



**AMENDED AND RESTATED DIRECTTRUST FEDERATED SERVICES AGREEMENT  
FOR ACCREDITED ENTITIES<sup>1</sup>**

**THIS AMENDED AND RESTATED FEDERATED SERVICES AGREEMENT FOR ACCREDITED ENTITIES** (the “DirectTrust FSA” or “Agreement”) is between DirectTrust.org, Inc., a Delaware not-for-profit corporation (“DirectTrust”) and the participants set forth on Schedule 1 (“Participant”) and is entered into effective as of \_\_\_\_\_ (“Effective Date”).

**RECITALS**

A. DirectTrust is an independent non-profit trade association created by and for participants in the Direct community to establish and maintain a national Security and Trust Framework in support of Direct exchange. DirectTrust, in conjunction with its partners, administers the DirectTrust Trusted Agent Accreditation Programs (“Accreditation Programs”) for Health Internet Service Providers (“HISPs”), Certificate Authorities (“CAs”), and Registration Authorities (“RAs”).

B. This Agreement, and other policies referenced herein, establish the terms governing Participant’s inclusion into and continued participation in the “DirectTrust Trust Anchor Bundle(s),” which are comprised of trust anchor certificates for entities that have obtained the accreditation(s) referenced in this Agreement, have met the additional requirements for inclusion in the trust anchor bundle, and have signed and become a party to this Agreement.

C. Participant is a HISP that is recognized by DirectTrust as accredited. In addition, Participant either (i) is itself a CA and/or RA recognized by DirectTrust as accredited, or (ii) has obtained and attached hereto as Exhibit A the signed agreement of a CA and/or RA recognized by DirectTrust as accredited (the “CA/RA Addendum”), which CA and/or RA shall support Participant’s HISP services in connection with its participation in DirectTrust Trust Anchor Bundle(s) under this Agreement.

D. Participant desires to participate in DirectTrust Trust Anchor Bundle(s) with other Participants.

E. This Agreement amends and restates the DirectTrust Federated Services Agreement for Accredited Entities adopted on March 25, 2015.

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<sup>1</sup> Approved by the DirectTrust Board of Directors on June 14, 2017

**NOW, THEREFORE**, in consideration of the mutual promises and benefits set forth herein, for good and valuable consideration the sufficiency of which is hereby acknowledged, DirectTrust and Participant agree as follows:

## **I. PARTICIPANT RESPONSIBILITIES**

a. Accreditation. Participant is currently, and shall for the duration of this Agreement remain, accredited and in good standing under the terms of the Accreditation Programs or another accreditation programs approved as equivalent by DirectTrust, including but not limited to an Accreditation Program administered by DirectTrust. Furthermore, Participant agrees that any separate CA or RA used by Participant in connection with its participation in DirectTrust Trust Anchor Bundle(s) shall be, and for the duration of this Agreement shall remain, accredited and in good standing under the terms of the Accreditation Program or another accreditation program approved as equivalent by DirectTrust, including but not limited to an Accreditation Program administered by DirectTrust. Participant shall cause each such separate CA or RA to sign, and Participant shall submit to DirectTrust, an addendum in the form of the CA/RA Addendum attached hereto as Exhibit A. Participant agrees that it, and its separate CA and/or RA, if applicable, shall adhere at all times to the criteria applicable to their respective accreditation(s), namely the DirectTrust HISP Accreditation, DirectTrust CA Accreditation, and DirectTrust RA Accreditation criteria. Loss or revocation of Participant's or Participant's CA's or RA's accreditation shall immediately disqualify Participant from inclusion in DirectTrust Trust Anchor Bundle(s), and from the rights and benefits set forth herein; *provided, however*, that a Participant excluded based on its CA's or RA's non-compliance shall be entitled to reinstatement upon replacement of the CA and/or RA, as applicable, with an accredited CA and/or RA that has signed and submitted to DirectTrust the required CA/RA Addendum.

b. Participation in DirectTrust Trust Anchor Bundle(s). Upon compliance with all requirements of Section I.a., above, compliance with the applicable Standard Operating Procedure(s) ("SOP"), approval of Participant's trust anchor(s) by the Trust Anchor Approval Committee, and payment of the applicable fee(s) as set forth in Schedule 2 attached to this Agreement, Participant shall be granted inclusion in DirectTrust Trust Anchor Bundle(s). Participant agrees that at all times during the term of this Agreement it will stay current in the payment of fees and adhere to all requirements of the applicable SOP(s) and this Agreement. Furthermore, Participant acknowledges and agrees that failure to adhere to the SOP(s) and to the requirements set forth in Section I.a of this Agreement may result in immediate termination of Participant's inclusion in DirectTrust Trust Anchor Bundle(s), pursuant to Section II.b, below.

c. Participation in DirectTrust Directory Aggregation Service. Should Participants also participate in the DirectTrust Directory Aggregation Services they must comply with the Directory Data Sharing Policy set forth on Schedule 3.

d. Changes in Applicable Policies and Applicable Laws. Participant acknowledges and agrees that DirectTrust, in consultation with the Participants, may from time to time modify the requirements of the Accreditation Programs and their criteria, or the SOP(s). Participant agrees to be bound by and adhere to all such changes, and to ensure that its CA and RA adopt and adhere to all such changes, and Participant acknowledges and agrees that Participant's obligations pursuant to Sections I.a and I.b., above, require adherence by Participant and its CA and RA to the most current version of the Accreditation Programs, and the SOP(s). In the event Participant objects to changes to the requirements of the Accreditation Programs, their criteria, or the SOP(s), and Participant elects not to comply, Participant must terminate this Agreement by giving notice as set forth in Section II.b., below.

