



Accreditation Program Agreement

THIS ACCREDITATION PROGRAM AGREEMENT (the "DirectTrust Accreditation Agreement" or "Agreement") is between DirectTrust.org, Inc., a Delaware not-for-profit corporation ("DirectTrust"), and _____, an ("Applicant") and is entered into effective _____ ("Effective Date"). This Agreement establishes the terms and conditions for the Applicant's obligations and responsibilities by entering into and seeking certification in one or more DirectTrust Accreditation Programs.

Recitals

- A. Applicant desires accreditation in one or more DirectTrust Accreditation Programs.
- B. The Agreement governs the process of the Applicant seeking such accreditation in a DirectTrust Accreditation Program and outlines the terms and conditions of such process.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. Terms and Conditions

- a. Applicant will designate one of two tracks with DirectTrust seeking accreditation in the Accreditation Process as follows:

Applicant check either 1(i) or 1(ii) below but not both:

- (i) Applicant desires to apply and receive (if successful) the DirectTrust Accreditation and has executed or agrees that it will execute the DirectTrust Federated Services Agreement before it receives DirectTrust Accreditation; or
- (ii) Applicant desires to apply and receive (if successful) the DirectTrust Accreditation but does not desire to be a part of the DirectTrust Trust Anchor Bundles with other accredited Applicants and will not execute the DirectTrust Federated Services Agreement at this time.

Applicants seeking accreditation under Section 1(i) must execute the DirectTrust Federated Services Agreement and comply with all of the obligations and terms and conditions of that agreement. In the event of any conflict between this Agreement and the DirectTrust Federated Services Agreement, the DirectTrust Federated Services Agreement will prevail.

Applicants seeking accreditation under Section 1(ii) will abide by the terms and conditions of this Agreement only and any other mutually agreed to terms and conditions by the parties.

- b. Applicant agrees that it will acquire or has acquired the separate HIPAA Privacy and Security Certification or Accreditation from an organization approved by DirectTrust to perform such Accreditation or Certification. Applicant agrees to maintain the validity of the HIPAA Privacy and Security Certification or Accreditation throughout the lifetime of the DirectTrust Accreditation and acknowledges that failure to do so will cause its Accreditation to be revoked. Approved organizations are listed on the DirectTrust website [directtrust.org](https://www.directtrust.org) located under the Accreditation tab which is updated from time to time by DirectTrust. Applicant will provide proof of such accreditation or certification to DirectTrust as part of the Accreditation Process.
- c. In connection with Applicant's participation in the Accreditation Process, DirectTrust may receive from Applicant certain information relating to the ongoing and planned operations of Applicant. Applicant should limit the information provided to DirectTrust relating to the Accreditation Process that is reasonably necessary for the participation in such Accreditation Process. Confidential information means a disclosing party's (including DirectTrust, any Applicant, or any Applicant'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 ("Confidential Information"). 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 Confidential Information received from DirectTrust, any Applicant, or any Applicant's CA or RA.

This Section 1.c. 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 receiving 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 Confidential Information of the disclosing party.

Each party's Confidential Information will remain the confidential information of that party except as otherwise expressly provided in this Agreement. Each of the parties will use the same degree of care to safeguard and prevent disclosing to third parties the Confidential 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 Confidential 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 Confidential Information of the other except as contemplated by this Agreement; or (ii) acquire any right in or assert any lien against the Confidential Information of the other party. Neither party may withhold the Confidential 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 Confidential 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 Confidential Information and retain no copies.

In addition, a party will not be considered to have breached its obligations under this Section 1.c for disclosing Confidential 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 Confidential Information, or (subject to Applicable Law) take such other action as it considers appropriate to protect the Confidential Information; (ii) takes all action necessary to not disclose Confidential 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 cost and expenses (including legal fees) incurred by that party in enforcing the confidentiality of its Confidential Information.

