Partner through a Data Exchange Service.
- bb. System** shall mean the software, portal, platform, or other electronic medium controlled by a Partner through which the Partner conducts its Data Transmittal related activities. For purposes of this definition, it shall not matter whether the Partner controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.
- cc. Testing** shall mean the tests and demonstrations of a Partner’s System and processes used for interoperable Data Transmittal to assess conformity with the Specifications and Validation Plan.
- dd. Transmit, Transmittal or Transmitting** shall mean, in varying tenses, to disclose Data electronically using the Specifications.
- ee. Validation Plan** shall mean the framework for Testing and demonstrations for parties seeking to become Partners. The Validation Plan is attached hereto as part of Appendix 1, and as amended in accordance with Appendix 5.

**2. Coordinating Committee.**

- a. Formation of the Coordinating Committee.** To support secure Data Transmittal, the Partners agree to establish a Coordinating Committee, which shall develop the Specifications, including Emergent Specifications, with which the Partners shall comply in Transmitting Data pursuant to this E-MOU.
- b. Composition of the Coordinating Committee.** The Coordinating Committee shall be composed of senior leaders or their designees from each of the Partner organizations. A majority of voting Committee members shall select a Committee Chairman and Vice-Chairman to serve an annual term coinciding with the Effective Date of this E-MOU. Nominees for Chairmain and Vice-Chairman must come from voting members within agencies of the Health and Human Resources, Public Safety, Commerce and Trade, Technology or Transportation Secretariats. A Committee Chairman and Vice-Chairman can serve successive terms.
- c. Staff Support for Coordinating Committee.** The Partners agree to designate support staff from their own organizations as required to provide a sufficient degree of support needed to carry out the activities of the Coordinating Committee as described in Section 3 and throughout this E-MOU.
- d. Recorder - Role.** The Recorder shall serve the Coordinating Committee by facilitating and archiving requests made by the Partners. For example: administering on-boarding requests from new Partners to join the Data Exchange; distributing Suspension or Termination notifications to Partners; coordinating requests to amend this E-MOU and administering requests to change Data Exchange Services. Unless otherwise noted in this E-MOU, the Recorder shall be the primary point of contact for the Coordinating Committee; receiving and sending communications on behalf of the body.

- 197 e. **Recorder – Selection and Term.** A majority of the voting Committee members shall  
198 select the Recorder from voting members within agencies of the Health and Human  
199 Resources, Public Safety, Technology or Transportation Secretariats.. The duties of the  
200 role may be delegated to a staff member of the elected Partner. The Recorder serves a  
201 term of one year and can serve successive terms.  
202
- 203 f. **Subcommittees.** The Chairman of the Coordinating Committee shall be authorized to  
204 form subcommittees to support Data Transmittal pursuant to this E-MOU.  
205 Subcommittees shall consist of one (1) representative from each of the Partner  
206 organizations, as designated by the organization’s senior leader. Subcommittee  
207 members may include the organization Chief Information Officers (CIO), Information  
208 Security Officers (ISO) or other designee, as determined by the organization’s senior  
209 leader.  
210
- 211 g. **Auditor of Public Accounts Representative.** The Auditor of Public Accounts may  
212 appoint an ex-officio, non-voting representative to serve on the Coordinating  
213 Committee.  
214
- 215 3. **Coordinating Committee Responsibilities.** The Partners agree that the Coordinating  
216 Committee will conduct the following activities:  
217
- 218 a. Maintaining a list of all E-MOU Partners, their designated representative(s) and their  
219 preferred contact information where they can be reached. Such contact information  
220 shall be made accessible by the Coordinating Committee to all E-MOU Partners by  
221 posting on a website. The Coordinating Committee shall request that VITA maintain a  
222 website that is accessible to all E-MOU Partners, Members of the Coordinating  
223 Committee, and any other stakeholders that the Coordinating Committee determines  
224 shall have access. Initially, this information will be deployed under the eHHR site at  
225 <https://dssshare.virginia.gov/sites/eHHRprogram>;  
226
- 227 b. Receiving reports of Breaches, notifying Partners of Breaches, receiving confirmation  
228 from Partners when the security of their Systems have been restored after Breaches,  
229 and notifying Partners when all issues leading to a Breach have been resolved.  
230 Notification of a Breach to the Coordinating Committee does not relieve the Partner of  
231 its responsibilities under Applicable Law, including required notifications that a Breach  
232 has occurred;  
233
- 234 c. Suspending or terminating Partners in accordance with Appendix 3 of this E-MOU;  
235
- 236 d. Resolving Disputes between Partners in accordance with this E-MOU;  
237
- 238 e. Managing the amendment of this E-MOU in accordance with Appendix 4 of this E-MOU;  
239
- 240 f. Developing, evaluating, prioritizing, and adopting Specifications, including Emergent  
241 Specifications, changes to such Specifications and the artifacts required by the  
242 Validation Plan in accordance with Appendix 1 and Appendix 2 of this E-MOU. Any  
243 Specifications developed shall be consistent with Applicable Law, any data or technical  
244 standards for information technology adopted by VITA Data Governance, the Secretary

