



DirectTrust Federation Agreement adopted on February 15, 2013

THIS FEDERATION AGREEMENT (the "Agreement") is between DirectTrust.org, Inc., a Delaware not-for-profit corporation ("DirectTrust"), and _____, a _____ corporation ("Participant") and is entered into on _____ ("Effective Date").

This Agreement establishes the terms governing Participant's inclusion into the "DirectTrust Trust Community," which is comprised of DirectTrust members that have signed and become a party to the DirectTrust Federation Agreement adopted on February 15, 2013 (collectively, "Community Members").

Recitals:

Participant is a member organization of DirectTrust, an independent non-profit trade association created by the Direct community to establish and maintain a nationwide security and trust framework in support of Directed exchange, and is seeking accreditation by the [Direct Trusted Agent Accreditation Program \(DTAAP\)](#) ("Program").

Pending accreditation, Participant desires to participate in the DirectTrust Trust Community with other Community Members.

In consideration for its inclusion in the DirectTrust Trust Community, Participant agrees as follows:

I. PARTICIPANT RESPONSIBILITIES

- a. Membership. Participant is, and shall remain, a DirectTrust member in good standing for the duration of this Agreement.
- b. Application. Participant, if it has not already done so, shall fully complete and submit an application for accreditation by the Program using the form provided at <http://www.ehnac.org/accreditation-applications/application-preapplication-form>. DirectTrust may deny inclusion in the DirectTrust Trust Community until the accreditation application is completed to DirectTrust's reasonable satisfaction.
- c. Accreditation. By signing this agreement, Participant attests that it complies with the criteria applicable to the Participant that are identified as "Mandatory" in sections 1 through 6 ("Mandatory Criteria") of the Program. DirectTrust may terminate Participant's inclusion in the DirectTrust Trust Community, subject to an affirmative vote by a majority of Community Members, based on reasonable evidence that the Participant does not meet the Mandatory Criteria. DirectTrust

How long will this take? If there is a bad actor on the network don't you need to move fast?



may require Participant to undergo an audit that confirms Participant's compliance with the Mandatory Criteria.

Is this the wrong link? This is the CP, right?

d. Changes in Accreditation Policies. DirectTrust may modify its policy statements (<http://www.directtrust.org/digital-certificate-policy/>) ("Policy") incorporated into Program (including Mandatory Criteria) as it determines are necessary, including whenever new implementation policies emerge at the federal and state agency levels. DirectTrust may terminate inclusion of a Participant in the DirectTrust Trust Community if Participant fails to comply with an amendment to Mandatory Criteria within a timeframe deemed reasonable by majority vote of Community Members, provided Participant has received email notice of the amendment from DirectTrust.

Why wouldn't the amendment indicate the time to comply? Who writes the amendments and how are they vetted?

e. HISP. Participant represents and agrees that, as of the Effective date and for the duration of this Agreement, Participant shall (1) approve Direct e-mail addresses (as contemplated by the specifications set forth in the Applicability Statement for Secure Health Transport, posted at <http://wiki.directproject.org/>, and any amendments made after the Effective Date ("Specification")) and (2) process Direct-compliant messages to and from Direct e-mail addresses, each of which is bound to a Direct-compliant X.509 digital certificate.

f. Basic Messaging. A "Basic Message" is a message used to send a variety of structured or unstructured content in accordance with the Specification. Participant agrees to accept messages from other Community Members conforming to the Specification, and in accordance with Participant's trust constraints. 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 ("Subscribers") solely responsible for obtaining proper consent under Applicable Law prior to Basic Message transmission.

For example that the Participant is also a member of the WSC Trust Community?

g. 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 shall follow the Direct Standard for secure messaging when transmitting or receiving (or facilitating the transmission or receipt of) messages under this Agreement.

Or what will you do? and how would you know?

h. Third Parties. If Participant utilizes one or more third parties to act as a Certificate Authorities or Registration Authorities (as defined in the Policy) in providing compliance with the Program or Direct Standard or to facilitate the exchange of Basic Messages, then Participant shall only utilize Certificate Authorities and Registration Authorities that have self-attested to the appropriate sections of the Program and that are either accredited with the Program, or designated by DirectTrust as actively seeking accreditation with the Program. If a Certificate Authority or Registration Authority fails to comply with the Program or has its application rejected by the Program, Participant shall cease using the Certificate

Should this 'a' be deleted?



I know this is a temporary thing that you hope to throw away but is this how you would be required to govern the process - there is this reference to a majority vote of members - which won't scale, right?

Authority's or Registration Authority's services in connection with the Direct Standard or the exchange of Basic Messages, within a timeframe **deemed reasonable by a majority vote of the Community Members**, after receiving email notice from DirectTrust of the failure to comply with the Program or the rejection of the Program application.

Who makes the deeming?

- 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 questions **deemed important by DirectTrust to Participant. 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.
- k. No Interference in Message Transmission. With the exception of routine maintenance and other transient outages, **Participant shall not intentionally prevent or delay the incoming or outgoing transmission or receipt of any Basic Message meeting the Direct Standard and local trust constraints to its intended recipient, nor shall Participant alter the content of any such message.**

II. TERM AND TERMINATION

Does everyone get one vote?