Nothing contained in this Section 1.c will be construed as obligating a party to disclose its Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any rights or license to the Confidential 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 Confidential 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 Confidential 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



Confidential rights; and (iv) promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of any Confidential Information.

Applicant agrees that Applicant will not include in its application any information in any form or medium that may be considered "Protected Health Information" (PHI) as that term is defined at 45 C.F.R. §160.103, or its successor. Applicant further agrees that Applicant will not include in its application any information in any form or medium that may be considered "Personally Identifiable Information" (PII) as that term is defined at 2 C.F.R §200.79, or its successor. Notwithstanding the foregoing duty of confidentiality, Applicant hereby authorizes DirectTrust to publicly disclose on the DirectTrust web site(s) Applicants status as part of the accreditation process and in DirectTrust publications the fact that Applicant has applied for DirectTrust accreditation, status of accreditation, and the Applicant's name in connection with the accreditation process.

DirectTrust agrees that under no circumstances shall any Confidential Information of Applicant be made available to or disclosed to, or otherwise be accessible by any member of the Board of Directors of DirectTrust or any other member of DirectTrust.

- d. Applicant acknowledges and certifies that it has reviewed the DirectTrust Accreditation Program Standard Operating Procedure provided on the DirectTrust website directtrust.org located under the Accreditation tab and is aware of and understands the accreditation process including the steps needed to make application to the DirectTrust Accreditation Programs, preparation and submission of self-assessment documentation, and accreditation award criteria. Additionally, if this is a re-accreditation for an Applicant, the Applicant must ensure that all previous recommendations in the final report must be addressed. All documentation must be submitted in English in a mutually agreed to and commercially reasonable format.
- e. Applicant agrees and acknowledges that the Accreditation Process has specific and documented timeline milestone events defined in the Accreditation Process Standard Operating Procedure. The Applicant further agrees and acknowledges that (i) it has read and agrees to the late fee terms and conditions available at directtrust.org located under the Accreditation tab which may be updated from time to time by Direct Trust (the "Late Fees") and such Late Fees are incorporated by reference in this Agreement and (ii) if the timeline milestone events are not met by Applicant, Applicant will pay DirectTrust the corresponding Late Fees within thirty (30) calendar days of not meeting the applicable timeline milestone events. At DirectTrust's sole discretion, an Applicant may be deemed to be out of process after missing deliverable timeline milestone events and must reapply for Accreditation.
- f. Accreditation by DirectTrust is awarded based upon its review of the organization for that specific "point in time" that the accreditation process occurred and will be subject to the DirectTrust Federated Services Agreement and any applicable addendum for HISPs and/or CA/RAs.

- g. The Applicant agrees to abide by all the terms and conditions specified in the most recent version of the DirectTrust Policy in force as of the Effective Date of this Agreement DirectTrust may at its sole discretion revoke an accreditation if it determines that the Applicant is in material breach of its Policy as determined by DirectTrust in its sole and absolute discretion.
- h. Applicant agrees to display on their website, collateral and any other social media or printed materials, only the approved DirectTrust trademarked logos as provided for this use by DirectTrust for accredited entities. The Applicant will abide by all policies and procedures for use of the logo provided by DirectTrust. If an accredited or candidate organization decides not to continue the accreditation process or, their accreditation status changes and the Applicant is no longer accredited, or the Applicant does not execute the Federated Services Agreement, then the DirectTrust logo may not be displayed and must be removed from the applicant website, collateral, social media or printed materials immediately. Any other representation of the DirectTrust accreditation status is prohibited as the logo and DirectTrust name are trademarks and proprietary property of DirectTrust.
- i. Sentinel Events. The Applicant acknowledges and agrees that it will comply with the applicable policies of their respective HIPAA Privacy and Security Accreditation or Certification accrediting body including but not limited to Sentinel Events. A "Sentinel Event" is defined by the accrediting body that awards the Applicant's HIPAA Privacy and Security Accreditation or Certification. The Applicant agrees it will provide written notices to DirectTrust for those events that are classified as a Sentinel Event by their HIPAA Privacy and Security accrediting body as soon as practical after the occurrence of such event(s). The Applicant will also provide DirectTrust with copies of all correspondence with their HIPAA Privacy and Security accrediting body with regard to Sentinel Events within a commercially reasonable period of time.