- 245 of Technology, and any policies, procedures, and standards developed by the  
246 Commonwealth's Chief Information Officer for the protection of Data;  
247  
248 g. Maintaining a process for managing versions of the Specifications, including migration  
249 planning;  
250  
251 h. Evaluating requests for the introduction of Emergent Specifications into the Production  
252 environment used by the Partners to Transmit Data;  
253  
254 i. Coordinating with VITA Data Governance, the Secretary of Technology and  
255 Commonwealth's Chief Information Officer to ensure the interoperability of the  
256 Specifications with other initiatives regarding data exchange including, but not limited  
257 to, providing input into Information Technology Resource Management policies,  
258 standards and guidelines;  
259  
260 j. Performing impartial review of Partners compliance with the Specifications as defined  
261 in Appendix 1 and Appendix 2 of this E-MOU; and  
262  
263 k. Fulfilling all other responsibilities delegated by the Partners to the Coordinating  
264 Committee as set forth in this E-MOU.  
265  
266 l. The Coordinating Committee shall meet regularly to perform their assigned  
267 responsibilities. The regular working session schedule of the Coordinating Committee  
268 will be administered by the Chairman. The Chairman may also schedule additional ad-  
269 hoc working sessions of the Coordinating Committee when time-sensitive activities  
270 must be completed before the next regularly scheduled session.  
271

272 **4. Use of Data.**

- 273  
274 a. **Permitted Purpose.** Partners shall only Transmit Data in accordance with Applicable  
275 Law. Each Partner shall require that its Users comply with this Section.  
276  
277 b. **Permitted Future Uses.** Subscribers may retain and use Data in accordance with  
278 Applicable Law and the Subscribers's record retention policies and procedures.  
279  
280 c. **Management Uses.** The Coordinating Committee may request Operational Measures  
281 from Partners, and Partners agree to provide requested measures in accordance with  
282 Applicable Law, for the purposes listed in Section 13 of this E-MOU.  
283

284 **5. System Access Policies.**

- 285  
286 a. **Autonomy Principle.** Each Partner agrees to have Partner Access and Disclosure  
287 Policies. Each Partner acknowledges that Partner Access and Disclosure Policies will  
288 differ among them as a result of differing Applicable Law and business practices. Each  
289 Partner agrees to be responsible for determining whether and how to Transmit Data  
290 based on the application of its Partner Access and Disclosure Policies to the Data  
291 contained in the Data Transmittal. Each Partner shall comply with Applicable Law, this  
292 E-MOU, and all applicable Specifications in Transmittal of Data.  
293



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

299 **6. Enterprise Security.**

300  
301 **a. General.** Each Partner agrees to be responsible for maintaining a secure environment  
302 compliant with Commonwealth policies, standards and guidelines and other Applicable  
303 Law that supports the Transmission of Data in compliance with the Specifications.  
304 Partners shall use appropriate safeguards to prevent use or disclosure of Data other  
305 than as permitted by this E-MOU and Applicable Law, including appropriate  
306 administrative, physical, and technical safeguards that protect the confidentiality,  
307 integrity, and availability of that Data. Appropriate safeguards shall be those required  
308 by Applicable Law related to Data security. Each Partner agrees to, as appropriate  
309 under Applicable Law, have written privacy and security policies, including Access and  
310 Disclosure Policies, in place with VITA or locally before the Partner's respective  
311 Effective Date. To the extent permitted under Applicable Law, Partners shall comply  
312 with any Specifications that define expectations with respect to enterprise security.  
313