In addition, the parties agree and acknowledge that this Agreement and any DirectTrust policies may be amended by Direct Trust in good faith to comply with Applicable Laws in its sole discretion, including the 21st Century Cures Act, as amended. DirectTrust will provide prior written notice of such changes to Participants (email sufficient).

e. Direct Standard. The Direct Standard is a set of protocols and technical specifications, as defined by 45 CFR Part 170, Section 170.202(a), and endorsed by the Office of the National Coordinator for Health IT (ONC), to enable the secure exchange of health information over the Internet. Participant, its CA, and RA shall follow the Direct Standard, and any amendments to the Direct Standard, for secure messaging when transmitting or receiving (or facilitating the transmission or receipt of) Basic Messages under this Agreement.

f. Basic Messaging. A "Basic Message" is a message used to send a variety of structured or unstructured content in accordance with the Direct Standard, which incorporates by reference the Applicability Statement for Secure Health Transport, Version 1.2, August 3, 2015, available at: <http://wiki.directproject.org/file/view/Applicability+Statement+for+Secure+Health+Transport+v1.2.pdf> and any amendments. Participant agrees to accept Basic Messages from other Participants conforming to the Direct Standard, and in accordance with Participant's trust constraints. It is understood and agreed that Participant does not validate or enforce clinical document standards on the content enclosed in a Basic Message. Participant shall hold respective entities appearing as the subject in a certificate submitted by Participant to DirectTrust Trust Anchor Bundle(s) solely responsible for obtaining proper consent under Applicable Law prior to Basic Message transmission.

g. No Interference in Message Transmission or Receipt. With the exception of routine maintenance and other transient outages, or as necessary to conform with Participant's trust constraints (e.g., if a sender's trust certificate has expired), Participant in its exchange of

messages with other Participants shall not intentionally prevent or delay the incoming or outgoing transmission or receipt of any Basic Message meeting the Direct Standard to its intended recipient, nor shall Participant alter the content of any such message. In addition, the parties agree and acknowledge that they will not engage in “information blocking” as defined by the 21<sup>st</sup> Century Cures Act and any implementing regulations, as adopted and amended, to the extent applicable to such parties.

h. No Fees for Message Transmission or Receipt. Participant shall not charge DirectTrust or any Participants any fees for the transmission or receipt of any Basic Message under this Agreement.

i. Support. Neither Participant nor DirectTrust is required to provide any technical or other support to the other party. However, for the duration of this Agreement, Participant shall provide an email address that DirectTrust may use to submit to Participant questions relevant to this Agreement. Participant shall reply to all questions submitted by DirectTrust within three (3) business days after the email is sent.

j. Marketing, Publicity and Distribution. Either party may disclose the existence and terms of this Agreement as necessary in order to pursue its business goals; provided, however, neither party may issue a press release regarding Participant’s execution of this Agreement without the prior written consent of the other party.

## II. TERM AND TERMINATION

a. Term. This Agreement and Participant’s eligibility for inclusion in DirectTrust Trust Anchor Bundle(s) starts on the Effective Date of this Agreement and continues until (i) this Agreement is terminated as permitted in Section II.b; or (ii) the DirectTrust Board of Directors, upon sixty (60) days written notice to Participant, terminates or adopts an agreement that supersedes this Agreement.

b. Termination. Participant acknowledges and agrees that DirectTrust Trust Anchor Bundle(s) is/are a self-governing community, and that Participants have empowered DirectTrust to enforce this Agreement for their mutual benefit. Accordingly, Participant agrees that Participant’s inclusion in DirectTrust Trust Anchor Bundle(s) may be terminated immediately if the Board of Directors of DirectTrust determines, in its sole discretion, (i) that Participant is in violation of Section I.a or I.b of this Agreement (whether by reason of its own non-compliance or the non-compliance if its separate CA and/or RA, if any), and (ii) that Participant’s continued inclusion in DirectTrust Trust Anchor Bundle(s) while in violation of Section I.a or I.b of this Agreement will jeopardize the integrity of DirectTrust Trust Anchor Bundle(s) or will otherwise be immediately detrimental to other Participants.

DirectTrust shall provide Participant with written notice of, and sixty (60) days in which to

cure, any breach of this Agreement (including any breach by Participant's separate CA and/or RA, if any, of the CA/RA Addendum). In the event Participant's inclusion in DirectTrust Trust Anchor Bundle(s) has been terminated under the immediate termination provisions set forth above, and Participant subsequently cures its noncompliance within the sixty (60) day cure period, Participant may be readmitted to DirectTrust Trust Anchor Bundle(s) by the affirmative vote of a majority (greater than fifty percent (50%)) of the Board of Directors of DirectTrust. A material breach of this Agreement that is not cured within sixty (60) days of Participant's receipt of written notice from DirectTrust shall result in termination of this Agreement, and Participant's exclusion from DirectTrust Trust Anchor Bundle(s).

