



Common Agreement Work Group Memorandum of Understanding and Confidentiality Agreement

This Memorandum of Understanding and Confidentiality Agreement (MOUCA) is made by and between The Sequoia Project, in its capacity as the ONC Trusted Exchange Framework and Common Agreement (TEFCA) Recognized Coordinating Entity (RCE) and _____, an organization seeking to participate in the Common Agreement Work Group (the CA Work Group), does recite and state as follows:

1. PURPOSE OF THE CA WORK GROUP

The RCE is responsible for developing the Common Agreement in coordination with ONC, including the Additional Required Terms and Conditions (ARTCs) and the Qualified Health Information Network (QHIN) Technical Framework (QTF) in addition to the Minimum Required Terms and Conditions (MRTCs) that ONC published in the TEFCA Draft 2 Guidance. The CA Work Group will provide input to the RCE in support of the RCE's effort to develop the Common Agreement. The CA Work Group will provide feedback to the RCE on issues that the RCE presents to the CA Work Group. The feedback is intended to be advisory only and the RCE is not required to incorporate any specific feedback into the draft Common Agreement.

2. REPRESENTATIONS

By signing this MOUCA as an authorized representative of your organization, you are acting on behalf of your organization and representing that the following statements are true and accurate ~~and you acknowledge~~. Your organization acknowledges that the RCE is expressly relying on ~~your~~these representations in making a decision about whether your organization will be asked to serve on the CA Work Group.

- a. All information in the CA Work Group Application is complete and accurate and you, and your organization, agree to comply with all of the conditions set forth in the application.
- b. If your organization is a Health Information Network (HIN), it already operates a network that provides the ability to locate and transmit Electronic Health Information (EHI) between multiple persons and/or entities electronically, on demand, or pursuant to one or more automated processes; Alternatively, if your organization is a Participant / Participant Member of a HIN, then your organization has the ability to locate and transmit, on demand, or pursuant to one or more automated processes EHI via the HIN;
- c. Your organization is a HIN and ~~has~~, based on the ~~ability~~TEFCA v.2 guidance published by

ONC, believes that it will be able to qualify as a QHIN; ~~or, Alternatively,~~ your organization is a Participant / Participant Member of a HIN which ~~has the ability~~believes that it will be able to qualify as a Participant / Participant Member of a QHIN;

- d. Your organization has the demonstrated ability to exchange documents at a in production ~~level, according to~~for at least the Treatment Exchange Purposes Purpose and Modalities in the MRTCs for QHIN Query ~~and QHIN Message Delivery~~ in QTF Draft 1, including recommended standards; and QHIN Message Delivery, including recommended or the alternative / emerging standards in QTF Draft 1;
- e. If your organization is a HIN, it has a demonstrated ability to support production exchange for ~~the services under (d)~~at least the Treatment Exchange Purpose at a nationwide scale;
- f. If your organization is a Participant / Participant Member, it is exchanging EHI in a live production environment and has been using the network for at least one year at the time of the HIN's application;
- g. If your organization is a HIN, your organization has Participants and/or Participant Members;
- h. Your organization is exchanging health data that meets the definition of Electronic Health Information using its network in accordance with all federal and state laws that govern the organization or the health information that the organization exchanges (Applicable Law); and
- i. Your organization has the necessary personnel, technological infrastructure, privacy and security safeguards to protect the confidentiality, integrity and availability of EHI, and other appropriate resources.
- j. Acknowledge that participation in the CA Work Group does not provide any assurance that the organization is or will be designated as a QHIN or a Participant / Participant Member of a QHIN.
- k. If accepted to the CA Work Group, you and your organization will not advertise or promote your membership on the CA Work Group.

3. PARTICIPATION IN THE CA WORK GROUP PROCESS

Your organization agrees to provide individuals to serve in the CA Work Group with the qualifications outlined in the CA Work Group Application. Your organization will allow these individuals to fully participate in all meetings of the CA Work Group, including in-person meetings, at no cost to the RCE. The participants acknowledge that their active participation in every CA Work Group meeting is important and agree to be prepared for every meeting. The RCE may also present materials including, but not limited to, drafts of contract language for the CA Work Group to review and provide specific feedback. Work Group participants representing your organization will diligently review these materials and provide feedback as requested by the RCE. The RCE reserves the right to remove any individual or organization from the CA Work Group if they fail to actively participate and contribute to the Work Group.

