**Appendix J**

**Terms of Use for the Patient Tracking System**

Virginia Hospital and Healthcare Association (VHHA), on behalf of the Virginia Department of Health (VDH), commissioned the development of a portal in the Virginia Healthcare Alerting and Status System (VHASS) through which healthcare providers, including providers who have entered into a Memorandum of Agreement with the Regional Healthcare Preparedness Coordinating Group (“Participating Regional Organization” or (PRO)), can enter data about victims of mass casualty incidents or public health emergencies (collectively “disaster events”) and through which family assistance centers (FACs) and other authorized individuals or entities can access information about the victims of the disaster event (“Patient Tracking System” or “System”), all in accordance with policies and procedures established for the use of the Patient Tracking System (“Policies and Procedures”). The Patient Tracking System will facilitate family reunification and Disaster Patient Locator Services, as defined below, during a mass casualty incident, act as a resource management tool during a disaster event and facilitate post-incident evaluation in the wake of a disaster event. “Disaster Patient Locator Services” shall mean providing information on the location of a healthcare provider’s patients in response to an inquiry about the location of a specific patient based on information that the healthcare provider inputs into the Patient Tracking System. PROs, FACs, Regional Healthcare Preparedness Coordinating Groups and all other organizations or individuals who utilize the Patient Tracking System shall be referred to as “Organization” or “Organizations.”

A. OWNERSHIP AND LICENSING

1. Ownership. Organization agrees that: (a) it is granted only a right of limited access to and use of the Patient Tracking System in accordance with these Terms of Use; (b) no information relating to Patient Tracking System may be used or disclosed by Organization for any reason except as necessary in connection with Organization’s legitimate and authorized use of Patient Tracking System as permitted under these Terms of Use; (c) Organization shall not remove any intellectual property, trade dress, product identification, proprietary rights notices, or use restriction notices from any portion of Patient Tracking System or from any output thereof.
2. License Grant: Patient Tracking System. VHHA hereby grants to Organization and Organization hereby accepts a limited, fully-paid up, non-exclusive, non-transferable, right and license for the term hereof to access and use Patient Tracking System, and to allow only users employed by or independently contracted to Organization who are 18 years of age or older to do so under the terms hereof (“Organization User”). Organization and its Users shall only use information obtained through Patient Tracking System in accordance with these Terms of Use and the Policies and Procedures for the Patient Tracking System (“Patient Tracking Policies and Procedures”). Organization shall not modify, enhance or otherwise change Patient Tracking System without the prior written permission of VHHA. Neither Organization nor its Users shall use Patient Tracking System nor any data or information accessible through Patient Tracking System for any purposes other than as permitted by the Patient Tracking Policies and Procedures.

B. RESPONSIBILITIES OF VHHA AND VDH

1. Patient Tracking System. VHHA shall permit access to the functions in Patient Tracking System for Organization and Organization Users, subject to the terms and conditions of these Terms of Use and the Patient Tracking Policies and Procedures. VHHA shall also comply with its Statement of Protection of Privacy and Security of PHI in the Patient Tracking System.
2. Disaster Patient Locator Services. Disaster Patient Locator Services shall be performed on behalf of Organization PROs by Family Assistance Centers (FACs) under the direction and supervision of state or local government agencies. To provide these services, the FACs will require access to the Patient Tracking System and specific fields therein. VDH shall be responsible for working with various state and local agencies that oversee FACs to establish access to the Patient Tracking System and for ensuring that the FACs provide Disaster Patient Locator Services and use the Patient Tracking System in compliance with the Policies and Procedures.
3. VHHA Patient Tracking Policies and Procedures. VHHA shall comply with Patient Tracking Policies and Procedures established for operation of Patient Tracking System.