Participant expressly waives any claim against DirectTrust arising out of the exercise of the foregoing termination and readmission provisions.

Participant may terminate this Agreement and its inclusion in DirectTrust's Trust Anchor Bundle(s), with or without cause, by providing DirectTrust sixty (60) days' notice of the termination.

In the event of voluntary termination by Participant or termination as the result of Participant's breach of this Agreement, no fees paid by Participant to DirectTrust under this Agreement, or by its CA or RA to DirectTrust in connection with Participant's inclusion in DirectTrust Trust Anchor Bundle(s), shall be refunded.

c. Survival. The provisions of Sections III, IV and V survive termination of this Agreement.

### **III. PROPRIETARY INFORMATION**

a. Protection of Proprietary Information. "Proprietary Information" means a disclosing party's (including DirectTrust, any Participant, or any Participant's CA or RA) business operations, financial condition, customers, products, services, technical knowledge, information, materials, processes, ideas, and techniques (whether or not reduced to writing) (i) which are not generally known in the relevant industry; (ii) which afford possessors of the information a commercial advantage over others; (iii) which are considered trade secrets under Applicable Law; and/or (iv) which, if utilized or disclosed by a party receiving such information, would place the party disclosing such information at a competitive disadvantage. Except as necessary for a party to perform its obligations under this Agreement, as permitted under a written consent of a disclosing party, or as required under Applicable Law, a party will not use or disclose Proprietary Information received from DirectTrust, any Participant, or any Participant's CA or RA.

Each party's Proprietary Information will remain the confidential information of that party except as otherwise expressly provided in this Agreement. Each of the parties will use at least the same degree of care to safeguard and to prevent disclosing to third parties the Proprietary Information of the other as it employs to avoid unauthorized disclosure or publication of its own

information of a similar nature, and in any event, no less than reasonable care. Each party may disclose relevant aspects of the other party's Proprietary Information to its employees, affiliates, subcontractors and agents to the extent such disclosure is reasonably necessary for the performance of its obligations, or the enforcement of its rights, under this Agreement; provided, however, that such party will cause such employees, affiliates, subcontractors or agents to comply with these confidentiality provisions.

Neither party will (i) make any use or copies of the Proprietary Information of the other except as contemplated by this Agreement; or (ii) acquire any right in or assert any lien against the Proprietary Information of the other; or (iii) sell, assign, lease or otherwise commercially exploit the Proprietary Information of the other party. Neither party may withhold the Proprietary Information of the other party or refuse for any reason (including due to the other party's actual or alleged breach of this Agreement) to promptly return to the other party its Proprietary Information (including copies thereof) if requested to do so. Upon expiration or termination of this Agreement and completion of a party's obligations under this Agreement, each Party will, at the request of the other party, (and except as otherwise provided in this Agreement) return or destroy, as the other party may direct, all documentation in any medium that contains or refers to the other party's Proprietary Information, and retain no copies.

This Section III.a will not apply to any particular information that either party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information (without corresponding confidentiality obligations) to it; or (v) was independently developed by the receiving party without use of the Proprietary Information of the disclosing party.

In addition, a party will not be considered to have breached its obligations under this Section III.a for disclosing Proprietary Information of the other party to the extent required to satisfy any legal requirement of a competent governmental or regulatory authority, provided that promptly upon receiving any such request and to the extent that it may legally do so, such party: (i) advises the other party prior to making such disclosure in order that the other party may object to such disclosure, take action to require confidential treatment of the Proprietary Information, or (subject to applicable law) take such other action as it considers appropriate to protect the Proprietary Information; (ii) takes all action necessary to not disclose Proprietary Information that is not required to satisfy any legal requirement of a competent governmental or regulatory authority (including through redaction of sensitive commercial information, including key terms of this Agreement, or otherwise); (iii) reimburses the other party for all costs and expenses (including legal fees) incurred by that Party in enforcing the confidentiality of its Proprietary Information.

Nothing contained in this Section III.a will be construed as obligating a party to disclose its Proprietary Information to the other party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Proprietary Information of the other party.

Each Party will:

(i) notify the other party promptly of any material unauthorized possession, use or knowledge, or attempt thereof, of the other party's Proprietary Information by any Person that may become known to such party; (ii) promptly furnish to the other party details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Proprietary Information; (iii) use reasonable efforts to cooperate with the other party in any litigation and investigation against third parties deemed necessary by the other party to protect its proprietary rights; and (iv) promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Proprietary Information.

b. Names, Logos, Marks. Neither party may use the name, logos, or marks of the other party without prior written consent, except that each party may use the trade name and logo of the other party to indicate the Participant's participation within the DirectTrust Trust Anchor Bundle(s). Use of the trademarks or logos of either party will be subject to compliance with licensing requirements of the party, to be provided upon request, and the trade name and logo of a government agency Participant shall not be used in such a manner as to express or imply Participant's endorsement of DirectTrust or other Participants. All use of one party's stock abbreviations or symbols, trademarks, trade names or logos by the other party will inure to the benefit of the owner of those stock abbreviations or symbols, trademarks, trade names or logos.