4. CONFIDENTIALITY OBLIGATIONS

~~The work of~~ It is important for participants in the CA Work Group ~~is confidential in order to encourage participants to provide candid feedback on the matters before the CA Work Group.~~ In order to protect all participants and to ensure honest and productive discussions, you agree to treat ~~everything~~ all non-public materials that you ~~encounter~~ receive as part of your participation in the CA Work Group as ~~confidential~~ “Confidential Information” and not to disclose any Confidential Information ~~, except to others in your organization whose input you are seeking in order to fulfill your obligations as a participant in the CA Work Group.~~ Confidential Information includes, but is not limited to, the following:

- ~~• the membership of the CA Work Group;~~
- ~~• the fact that you are participating in the CA Work Group;~~
 - CA Work Group agendas, meeting notes, presentations, issue papers, draft contract language, e-mails, ~~and anything else and any other non-public materials relating to the topics being addressed during CA Work Group meetings~~ that you receive from the RCE or other CA Work Group participants in connection with the CA Work Group;
- ~~• Your thoughts, comments or submissions whether oral or written about issues being considered by the CA Work Group;~~
 - E-mails that you send or receive regarding the CA Work Group;
 - Any non-public ONC policy directions which may be communicated as part of the CA Work Group process;
 - Discussions among CA Work Group participants about the topics being addressed during CA Work Group meetings, whether in written or oral form.

Neither you, nor your organization or anyone in your organization, may be interviewed, write articles, make presentations or otherwise publicly discuss the CA Work Group or your work with it without the prior expressed written consent of the RCE. Notwithstanding the previous sentence, the RCE acknowledges that nothing in this MOU prevents the use of general knowledge, skills, experience, concepts, or know-how that that may be retained in the unaided memory of your personnel who have had rightful access to Confidential Information that is subject to this MOU.

These confidentiality obligations apply both to you individually and to your organization. ~~You can only share Confidential Information with others in your organization whose input you are seeking in order to fulfill your obligations as a participant in the CA Work Group.~~ You must inform everyone with whom you share Confidential Information of their obligation to preserve the confidentiality of all Confidential Information even though those individuals are not a member of the CA Work Group.

These confidentiality obligations remain in force after you leave the CA Work Group and after the CA Work Group completes its work. When you leave the CA Work Group, ~~you will destroy or return any Confidential Materials that you possess. This includes your notes and e-mails related to your work on~~ after the CA Work Group. ~~If you cannot destroy or return the Confidential Materials, you must store them in a secure location that will~~ completes its work and disbands, you will continue to protect the confidentiality of the Confidential ~~Information.~~ Materials by storing them in a secure location within your records management system.

If you fail to comply with your confidentiality obligations, you may be removed from the CA Work Group.

5. GENERAL PROVISIONS

- a. **Consideration.** You agree that you are not being compensated in cash or in-kind for your participation in the CA Work Group. Despite the absence of any compensation, you agree that the ability to participate in the CA Work Group is good and valuable consideration which makes the terms of this MOUCA enforceable.
- b. **Governing Law.** This MOUCA shall be governed by the laws of the Commonwealth of Virginia without regard to any conflict of laws provisions. In the event that a dispute arises regarding this MOUCA or your participation in the CA Work Group, you and your organization agree that exclusive venue shall lie with the Circuit Court of the City of Alexandria, Virginia.
- c. **Term and Termination.** This MOUCA shall be effective when counter-signed by the RCE and shall remain in effect until you stop participating in the CA Work Group. The RCE may require you to stop participating in the CA Work Group if you fail to fulfill the obligations identified in this MOUCA to the satisfaction of the RCE.
- d. **Hold Harmless.** You agree that you will not seek to recover from the RCE any damages of any kind related to your participation on the CA Work Group.
- e. **Amendment.** This MOUCA cannot be amended by either you or the RCE without mutual agreement.

6. ATTESTATION OF PARTICIPATING IN THE EXCHANGE ACTIVITIES UNDER THE COMMON AGREEMENT

Your organization attests that it has a good faith intention to ~~apply~~consider applying as a QHIN, or a Participant or Participant Member of a QHIN, for the exchange activities under the Common Agreement. Your organization also attests that it is willing to ~~serve~~consider serving in any pilot versions of the Common Agreement that the RCE and ONC establish. It is understood and agreed that your organization may decide to not apply once the details of the CA become known and that will not be considered a violation of this MOU.

PROPOSED WORK GROUP PARTICIPANTS

Participant #1

PRINTED NAME _____

SIGNATURE _____

DATE _____

SIGNATURE _____

DATE _____

Participant #2

PRINTED NAME _____

SIGNATURE _____

DATE _____

SIGNATURE _____

DATE _____

Participant #3

PRINTED NAME _____

SIGNATURE _____

DATE _____

SIGNATURE _____

DATE _____

PARTICIPANTS' ORGANIZATION

PRINTED NAME OF ~~ORGANIZATION~~ _____ ORGANIZATION _____

PRINTED NAME AND TITLE OF INDIVIDUAL SIGNING ON BEHALF OF ORGANIZATION_

SIGNATURE_ _____

DATE_ _____

The Sequoia Project, Inc. PRINTED NAME _____

SIGNATURE _____

DATE _____

SIGNATURE _____

DATE _____