C. RESPONSIBILITIES OF ORGANIZATION

1. Reasons for Use of Patient Tracking System.
2. Organizations that are PROs shall enter data about the identity and location of disaster event victims into the Patient Tracking System. The data entered by the Organization PROs will then be used by an FAC to provide the PRO with Disaster Patient Locator Services.
3. Organizations that are not PROs shall be granted access to use the Patient Tracking System for either Resource Management or Post-Incident Evaluation if the Organization can show a legitimate for such use. “Resource Management” shall mean evaluating and monitoring available resources, establishing priorities for the distribution of resources amongthe various sites, and coordinating said distribution. “Post-Incident Evaluation” shall mean an assessment of the response and recovery associated with a disaster event.
4. Information Available Through Patient Tracking System. Organization PROs shall have access to all data and Protected Health Information entered into the Patient Tracking System by the PRO. Organization PROs will not have access to the Protected Health Information entered into the Patient Tracking System by other Organization PROs. Organizations that are not PROs shall only have access to De-Identified information, as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For purposes of these Terms of Use, “Protected Health Information” or “PHI” shall have the broadest meaning given under applicable federal and state laws, and generally refers to individually identifiable health information.
5. Patient Tracking System Policies and Procedures. Organization shall comply and cause Organization Users to comply with all applicable Patient Tracking Policies and Procedures and the Statement of Protection of Privacy and Security of PHI in the Patient Tracking System.
6. Establishment of Organization Users. Organization shall be responsible for assigning a Designated Organization Contact who shall be responsible for establishing access to and permissions for the Patient Tracking System for the Organization’s employees and independent contractors in accordance with the Patient Tracking Policies and Procedures. Organization shall also be responsible for updating the status of its Users in the Patient Tracking System whenever an Organization User is added or removed.
7. Responsibility for Organization Users and Organization Unauthorized Users. Organization shall be responsible for all acts and omissions of (i) Organization Users, and (ii) all other individuals who access Patient Tracking System through Organization or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from Organization or any Organization User (“Organization Unauthorized Users”) with respect to Patient Tracking System; all Organization Users and Organization Unauthorized Users acts and omissions shall be deemed to be the acts and omissions of Organization.
8. Equipment and Software. Organization shall be responsible for procuring all equipment and software necessary for it to (i) access Patient Tracking System, (ii) use Patient Tracking System, and (iii) provide to Patient Tracking System all information required by these Terms of Use and Patient Tracking Policies and Procedures. Organization shall ensure that all computers and electronic devices owned or leased by Organization to be used to interface with or use information from Patient Tracking System are properly configured, including but not limited to the base PC operating system, web browser and Internet connectivity.
9. Availability of Patient Tracking System. Organization acknowledges and agrees that because Patient Tracking System: (a) is accessed over the Internet, (b) relies, in part, on the existence and proper operation of equipment and software that is outside of the control of VHHA, and (c) relies on access to information from, and the provision of information controlled by, third parties, VHHA makes no guarantee as to the availability or accessibility of Patient Tracking System, at any particular point in time.

D. PATIENT DATA AND SUBMISSIONS

1. To the extent Organization or Organization Users provide Submissions to Patient Tracking System, Organization shall comply with the terms and conditions of this Section D, as well as all applicable Patient Tracking Policies and Procedures.

“Submissions” mean all virus-free data and information added to, provided to or submitted to Patient Tracking System by Organization or an Organization User. Submissions include “Patient Data,” where Patient Data means any and all virus-free, Protected Health Information maintained by Organization that complies with the Patient Tracking Policies and Procedures in effect from time to time, and Data Maps, as defined in Section E.3.

Submissions must comply with Patient Tracking Policies and Procedures. VHHA will protect the security of Submissions in accordance with Patient Tracking Policies and Procedures. Upon reasonable prior written request, VHHA will provide to Organization any information reasonably requested by Organization for the purpose of verifying such protection.

1. License Grant. Organization hereby grants to VHHA and VHHA hereby accepts a worldwide, non-exclusive, irrevocable, royalty-free right and license to use the Submissions as necessary in order for VHHA to comply with these Terms of Use and to operate Patient Tracking System.
2. Data Maps. To the extent Organization provides Submissions to Patient Tracking System through direct interfaces between Organization Clinical Systems and the Patient Tracking System which contains categorical field level values that can only be translated by using Data Maps, Organization shall provide such Data Maps, which are true, accurate, complete, current, virus-free, in a standard format agreed upon by the parties, and comply with the Patient Tracking Policies and Procedures. At least 30 days prior to Organization implementation of changed, amended, updated or newly created Data Maps, Organization shall provide written notice to VHHA of such changes, amendments, updates or creation, which shall include the specific details of such changes, amendments, updates or creation.

“Data Maps” means any and all virus-free information that is necessary to VHHA’s ability to translate field-level categorical values into a format that allows Users to understand the Submission. Data Maps must comply with Patient Tracking Policies and Procedures.

“Clinical Systems” means all information systems used by Organization, currently or in the future, to collect, maintain, store, disseminate, or process any information related to patients, including but not limited to a practice management system or electronic medical record.