314 **b. Malicious Software.** Each Partner agrees to employ security controls that meet  
315 applicable requirements defined in VITA ITRM Standards, including SEC501-07.01 (or  
316 later) and VITA ITRM Guideline SEC515-00 (or later), so that Data Transmittal will not  
317 introduce any viruses, worms, unauthorized cookies, trojans, malicious software,  
318 "malware," or other program, routine, subroutine, or Data designed to disrupt the  
319 proper operation of a System or any part thereof or any hardware or software used by a  
320 Partner in connection therewith, or which, upon the occurrence of a certain event, the  
321 passage of time, or the taking of or failure to take any action, will cause a System or any  
322 part thereof or any hardware, software or Data used by a Partner in connection  
323 therewith, to be improperly accessed, destroyed, damaged, or otherwise made  
324 inoperable.  
325

326 **7. Equipment and Software.** In accordance with Applicable Law, each Partner shall be  
327 responsible for procuring, and assuring that its Users have or have access to, all equipment  
328 and software necessary for it to Transmit Data. Each Partner shall ensure that all computers  
329 and electronic devices owned or leased by the Partner used to Transmit Data are properly  
330 configured, including, but not limited to, the operating system, web server, and Internet  
331 connectivity. Partners shall ensure that System solutions that enable Citizens to input their  
332 personal data as part of the solution workflow are compliant with the Specifications.  
333

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

339 **9. Specifications.**

340

- 341 a. **General Compliance.** Each Partner shall comply with all of the Specifications under this  
342 E-MOU, and identified hereto as Appendix 1 and Appendix 2, unless compliance would  
343 be a violation of Applicable Law.  
344
- 345 b. **Adoption of Specifications.** The Partners hereby acknowledge the role of the  
346 Coordinating Committee as the mechanism whereby the Partners jointly adopt new  
347 Specifications, and that the Coordinating Committee may adopt amendments to, or  
348 repeal and replacement of, the Specifications at any time, as outlined in Appendix 5 of  
349 this E-MOU. Specifications should be in compliance with the applicable template  
350 defined in Appendix 1 and Appendix 2.  
351
- 352 c. **Specification Amendment Process.** The Specifications shall be amended as set forth in  
353 Appendix 5 of this E-MOU.  
354

355 **10. Expectations of Partners.**  
356

357 a. **Minimum Requirements for Partners Regarding Data Requests.**  
358

- 359 1. All Partners that make Data Requests, or allow their respective Users to make Data  
360 Requests, shall have a corresponding reciprocal duty to respond to Data Requests. A  
361 Partner shall fulfill its duty by either (i) responding to the Data Request with the  
362 requested Data, or (ii) responding with a standardized response that indicates the  
363 Data is not available or cannot be exchanged. Data Transmittals in response to Data  
364 Requests shall comply with the Specifications, this E-MOU, applicable Partner  
365 Access and Disclosure Policies, any applicable agreements between Partners and  
366 their Users, and Applicable Law. Partners must be approved to request data from  
367 the specified Data Exchange Service as defined in Appendix 1 and Appendix 2.  
368 Nothing in this E-MOU shall require a Data Transmittal that would violate  
369 Applicable Law.  
370
- 371 2. Each Partner that makes Data Requests, or allows its respective Users to make Data  
372 Requests, shall Transmit Data with all other Partners, in accordance with Sections 6,  
373 12 and 14 of this E-MOU. If a Partner desires to stop Transmitting Data with another  
374 Partner based on the other Partner's acts or omissions in connection with this E-  
375 MOU, the Partner may temporarily stop Transmitting Data with such Partner to the  
376 extent necessary to address the Partner's concerns and to the extent allowed or  
377 required by Applicable Law. If any such cessation occurs, the Partner shall provide a  
378 Notification to the Coordinating Committee of such cessation and the reasons  
379 supporting the cessation. The Partners shall submit the Dispute leading to the  
380 cessation through the Dispute Resolution Process. If the cessation is a result of a  
381 Breach that was reported to, and deemed resolved pursuant to Appendix 6, the  
382 Partners involved in the Breach and the cessation agree to engage in the Dispute  
383 Resolution Process in an effort to attempt to reestablish trust and resolve any  
384 security concerns arising from the Breach.  
385

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

390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438

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

- a. Submittal of Data.** Transmit Data in compliance with Applicable Law, this E-MOU, the applicable Partner Access and Disclosure Policies, and the applicable Specifications.
- b. Authorization.** If Applicable Law requires an Authorization from the individual who is the subject of the Data in order to exchange the Data, the requesting Partner shall provide an Authorization that meets all requirements of Applicable Law.