As part of this Agreement, the Applicant agrees that it will provide written notice to DirectTrust within 10 calendar days of a change in the status or relationship with its HIPAA Privacy and Security Vendor including but not limited to: a loss of HIPAA Privacy and Security Accreditation or Certification, termination of the agreement with the HIPAA Privacy and Security accrediting body or entering into an agreement with a different HIPAA Privacy and Security accrediting body.

2. Indemnification; Liability

- a. Each Applicant, unless it is a government entity, acknowledges and agrees that DirectTrust, and their respective employees, officers, directors, representatives and agents (each, an "Indemnitee") shall have no liability for and each Applicant 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) the acceptance and review, and approval or disapproval of Applicant's application for DirectTrust Accreditation (other than claims or actions arising out of, related to or resulting from the Indemnitee's negligence or willful misconduct), or (ii) an Applicant's breach of its specific obligations under this Agreement.

- The obligations of each Applicant 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.
- b. Limited Third-Party Beneficiaries. This Agreement does not create any beneficiary rights in any third-parties.
 - c. 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 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.
 - d. Federal Applicant Liability. If Applicant 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.

3. Term and Termination; Survival

- a. This Agreement starts on the Effective Date of this Agreement and continues until the DirectTrust Board of Directors, upon sixty (60) days written notice to the Applicant, terminates or adopts an agreement that supersedes this Agreement.
- b. The provisions of Sections 1(c), 2, 3(b) and 4 (except for 4(b) and 4(c)) survive termination of this Agreement.

4. General Terms

- a. **Dispute Resolution.** Any dispute regarding Applicant's accreditation or good standing under the terms of its accreditation(s) or adherence to the criteria applicable to its accreditation(s), which may include the DirectTrust Accreditation, shall be resolved pursuant to the Appeal Process procedures in the DirectTrust Accreditation Program Standard Operating Procedure non-compliance notification procedures for accredited entities administered by DirectTrust and its partners or any successor thereto. In each instance, the final decision rendered pursuant to the designated dispute resolution mechanism shall be final and dispositive for purposes of determining Applicant's compliance with the accreditation provisions of this Agreement and Applicant's qualification.

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 Applicant is a government entity. In lieu of arbitration, a government entity shall have the right to proceed to court. Any Applicant 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 (g) 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.** Applicant shall provide notice of any assignment of this Agreement and any change of control event in Applicant'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 Applicant's voting rights changes, (ii) the ability to manage the business by a vote of the ownership of Applicant changes, (iii) the ability to elect more than fifty percent (50%) of Applicant'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 Applicant named herein.
- c. **Compliance with Applicable Law.** "Applicable Law" means all federal and state laws and regulations applicable to the parties under this Agreement. 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 Applicant is a government entity, in which case the laws of Applicant's jurisdiction (state or federal) shall apply, and jurisdiction and venue shall be in the courts of the Applicant's jurisdiction (state or federal).

- e. 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.
- f. 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.
- g. 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.
- h. Entire Agreement. This Agreement, together with the Exhibits and attachments hereto, and the Late Fees 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.
- i. 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.
- j. 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.
- k. 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.

- l. Construction. All references in this Agreement to "Sections" and "Exhibits" (if applicable) 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.
- m. Notices. Legal notices and other notifications 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.
Attn: President/CEO
1629 K Street NW, Suite 300
Washington, DC 20006

If to Applicant:

NOTE: A change in the organizations primary contact individual having responsibility to liaison with DirectTrust needs to be communicated within 10 days of a change in personnel so that there is no disruption in any notices or communications between the parties.



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

DIRECTTRUST.ORG, INC.

APPLICANT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____