#### **IV. WARRANTIES/COVENANTS/DISCLAIMER**

a. Disclaimer of Warranties. Participant warrants that its systems and operations, and those of any CA or RA under its direct control, shall perform as required by Participant's accreditation(s) and the SOP(s); *however*, with the exception of the foregoing, Participant and DirectTrust disclaim any other warranty with regard to the performance of their respective systems and operations.

b. Carrier Lines. The transmission of messages is provided over various facilities and communications lines, and information shall be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, "Carrier Lines") owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which may be beyond the Participant's control. Provided that Participant uses reasonable security measures that comply with its accreditation(s) and the SOP(s), Participant does not assume any liability relating to (i) the integrity, privacy, security, confidentiality, or

use of any information resulting from transmission using Carrier Lines that are not under Participant's control, or (ii) any delay, failure, interruption, interception, loss, transmission, or corruption of any Basic Message information resulting from transmission using Carrier Lines that are not under Participant's control.

c. Indemnity. Each Participant, unless it is a government entity, acknowledges and agrees that DirectTrust and the other Participants, and their respective employees, officers, directors, representatives and agents (each, an "Indemnitee") shall have no liability for and each Participant shall, to the fullest extent permitted by applicable law, indemnify, defend, and hold Indemnitees harmless from third-party claims and actions that arise out of, relate to or result from: (i) any unauthorized alteration or modification by a Participant of any content of any Direct messages transmitted by such Participant; (ii) the misdelivery by a Participant of any Direct messages; (iii) a breach of Indemnitee's network as a result of a Participant's actions (unless it is shown that such breach was directly caused by the applicable Indemnitee); or (iv) a Participant's breach of its specific obligations under this Agreement.

The obligations of each Participant party (the "Indemnitor") under this Agreement to defend, indemnify and hold harmless each Indemnitee shall be subject to the following: (a) the Indemnitee shall provide the Indemnitor with prompt notice of the claim giving rise to such obligation; provided, however, that any failure or delay in giving such notice shall only relieve the Indemnitor of its obligation to defend, indemnify and hold the Indemnitee harmless to the extent it reasonably demonstrates that its defense or settlement of the claim or suit was adversely affected thereby; (b) the Indemnitor shall have sole control of the defense and of all negotiations for settlement of such claim or suit; provided, however, that the Indemnitor shall not settle any claim unless such settlement completely and forever releases the Indemnitee from all liability with respect to such claim or unless the Indemnitee consents to such settlement in writing (which consent shall not be unreasonably withheld); and (c) the Indemnitee shall cooperate with the Indemnitor in the defense or settlement of any such claim or suit; provided, however, that the Indemnitee shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by the Indemnitor. Subject to clause (b) above, the Indemnitee may participate in the defense of any claim or suit in which the Indemnitee is involved at its own expense.

d. Limited Third-Party Beneficiaries. This Agreement does not create any beneficiary rights in any third-parties. For the avoidance of doubt, each Participant has a right to enforce this Agreement against other Participants.

e. Limitation of Liability. EXCEPT FOR LIABILITIES ARISING FROM INDEMNIFICATION, BREACH OF CONFIDENTIALITY, OR INFRINGEMENT OR VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS OR RESTRICTIONS OF THE OTHER PARTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY OTHER ACCREDITED COMMUNITY MEMBER FOR ANY SPECIAL, INDIRECT,

CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES RELATED TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, REVENUE OR ANTICIPATED PROFITS, OR LOST BUSINESS. THIS LIMITATION OF LIABILITY DOES NOT APPLY, IF THE PARTY OR ACCREDITED COMMUNITY MEMBER IS A FEDERAL GOVERNMENT ENTITY.

f. Federal Participant Liability. If Participant is a federal government entity, liability for any breach of or claim arising from this Agreement shall be determined under the Federal Tort Claims Act or other governing federal law, and federal statute of limitations provisions shall apply to any such breach or claim.

## **V. GENERAL PROVISIONS**

a. Dispute Resolution. Any dispute regarding Participant's or Participant's CA's or RA's good standing under the terms of its accreditation(s) or adherence to the criteria applicable to its accreditation(s), which may include the DirectTrust HISP Accreditation, DirectTrust CA Accreditation, DirectTrust RA Accreditation and/or DirectTrust Accreditation criteria, shall be resolved pursuant to the non-compliance notification procedures for accredited entities administered by DirectTrust and its partners or any successor thereto or, for Participants, CAs or RAs accredited outside the Accreditation Program, the dispute mechanism applicable to Participant's or the CA's or RA's accreditation. In each instance, the final decision rendered pursuant to the designated dispute resolution mechanism shall be final and dispositive for purposes of determining Participant's or Participant's CA's or RA's compliance with the accreditation provisions of this Agreement and Participant's qualification, pursuant to Section I.a above, for inclusion in DirectTrust Trust Anchor Bundle(s).