**12. Privacy and Security.**

- a. Applicability of Privacy and Security Regulations.** To maintain the privacy, confidentiality, and security of Data, each Partner shall comply with Applicable Law, Applicable Partner Access and Disclosure Policies, the Specifications, and this E-MOU.
- b. Safeguards.** In accordance with Sections 7, 8 and 9, Partners shall use reasonable and appropriate administrative, physical, and technical safeguards and comply with the Specifications to protect Data and to prevent use or disclosure of Data other than as permitted by Section 4 of this E-MOU.
- c. Breach Notification.** Partners shall report to the Commonwealth's Chief Information Officer all known incidents that threaten the security of the Commonwealth's databases and Data communications resulting in exposure of Data protected by federal or state laws, or other incidents compromising the security of the Commonwealth's information technology systems with the potential to cause major disruption to normal organization activities. Such reports shall be made to the Chief Information Officer within 24 hours from when the Partner discovered or should have discovered the occurrence. Partners shall also comply with any Applicable Law regarding Breaches, including Virginia Code § 18.2-186.6. Policies and Procedures for Breach Notification have been provided in Appendix 6.
- d. Conflict of Obligations.** This Section shall not be deemed to supersede a Partner's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law.
- e. Conflict of Compliance.** Compliance with this Section shall not relieve Partners of any other security incident or Breach reporting requirements under Applicable Law including, but not limited to, those related to Citizens.

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

- a. Data Requested by the Coordinating Committee.** Except to the extent prohibited by Applicable Law, each Partner has provided, and agrees to continue to provide, the Coordinating Committee with all Operational Measures reasonably requested by the Coordinating Committee and needed by the Coordinating Committee to discharge its duties under this E-MOU or Applicable Law. Any Operational Measures provided by a

439 Partner to the Coordinating Committee shall be responsive and accurate. Each Partner  
440 agrees to provide Notice to the Coordinating Committee if any Operational Measures  
441 provided by the Partner to the Coordinating Committee materially changes. Each  
442 Partner agrees to cooperate in the confirmation or other verification of the  
443 completeness and accuracy of any Operational Measures provided. At any time, each  
444 Partner agrees to cooperate with the Coordinating Committee in such requests, given  
445 reasonable prior Notice. If a Partner cannot in good faith provide Operational Measures  
446 as requested by the Coordinating Committee, the Partner may ask for relief from the  
447 request as defined in the Dispute Resolution Process.  
448

- 449 **b. Execution of the E-MOU.** Each Partner shall execute this E-MOU and return an  
450 executed copy of this E-MOU to the Coordinating Committee. In doing so, the Partner  
451 affirms that it has full power and authority to enter into and perform this E-MOU and  
452 has taken whatever measures necessary to obtain all required approvals or consents in  
453 order for it to execute this E-MOU. The representatives signing this E-MOU on behalf of  
454 the Partners affirm that they have been properly authorized and empowered to enter  
455 into this E-MOU on behalf of the Partner. The organization's senior leader shall be the  
456 representative authorized to sign on behalf of the Partner organization.  
457

458 VITA shall maintain the E-MOU documents in an on-line, printable, version-controlled  
459 location that is accessible to all Partners, Members of the Coordinating Committee, and  
460 any other stakeholders that the Coordinating Committee determines require access.  
461

- 462 **c. Compliance with this E-MOU.** Except to the extent prohibited by Applicable Law, each  
463 Partner shall comply fully with all provisions of this E-MOU.  
464

- 465 **d. Agreements with Users.** Each Partner shall have established agreements with each of  
466 its Users that require the User to, at a minimum: (i) comply with all Applicable Law; (ii)  
467 reasonably cooperate with the Partner on issues related to this E-MOU; (iii) Transmit  
468 Data only for a permitted purpose; (iv) use Data received from another Partner or User  
469 in accordance with the terms and conditions of this E-MOU; (v) within 24 hours after  
470 determining that a Breach occurred, User will report such Breach to the Partner who in  
471 turn will report to the Commonwealth's Chief Information Officer in accordance with §  
472 2.2-603, *Code of Virginia*; and (vi) refrain from disclosing to any other person any  
473 passwords or other security measures issued to the User by the Partner.  
474 Notwithstanding the foregoing, for Users who are employed by a Partner or who have  
475 agreements with the Partner which became effective prior to the Effective Date,  
476 compliance with this Section may be satisfied through written policies and procedures  
477 that address items (i) through (vi) of this Section so long as the Partner can document  
478 that there is a written requirement that the User must comply with the policies and  
479 procedures.  
480