- a. Term. Inclusion in the DirectTrust Trust Community starts on the Effective Date or the date on which Participant meets the criteria for inclusion set forth in this Agreement, whichever is later, and continues until (i) this Agreement is terminated as permitted herein, or (ii) Participant no longer qualifies for inclusion under the terms of this Agreement; or (iii) Participant is no longer in compliance with the Program or Policy. This Agreement shall continue until terminated as set forth in paragraph b., below, or until the DirectTrust Trust Community, by majority vote of the Community Members, terminates or supersedes the DirectTrust Federation Agreement adopted on February 15, 2013.
- b. Termination. Participant may terminate this Agreement, with or without cause, by providing DirectTrust thirty (30) days' notice of the termination. DirectTrust may terminate this Agreement after providing thirty (30) days' notice of termination, if DirectTrust has evidence that Participant has not complied with either this Agreement or a Mandatory Criteria, and Participant has failed to cure its noncompliance during the thirty-day notice period. Upon termination of this Agreement, DirectTrust may immediately take steps to terminate Participant's ability to provide Basic Messaging to other Community Members, including



removing Participant's trust anchor from the trust bundles distributed by DirectTrust.

- c. Survival. The provisions of sections IV-VI survive termination of this Agreement.

III. FEES.

Neither party may charge the other party or any Community Members any fees for the transmission or receipt of any Basic Message under this Agreement.

IV. PROPRIETARY INFORMATION

- a. Protection of Proprietary Information. "Proprietary Information" means 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 for a party performing its obligations under this Agreement, as permitted under a written consent of a party, or as required under Applicable Law, a party will not use or disclose the other party's 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 of the other party to indicate the Participant's participation within the DirectTrust Trust Community. 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. All use of one party's stock abbreviations or symbols, trademarks, trade names or logos by another party will inure to the benefit of the owner of those stock abbreviations or symbols, trademarks, trade names or logos.

V. WARRANTIES/COVENANTS/DISCLAIMER

- a. Disclaimer. Except as specified in the Mandatory Criteria, Participant does not warrant that its network or operations will perform in accordance with any expectation or industry standard, and DirectTrust does not warrant any of its systems or timely participation in the DirectTrust Trust Community.
- b. Carrier Lines. The transmission of messages are 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 the Program, Participant does not assume any liability relating to (i) the integrity, privacy, security, confidentiality, or use of any information during 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 transmitted over the Carrier Lines that are beyond the Participant's control.

- c. Trust Bundles. DirectTrust will provide reasonable support to Participant and other Community Members in complying with the Program and the DirectTrust Federation Agreement adopted on February 15, 2013, including updating and distributing bundles of trust anchors. If DirectTrust later adopts a service level commitment, then DirectTrust represents it will abide by that commitment.
- d. Indemnity. Participant acknowledges and agrees that DirectTrust.org and other Community Members shall have no liability for and Participant shall hold them harmless from third-party claims and actions that arise out of or results from: (i) any unauthorized alteration or modification by Participant of any content of any Direct messages transmitted pursuant to the Agreement; (ii) Participant's mis-delivery of any Direct messages; (iii) a breach of Participant's network (unless it is shown that such breach was directly caused by DirectTrust.org or a Community Member); (iv) Participant's breach of its obligation under this Agreement.
- e. Warranties. EXCEPT AS EXPRESSLY STATED OTHERWISE IN THIS AGREEMENT, ALL INFORMATION AND SERVICES PROVIDED BY DIRECTTRUST OR PARTICIPANT IS PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. NEITHER PARTY IS LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, RELATED TO THIS AGREEMENT, INCLUDING ANY LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. THE PARTICIPANT AND DIRECTTRUST DISCLAIM ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR OTHER THIRD PARTIES.

VI. GENERAL PROVISIONS

- a. Dispute Resolution. For any dispute 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 notice of the dispute, then binding arbitration shall be used to resolve the dispute. The parties 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 Delaware.

- 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.
- c. No Third-Party Beneficiaries. This Agreement does not create any beneficiary rights in any third-party except Community Members, and no third-party except Community Members has a right to enforce this Agreement.
- d. Compliance with Applicable Law. "Applicable Law" means all federal and state laws and regulations governing the matters set forth in this Agreement. Each party shall perform its obligations under this Agreement in accordance with Applicable Law.
- e. 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. The parties hereby submit to the exclusive jurisdiction of and venue in the state and federal courts located in the state of Delaware.
- f. Amendments. DirectTrust may amend this Agreement unilaterally to the extent necessary to conform to the Direct Standards. DirectTrust shall provide notice of all such amendments at least thirty (30) days prior to their effective date and apply amendments to all Community Members.
- g. Notices. Notices are effective on the date received, per written proof of receipt 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.
Attn: General Counsel
1101 Connecticut Ave. NW, Suite 1000
Washington, DC 20036



If to Participant:

- h. Counterparts. The parties may execute this Agreement in any number of counterparts, each of which is considered an original copy of the same agreement.

The parties are signing this agreement as of the Effective Date by a duly authorized officer below:

PARTICIPANT

DIRECTTRUST.ORG, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____