Any dispute regarding Participant's or Participant's CA's or RA's adherence to the SOP(s) or any other requirements for inclusion in DirectTrust Trust Anchor Bundle(s) shall be subject, in the first instance, to the termination provisions set forth in Section II.b, above. Disputes not resulting in immediate termination pursuant to Section II.b, and any instance in which Participant is terminated from and not readmitted to DirectTrust Trust Anchor Bundle(s) as specified in Section II.b shall be subject to the negotiation and arbitration provisions set forth below.

For unresolved disputes as set forth above, and for all other disputes related to this Agreement, the parties shall attempt to resolve the dispute through good-faith negotiations. If negotiations fail to achieve a satisfactory resolution within fifteen (15) days after either party provides written notice of the dispute, then binding arbitration shall be used to resolve the dispute, unless Participant is a government entity. In lieu of arbitration, a government entity shall have the right to proceed to court. Any Participant with an interest in the dispute shall have the

right to intervene as a party. The parties to a binding arbitration shall mutually select an arbitrator. If the parties fail to select an arbitrator, then the DirectTrust Board of Directors shall select an arbitrator that they believe can fairly and impartially resolve the dispute. Arbitration will occur at a place mutually selected by the parties. If a place cannot be mutually agreed to, then the parties will arbitrate the dispute in Washington, D.C. Absent other agreement among the parties, the arbitration shall be governed by the commercial arbitration rules and procedures of the American Arbitration Association. The decision of the arbitrator shall be final and binding for purposes of this Agreement, and subsection (h) below governs applicable expenses, attorneys' fees and expert fees, provided, however, the costs of arbitration shall be shared equally among the parties to the arbitration.

b. Assignment. Participant shall provide notice of any assignment of this Agreement and any change of control event in Participant's organization within thirty (30) days of the assignment/change of control event. A change of control event means (i) the ownership of fifty percent (50%) of the Participant's voting rights changes, (ii) the ability to manage the business by a vote of the ownership of Participant changes, (iii) the ability to elect more than fifty percent (50%) of Participant's Board of Directors changes. No assignment of this Agreement shall be effective, unless the party accepting the assignment agrees to be fully bound as the Participant named herein.

c. Compliance with Applicable Law. "Applicable Law" means all federal and state laws and regulations governing Basic Messages transmitted in accordance with the Direct Standard and/or the parties' trade secrets or other proprietary information. Each party shall perform its obligations under this Agreement in accordance with Applicable Law.

d. Governing Law. The laws of the state of Delaware govern the interpretation, construction, and enforcement of this Agreement and all matters related to it, including tort claims, without regards to any conflicts-of-laws principles, and the parties hereby submit to the exclusive jurisdiction of and venue in the state and federal courts located in the state of Delaware, unless Participant is a government entity, in which case the laws of Participant's jurisdiction (state or federal) shall apply, and jurisdiction and venue shall be in the courts of the Participant's jurisdiction (state or federal).

e. Notices. Notices are effective on the date received, per written proof of delivery from a delivery service or via email. Parties shall send any notices required under this agreement addressed as follows:

If to DirectTrust:  
DirectTrust.org, Inc.  
1629 K Street NW, Suite 300  
Washington, DC 20006

If to Participant:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

f. Independent Contractors. The parties acknowledge that the relationship of parties is that of independent contractors and that nothing contained in this Agreement shall be construed to place any of the parties in the relationship of principal and agent, master and servant, partners or joint venturers.

g. Amendment; Waiver. No amendment of any provision of this Agreement shall be effective unless set forth in a writing signed by a representative of the parties, and then only to the extent specifically set forth therein. No course of dealing on the part of any party, nor any failure or delay by either party with respect to exercising any of its rights, powers or privileges under this Agreement or law shall operate as a waiver thereof. No waiver by either party of any condition or the breach of any provision of this Agreement in any one or more instances shall be deemed a further or continuing waiver of the same or any other condition or provision.

h. Attorneys' Fees. If any arbitration or other action at law or in equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reimbursement from the other party for its expenses and reasonable attorneys' fees and expert fees associated with the action, in addition to any other relief to which such prevailing party may be entitled.

i. Entire Agreement. This Agreement, together with the Exhibits and attachments hereto, all of which are incorporated herein and made part hereof by this reference, embodies the entire agreement between the parties with respect to the subject matter hereof and thereof, and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof and thereof.

j. Severability. If any term of this Agreement or part hereof not essential to the commercial purpose of this Agreement shall be held to be illegal, invalid or unenforceable, it is the intention of the parties that the remaining terms hereof or part hereof shall constitute their agreement with respect to the subject matter hereof and thereof and all such remaining terms, or parts thereof, shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision which will implement the commercial purpose of the illegal, invalid or unenforceable provision.

k. Headings. The headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement.

l. Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. A signature received via facsimile or electronically via Email shall be as legally binding for all purposes as an original signature.

m. Construction. All references in this Agreement to "Sections" and "Exhibits" refer to the sections and exhibits of this Agreement. As used in this Agreement, neutral pronouns and any

variations thereof shall be deemed to include the feminine and masculine and all terms used in the singular shall be deemed to include the plural, and vice versa, as the context may require. The words "hereof," "herein" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended or supplemented, and not to any subdivision contained in this Agreement. The words "including" and "includes" when used herein are not intended to be exclusive and shall be deemed to mean "including, without limitation" or "including, but not limited to" (or "includes, without limitation" and "includes, but is not limited to") regardless of whether the words "without limitation" or "but not limited to" actually follow the term. Each of the parties and their counsel has carefully reviewed this Agreement, and, accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting party shall apply in the interpretation of this Agreement. The Section headings and titles appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement or the interpretation hereof.