- 481 **e. Agreements with Vendors.** To the extent that a Partner uses vendors in connection  
482 with the Partner's Transmittal of Data, each Partner affirms that it has established  
483 agreements with each of its vendors, including ITSPs, that require the vendor to, at a  
484 minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of any  
485 Data to which it has access; (iii) as soon as reasonably practicable after determining that  
486 a Breach occurred, report such Breach to the Partner; and (iv) reasonably cooperate  
487 with the other Partners to this E-MOU on issues related to this E-MOU, under the

488 direction of the Partner. These agreements include, but are not limited to, Memoranda  
489 of Understanding between Partners and the Virginia Information Technologies Agency.

490  
491 **f. Creation of Test Data.** Certain Partners may agree to create Test Data to be used by  
492 other Partners for testing. Any Test Data shall not contain personally identifying  
493 information. Test Data shall be created in accordance with the Validation Plan and used  
494 only within a Test environment.

495  
496 **g. Accuracy of Data.** When Transmitting Data, each Partner hereby represents that at the  
497 time of Transmittal, the Data it provides is (a) an accurate representation of the Data  
498 contained in, or available through, its System, (b) sent from a System that employs  
499 security controls that meet VITA standards so that the Data are intended to be free from  
500 malicious software in accordance with Section 7.b, and (c) provided in a timely manner  
501 and in accordance with the Specifications.

502  
503 **h. Use of Data.** Each Partner shall use Data transmitted to it only in accordance with the  
504 provisions of this E-MOU or as permitted or required by Applicable Law.

505  
506 **i. Compliance with Laws.** Each Partner shall fully comply with all Applicable Law.

507  
508 **14. Treatment of Data.**

509  
510 **a. Hold in Confidence.** Each Subscriber agrees to hold all personally identifying Data in  
511 confidence and agrees that it shall not, during the term or after the termination of this E-  
512 MOU, redisclose to any person or entity, nor use for its own business or benefit, any  
513 such Data obtained by it in connection with this E-MOU, unless such use or redisclosure  
514 is permitted by the terms of this E-MOU or permitted or required by Applicable Law.

515  
516 **15. Disclaimers.**

517  
518 **a. Reliance on a System.** Each Partner acknowledges and agrees that: (i) the Data  
519 provided by, or through, its System is drawn from numerous sources, (ii) the Data is  
520 specific to the point in time when drawn, and (iii) it can only confirm that, at the time of  
521 the Data Transmittal the Data are an accurate representation of Data contained in, or  
522 available through, its System. Nothing in this E-MOU shall be deemed to impose  
523 responsibility or liability on a Partner related to the clinical accuracy, content or  
524 completeness of any Data provided pursuant to this E-MOU. The Partners acknowledge  
525 that other Partners' Digital Credentials may be activated, suspended or revoked at any  
526 time or the Partner may suspend its participation; therefore, Partners may not rely  
527 upon the availability of a particular Partner's Data.

528  
529 **b. Carrier lines.** All Partners acknowledge that the Transmittal of Data between Partners  
530 is to be provided over various facilities and communications lines, and Data shall be  
531 transmitted over local exchange and Internet backbone carrier lines and through  
532 routers, switches, and other devices (collectively, "carrier lines") owned, maintained,  
533 and serviced by third-party carriers, utilities, and Internet service providers, all of  
534 which may be beyond the Partners' control. Provided a Partner uses reasonable security  
535 measures, no less stringent than those directives, instructions, and specifications  
536 contained in this E-MOU and the Specifications and Applicable Law, the Partners

537 assume no liability for or relating to the integrity, privacy, security, confidentiality, or  
538 use of any Data while it is transmitted over those carrier lines, which are beyond the  
539 Partners' control, or any delay, failure, interruption, interception, loss, Transmittal, or  
540 corruption of any Data or other information attributable to Transmittal over those  
541 carrier lines which are beyond the Partners' control. Use of the carrier lines is solely at  
542 the Partners' risk and is subject to all Applicable Law. If a Breach occurs and it is  
543 determined that it happened because of a Carrier issue, the Partner responsible for the  
544 Data being transmitted is the responsible party for the Breach Notification.  
545

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

- 547
- 548 **a. Term.** The initial term of this E-MOU shall be for a period of one year commencing on  
549 the Effective Date. Upon the expiration of the initial term, this E-MOU shall  
550 automatically renew for successive one-year terms unless terminated pursuant to this  
551 Section.  
552
- 553 **b. Addition.** On-boarding new partners shall be in accordance with Appendix 1 and  
554 Appendix 2 of this E-MOU.  
555
- 556 **c. Suspension, Reinstatement or Termination.** Suspensions, Reinstatements and  
557 Terminations of Partners shall be in accordance with Appendix 3 of this E-MOU.  
558
- 559 **d. Effect of Termination.** Upon any termination of this E-MOU for any reason, the  
560 terminated party shall cease to be a Partner and thereupon and thereafter neither that  
561 party nor its Users shall have any rights to participate in the Data Exchange. In the event  
562 a Partner fails to comply with the policies, standards and guidelines of the Coordinating  
563 Committee, or abide by the decisions of the Coordinating Committee, the Coordinating  
564 Committee may revoke a Partner's Digital Credentials, which will terminate the  
565 Partner's participation in the Data Exchange. Once the Coordinating Committee revokes  
566 the Partner's Digital Credentials, the Coordinating Committee shall provide Notice of  
567 such revocation to the remaining Partners. In the event that any Partner(s) is  
568 terminated, this E-MOU will remain in full force and effect with respect to all other  
569 Partners. Any Partner terminated from this E-MOU shall consider executing alternate  
570 data sharing agreements and where required by applicable law, shall do so.  
571

572 **17. Dispute Resolution Process.**

- 573
- 574 **a. General.** If any Dispute arises between Partners, those Partners agree to commence  
575 efforts to resolve such dispute in good faith via a designated subcommittee of the  
576 Coordinating Committee. The subcommittee will be formed by the Coordinating  
577 Committee within seven (7) business days after written notification of the Dispute. Any  
578 Partner may submit written notification of a Dispute to the Coordinating Committee. If  
579 the Disputed Matter has not been resolved by the subcommittee within thirty (30) days  
580 after first having been referred to the subcommittee (or at any earlier time, if requested  
581 by Partners who are parties to the Dispute), such Dispute may be referred to the  
582 Chairman of the Coordinating Committee for resolution. Should the Chairman be a  
583 leader of a Partner involved in the Dispute, the Chairman will recuse himself and defer  
584 Dispute oversight duties to the Vice-Chairman. If a Disputed Matter is referred to the  
585 Chairman and such Disputed Matter has not been resolved within thirty (30) days after

586 such Dispute was first referred to the Chairman (or such longer period as agreed to in  
587 writing by the Partners who are parties to the Dispute), then the Disputed Matter shall  
588 be simultaneously escalated to the Secretaries of Health and Human Resources, Public  
589 Safety, Commerce and Trade, Technology, and Transportation for resolution. If the  
590 Secretaries cannot agree on a resolution for the Disputed Matter, then the Secretaries  
591 may escalate the Dispute and consult with the Governor's Chief of Staff for final  
592 resolution. Notwithstanding the provisions of this Section, at any time any participant  
593 may unilaterally choose to voluntarily suspend or terminate their participation in the  
594 Data Exchange in lieu of following the Dispute Resolution Process.

595  
596 **b. Activities during Dispute Resolution Process.** Pending resolution of any Dispute  
597 under this E-MOU, the Partners agree to fulfill their responsibilities in accordance with  
598 this E-MOU, unless the Partner voluntarily suspends its right to Transmit Data, is  
599 suspended by the Coordinating Committee, or exercises its right to cease Transmitting  
600 Data.

601  
602 **c. Implementation of Agreed Upon Resolution.** If, at any point during the Dispute  
603 Resolution Process, all of the Partners to the Dispute accept a proposed resolution of the  
604 Dispute, the Partners agree to implement the terms of the resolution in the agreed upon  
605 timeframe.