IN WITNESS WHEREOF, the parties are signing this Agreement as of the Effective Date by a duly authorized officer below:

**DIRECTTRUST.ORG, INC.**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PARTICIPANT**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule 1 – Participant**

Name of Company \_\_\_\_\_

A corporation in the state of \_\_\_\_\_

Name of Chief Executive Officer \_\_\_\_\_

**Schedule 2 – Fee Addendum to the DirectTrust Federated Services Agreement**

The following schedule of fees for HISPs included in DirectTrust Trust Anchor Bundle(s) shall apply in the calendar years 2017 and 2018, and shall include the cost of receiving any DirectTrust network services associated with that bundle. The fee schedule will be reviewed and, if necessary, revised by the DirectTrust Board of Directors annually. Absent revision by the Board of Directors, the fee for each subsequent six-month period shall be the amount set forth for January 1 – June 30, 2018.

<b>Category of HISP</b>	<b>July 1 – December 31, 2017</b>	<b>January 1 – June 30, 2018</b>
Members of DirectTrust -- Less than 2,500 Direct accounts and addresses	\$ 2,000	\$ 2,200
Members of DirectTrust -- Greater than 2,500 Direct accounts and addresses	\$ 5,000	\$ 5,500
Non-members -- Less than 2,500 Direct accounts and addresses	\$ 15,000	\$ 16,500
Non-members -- Greater than 2,500 accounts and addresses	\$ 30,000	\$ 33,000

All HISPs will be billed by DirectTrust within 15 days of their review and approval for inclusion in the trust bundle, and semi-annually thereafter. Payment is due within 30 days of receipt of invoice. No pro rated or partial payments will be accepted.

## Schedule 3 – Data Sharing Policy

### DirectTrust Provider Directory Data Sharing Policy<sup>2</sup>

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#### **Version 2.0 adopted by the DirectTrust Board of Directors August 9, 2017**

The purpose of this document is to establish a Directory Data Sharing Policy (“Policy”) for DirectTrust accredited members electing to participate voluntarily in a Direct Address Directory to be administered by an Aggregator (“DirectTrust Directory”). The scope of this Policy is limited to information about healthcare providers, clinicians, support staff and departments. The Aggregator does not include information about patients, caregivers, healthcare agents or devices. This Policy is meant to promote interoperability of Direct exchange by encouraging the sharing of Direct Address Information among DirectTrust accredited Health Information Services Providers (“HISPs”) and their Subscribers on a non-commercial basis, while maintaining the integrity and currency of the Direct Address Information.

The data provided to and obtained from the Aggregator is Provider Information about holders of Direct Addresses issued in accordance with the DirectTrust Certificate Policy (CP) and other relevant DirectTrust policies and procedures.

Accredited HISPs participating in an active DirectTrust Trust Anchor Bundle are strongly encouraged to share under this Policy, with the permission of their Subscribers, the Providers’ data elements for inclusion in the DirectTrust Directory, which will be made available via the Aggregator to other participating DirectTrust accredited HISPs and their Subscribers. All interactions between the Aggregator and a Subscriber occur via the HISP which provides Direct exchange services. Neither DirectTrust nor the Aggregator interacts directly with a HISP’s Subscribers. HISPs will use best efforts to provide all its Subscribers’ Provider Information, including Direct Addresses, for inclusion in the DirectTrust Directory.

The minimum required data elements to be shared include Providers’ full name, specialty and/or specializations, city and state, and Direct Address. HISPs are encouraged to share additional Provider Information when available from Subscribers (*e.g.*, practice street address, associate organization name(s), Provider gender, languages spoken, National Provider Identifier (NPI), etc.). Information for department (or role-based) Direct Addressees may be shared, with permission, when deemed appropriate by the Subscriber.

A separate technical document titled “Directory Services User’s Guide,” found on the DirectTrust.org website, which is updated from time to time by DirectTrust and incorporated by reference in this Policy, specifies: the complete list of required and optional data elements; acceptable

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<sup>2</sup> Approved by the DirectTrust Board of Directors on August 9, 2017

data element syntax; and secure methods for accessing the Aggregator. While participation is encouraged and recommended, HISP participation is voluntary as is that of their Subscribers.

This Policy describes and ensures the acceptable uses of Directory Information by the party providing the Directory information (the “Disclosing Party”), the party receiving the Directory information (the “Receiving Party”), and DirectTrust (including, the “Aggregator”).

This Policy inures to the benefit of, and is binding upon, the parties subject to this Policy, including but not limited to all Qualified Users and any and all respective successors in interest to the parties subject to this Policy by way of merger, acquisition, consolidation, creation of a subsidiary, operation of law or otherwise, and their permitted assigns.

## **I. DEFINITION OF TERMS**

- a. “Aggregator” means an electronic service run by DirectTrust that provides the following services: securely collects Directory Information directly from Disclosing Parties; combines and/or reformats the Directory Information into a uniform data structure; securely stores Directory Information; and makes the Directory Information available to Receiving Parties, via secure means. (The Aggregator facilitates bulk downloading and differential checks, but is not intended for real-time querying.)
- b. “Customer” means any Person that enters into an agreement or arrangement of any kind with a HISP, Subscriber, Qualified User, Provider or Aggregator.
- c. “Directory Information” means the Provider Information provided to the Aggregator that makes up the DirectTrust Directory and made available to Qualified Users.
- d. “Disclosing Party” means the HISP, which, by mutual agreement with its Subscriber(s), is the authoritative distribution source of the Provider Directory Information. The Disclosing Party is (1) the legal entity pledged to abide by the terms of this Policy, (2) a DirectTrust accredited HISP providing HISP services for the Direct Addresses submitted, and (3) the agent for enforcing this policy with its Subscriber(s). A Disclosing Party that is in compliance with this Policy shall have the right to also be a Receiving Party, and to access the DirectTrust Directory, including Directory Information provided by other Disclosing Parties, on behalf of its Subscribers.
- e. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- f. “Provider” means an organization or individual that provides clinical care to patients that is a Subscriber of the HISP, or receives Direct Messaging and related HISP services through a Subscriber.
- g. “Provider Information” means at a minimum Providers’ full name, specialty and/or specializations, city and state, and Direct Address. Provider information may also include practice street address, associate organization name(s), Provider gender, languages spoken, and National Provider Identifier (NPI).

- h. “Qualified User” means a Receiving Party (HISP) or a Subscriber of that HISP that is permitted by this Policy to access, search, store, and use the Directory Information obtained from the DirectTrust Aggregator.
- i. “Receiving Party” means a HISP that downloads the Directory Information from the Aggregator.
- j. “Subscriber” means the Customer of a HISP, which has active Direct Addresses serviced by the DirectTrust accredited HISP, and to which the HISP provides Direct messaging and related HISP services. The Subscriber may be an individual or an organization. (When a Direct Address belongs to an operator/employee of a HISP, or an automated service of that HISP, that operator/employee is a Subscriber.)
- k. All Direct Addresses included in Directory Information must link to certificates with a certificate path verified and validated by a Certificate Authority (CA) in an active DirectTrust Trust Anchor Bundle.

The remaining sections of this Policy discuss responsibilities, usage restrictions, maintenance, and remediation responsibilities placed on the Receiving Party with respect to the use of Directory Information. This Policy does not place any restrictions on how a Subscriber uses or distributes Directory Information about *themselves*, either directly or through agreements with their HISP.

## II. RESPONSIBILITIES

To ensure the accuracy, permissibility, and timeliness of the Directory Information, the Disclosing Parties and Receiving Parties are required to carry out the functions described in this section. Each participant listed in this section, and any Customer of such participant in the preceding “Definition of Terms” must comply with the following terms and conditions:

### A. DISCLOSING PARTY

The responsibilities of a Disclosing Party are as follows:

1. The Disclosing Party must have a legal and binding agreement with its Subscriber(s), providing the Disclosing Party permission to provide the Directory Information to the Aggregator. The legal agreement must also ensure that Directory Information is accurate when supplied by the Subscriber, and is regularly updated.
2. It is the Subscriber’s responsibility to ensure their Directory Information provided to the Disclosing Party is kept current, up to date, and accurate. This responsibility includes updating for any changes in provider specialties, geographic locations, telecommunications information, etc. (See the “Directory Services User’s Guide” which contains a complete list of required and optional data elements.) The Disclosing Party (i.e., the HISP) will communicate with the Aggregator to update the Subscriber’s information.
3. The Disclosing Party agrees to upload their contributed Directory Information on a consistent periodic basis, as described in the “Directory Services User’s Guide.”
4. It is recommended that each Disclosing Party upload Directory Information to the DirectTrust Aggregator at a minimum of every 72 hours, or when there are changes to that information or participants.

5. If the business relationship between the Disclosing Party and the Subscriber is terminated, the Disclosing Party agrees to (1) stop publishing the Subscriber's Directory Information, and (2) update the Disclosing Party's Directory Information, removing the former Subscriber's information. The method to be followed by the Disclosing Party for removing the Subscriber's information from the Aggregator is described in the "Directory Services User's Guide."
6. All Direct Addresses included in Directory Information must link to certificates with a certificate path verified and validated by a Certificate Authority (CA) in an active DirectTrust Trust Anchor Bundle.
7. If a Direct Address is no longer linked to an anchor certificate in a DirectTrust Trust Anchor Bundle, that Direct Address and its associated Directory Information must be removed immediately from the DirectTrust Provider Directory. The removal method is described in the "Directory Services User's Guide."