606  
607 **d. Disputes between a Partner and the Coordinating Committee.** If any Dispute arises  
608 between a Partner and the Coordinating Committee, such Disputed Matter is escalated  
609 to the Secretaries of Health and Human Resources, Public Safety, Commerce and Trade,  
610 Technology, and Transportation for resolution. If the Secretaries cannot agree on a  
611 resolution for the Disputed Matter, then the Secretaries may escalate the Dispute and  
612 consult with the Governor's Chief of Staff for final resolution. Notwithstanding the  
613 provisions of this Section, at any time any Partner may unilaterally choose to voluntarily  
614 suspend or terminate their participation in the Data Exchange in lieu of following the  
615 Dispute Resolution Process.

616  
617 **e. Dispute Resolution before Suspension.** Partners agree to address differences using  
618 this Dispute Resolution Process as their initial method to resolve disagreements with  
619 other Partners. A good faith effort should be made proactively to resolve differences  
620 between Partners before the Coordinating Committee will consider interceding to  
621 Suspend a Partner for failing to fulfill their E-MOU defined duties.

622  
623 **18. Notices.**

624  
625 **a.** All Notices to be made under this E-MOU shall be given in writing to the authorized  
626 Partner's representative at the address listed with the Coordinating Committee, and  
627 shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date  
628 indicated on the return receipt, when sent by the United States Postal Service Certified  
629 Mail, return receipt requested; and (iii) if by facsimile telecommunication or other form  
630 of electronic Transmittal, upon receipt when the Notice is directed to a facsimile  
631 telecommunication number or electronic mail address listed with the Coordinating  
632 Committee and the sending facsimile machine or electronic mail address receives  
633 confirmation of receipt by the receiving facsimile machine or electronic mail address.

635 **19. Miscellaneous/General.**

636  
637 **a. Governing Law.** This E-MOU shall be governed by and construed in accordance with  
638 the laws of the Commonwealth of Virginia.

639  
640 **b. Amendment.** An amendment of the E-MOU may be recommended by agreement of at  
641 least two-thirds of the Coordinating Committee. All Partners agree to sign an  
642 amendment adopted in accordance with the provisions of this Section or terminate  
643 participation in accordance with Appendix 3. Partners shall have the right to challenge a  
644 Coordinating Committee recommendation to amend the E-MOU, with the challenge  
645 being considered a Disputed Matter and resolved based on the Dispute Resolution  
646 Process described in this E-MOU. Notwithstanding the provisions of this Section and  
647 Appendix 3, at any time any Partner may unilaterally chose to voluntarily suspend or  
648 terminate their participation in the Data Exchange in lieu of signing an amendment to  
649 this E-MOU.

650  
651 **c. Entire E-MOU.** This E-MOU, together with all Appendices and Attachments, constitutes  
652 the entire agreement.

653  
654 **d. Validity of Provisions.** In the event that any Section, or any part or portion of any  
655 Section of this E-MOU, is determined to be invalid, void or otherwise unenforceable,  
656 each and every remaining Section or part or portion thereof shall remain in full force  
657 and effect.

658  
659 **e. Priority.** In the event of any conflict or inconsistency between a provision in the body of  
660 this E-MOU and any attachment hereto, the terms contained in the body of this E-MOU  
661 shall prevail.

662  
663 **f. Headings.** The headings throughout this E-MOU are for reference purposes only, and  
664 the words contained therein may in no way be held to explain, modify, amplify, or aid in  
665 the interpretation or construction of meaning of the provisions of this E-MOU. All  
666 references in this instrument to designated "Sections" and other subdivisions are to the  
667 designated Sections and other subdivisions of this E-MOU. The words "herein," "hereof,"  
668 "hereunder," and other words of similar import refer to this E-MOU as a whole and not  
669 to any particular Section or other subdivision.

670  
671 **g. Relationship of the Partners.** Nothing in this E-MOU shall be construed to create a  
672 partnership, relationship, or joint venture among the Partners. Neither the Coordinating  
673 Committee nor any Partner shall have any authority to bind or make commitments on  
674 behalf of another Partner for any purpose, nor shall any such Partner hold itself out as  
675 having such authority. No Partner shall be held liable for the acts or omissions of  
676 another Partner.

677  
678 **h. Effective Date.** With respect to the first two Partners to this E-MOU, the Effective Date  
679 shall be the date on which the second Partner executes this E-MOU. For all Partners  
680 thereafter, the Effective Date shall be the date that the Partner executes this E-MOU.

681



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

## 20. Version History

<b>Number</b>	<b>Date</b>	<b>Author(s)</b>	<b>Comment</b>
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.