## **B. RECEIVING PARTY**

The responsibilities of a Receiving Party are as follows:

1. To qualify as a Receiving Party, the HISP must first act as a Disclosing Party by contributing Direct Addresses and associated Directory Information to the Aggregator as a Disclosing Party.
2. The Receiving Party may reformat and distribute the downloaded Directory Information to its Subscribers, in a format convenient for the Subscribers.
3. The Receiving Party may provide searching and/or filtering services to its Subscribers, but must employ sufficient security controls to ensure only their Subscribers can access those services.
4. A Receiving Party is responsible for ensuring that all its Qualified Users obtain and use the Directory Information only in ways permitted by this Policy. If a Qualified User uses Directory Information in a way prohibited by or contrary to this Policy, the Receiving Party will take immediate actions to stop the use of that Directory Information. A Receiving Party will obtain the affirmative consent and agreement to terms and conditions of this Policy by Qualified Users prior to the use of the Directory Information by such Qualified Users.
5. A Receiving Party may not give the downloaded Directory Information to any Person that is not one of its Subscribers.

## **C. QUALIFIED USER**

The responsibilities of Qualified Users are as follows:

1. Qualified Users may optionally download search results, but are required to check periodically to confirm the downloaded information is still valid and accurate (e.g., prior to sending a Direct Message) and use the Directory Information only in accordance with this Policy.
2. Qualified Users may not give the downloaded Directory Information to any Person that is not also both (1) in their organization and (2) a Qualified User.

3. Qualified Users will consent and agree to terms and conditions of this Policy prior to the use of the Directory Information.

### **III. PERMITTED USES OF DIRECTORY INFORMATION**

The Receiving Party may use the Directory Information received from the DirectTrust Aggregator only for the purposes of:

- a. Supporting the Direct Messaging and related HISP services provided by the Receiving Party to only its Subscribers and Qualified Users.
- b. Permitting and enabling its Qualified Users to search the Directory Information by selected individual data elements.
- c. Sending messages to Direct Addresses contained in the DirectTrust Provider Directory for the purposes of manual testing.

*Note:* Examples of permitted communications include, but are not limited to: transition of care documents, referrals, consultations, etc. Unless a “No Patient Access” flag is set on a record, all Directory data may be made available for patient access for permitted use.

### **IV. PROHIBITED USES OF DIRECTORY INFORMATION**

This section discusses inappropriate uses of Directory Information obtained from the DirectTrust Aggregator. The intent is not to impede standing medical practices, interactions with insurance companies, suggestions by Accountable Care Organizations for follow-on procedures, etc. The intent is to provide reasonable assurances to Direct message recipients that their systems will not be flooded with messages inappropriate for their electronic systems’ workflow as a result of their participation in the DirectTrust Directory.

Qualified Users may not use the Directory Information for any purpose not covered in the “Permitted Uses” section of this Policy without express written permission of the Disclosing Party, including but not limited to:

- a. Selling, disclosing, making available, or otherwise permitting to obtain, DirectTrust Directory Information to any third party that is not a Qualified User and/or which is not a legal client of the Receiving Party and which is receiving HISP services from the Receiving Party.
- b. Providing and/or using the Directory Information for direct marketing, database marketing, telemarketing, marketing analysis, or research purposes.
- c. Under no circumstances shall the Receiving Party use, or permit their Subscribers to use, the Directory Information for any of the following activities:
  - a. Advertising
  - b. Pop-up ads
  - c. Soliciting business
  - d. Surveys
  - e. Any unsolicited communications using Directory Information by or on behalf of parties not already part of the healthcare team or not already part of the normal healthcare workflows.

## **V. Remediation**

In the event a Disclosing Party notifies DirectTrust of any use of Directory Information in violation of this Policy:

- a. DirectTrust shall notify in writing (email sufficient) the Receiving Party responsible for the use in violation of this Policy.
- b. The Receiving Party will immediately notify in writing (email sufficient) the responsible Subscriber of the use in violation of this Policy, and shall immediately notify in writing (email sufficient) its Subscriber(s) to stop using the Direct Addresses of concern in the offending context.
- c. The Receiving Party, in its capacity as a HISP, will take action, if necessary, within 2 business days after notice of the violation, to block the sending of messages using Directory Information in violation of this Policy.
- d. In the event a Receiving Party or its Subscriber discloses any portion of the DirectTrust Directory Information in an unauthorized or unapproved manner, the offending party will immediately notify the unauthorized recipient that the information was delivered in error and must be removed.

## **VI. Term and Termination**

If a HISP no longer wishes to participate in the DirectTrust Directory, the HISP will notify DirectTrust in writing (email sufficient). If the departing HISP offers directory services to its Subscribers, that directory service can no longer contain any information obtained from the DirectTrust Directory. The departing HISP and its Subscribers remain under obligation to abide by the terms stated in the previous section titled "Prohibited Uses of Directory Information." To the extent possible, Subscribers of the departing HISP should remove from their local client phonebooks/addressbooks any Direct Address retrieved from the DirectTrust Directory which are not part of their expected healthcare exchange partners.

DirectTrust, in turn will notify in writing (email sufficient) all Receiving Parties of the HISP's departure from the DirectTrust Directory. The notification will include the HISP identifier. The Aggregator operator will remove Aggregator access rights for the departing HISP. All Receiving Parties should notify their Subscribers that the Direct domains that will no longer be updated.

Under no circumstances will the Directory Information be used for any purpose beyond the permitted purposes stated in this Policy.