1. Organization Clinical Systems. To the extent Patient Tracking System is interfaced with Organization Clinical Systems, Organization shall provide not less than 90 days written notice to VHHA of any changes or modifications in the Organization Clinical Systems including, but not limited to, the discontinuation of an information system or the implementation of a new information system which is or will be included in Organization Clinical Systems.
2. Malicious Software. In participating in the Patient Tracking System, PRO will ensure, through implementation of security controls that meet industry standards, that the Submissions being transmitted and any method of transmitting such Submissions will not introduce any viruses, worms, unauthorized cookies, trojans, malware or other program, routine, subroutine, or data which will disrupt the proper operation of the Patient Tracking System, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the Patient Tracking System or any part thereof or any hardware, software or data used by an Organization in connection therewith, to be destroyed, damaged or otherwise made inoperable.
3. Accuracy of Data. Organization hereby warrants and represents to VHHA that all Submissions it provides to VHHA for input to Patient Tracking System are accurate, free from error, complete, virus-free and provided in a timely manner.
4. Express Warranty on Submissions. To the extent Organization is providing Submissions to VHHA or Patient Tracking System, Organization represents and warrants to VHHA that Organization has sufficient rights in and to all Submissions that it provides, places into or makes available to Patient Tracking System or to VHHA during the Term to grant the rights set out in these Terms of Use.
5. Rights on Termination of License. To the extent Organization has provided Submissions to VHHA or Patient Tracking System, such Submissions are inextricably entangled with Patient Tracking System such that returning or destroying same at the termination of these Terms of Use would be a severe hardship to VHHA. At the time of termination, therefore, Organization Submissions may remain on Patient Tracking System indefinitely and in accordance with the terms and conditions of these Terms of Use and the Patient Tracking Policies and Procedures.

E. PRIVACY OF PROTECTED HEALTH INFORMATION

To the extent that VHHA and Organization have access to Protected Health Information (PHI) in the Patient Tracking System, VHHA and Organization shall each be responsible for ensuring that performance of its obligations and exercise of its rights under these Terms of Use complies with all applicable privacy laws, including the Health Insurance Portability and Accountability Act of 1996 and the rules or regulations promulgated thereunder (“HIPAA”), and local and state laws rules and regulations including the Virginia Health Records Privacy Act. In VHHA’s Memorandum of Understanding with the Regional Healthcare Preparedness Coordinating Group, VHHA has documented the assurances and other requirements respecting the use and disclosure of PHI required by a Business Associate Agreement through its Statement of Protection of Privacy and Security of PHI in the Patient Tracking System. Upon reasonable advance notice, a party will make certain of its practices, books and records relating to the safeguarding, protection, use and disclosure of PHI available for inspection by the other party for purposes of determining compliance with this Section. In the event that these Terms of Use are, or activities permitted or required by these Terms of Use are, inconsistent with or do not satisfy the requirements of any applicable privacy law, rule or regulation, the parties shall take any action reasonably necessary to bring these Terms of Use, or performance under these Terms of Use, into compliance with such privacy law, including amending or modifying these Terms of Use.

F. INDEMNIFICATION, WARRANTY AND LIABILITY

1. Indemnification by VHHA for Infringement. VHHA will defend, at its expense, any action brought against Organization to the extent that it is based on a claim that Organization’s use of Patient Tracking System complies with the terms of the license but infringes upon a valid United States copyright, patent or intellectual property right of a third party. VHHA will pay all costs, including reasonable attorney’s fees, associated with such claim provided that Organization promptly notifies VHHA in writing of any such claim and permits VHHA and its agents full control and sole authority in the defense and/or settlement of any such claim. In its sole discretion, VHHA may settle any such actions by securing for Organization the right to continue to use Patient Tracking System or by replacing or modifying any components of Patient Tracking System to avoid any claim of infringement. Organization shall give VHHA information and reasonable assistance for the defense of any such suit, action or proceeding. Notwithstanding the foregoing, VHHA shall have no obligation or liability under these Terms of Use for any action based on a claim that Patient Tracking System infringes on a copyright, patent or intellectual property right of a third party if any part of Patient Tracking System has been combined by Organization with software not furnished by VHHA, or has been altered by or for Organization, where such combination or alteration, rather than Patient Tracking System alone, is the basis for the infringement.
2. Indemnification by Organization for Infringement. To the extent permitted under applicable state and federal law, Organization will defend, at its expense, any action brought against VHHA in the event that Organization’s use of Patient Tracking System violates the terms of the license or is inappropriate use, or that Patient Tracking System infringes on a copyright, patent or intellectual property right of a third party if any part of Patient Tracking System has been combined by Organization with software not furnished by VHHA, or has been altered by or for Organization, where such combination or alteration, rather than Patient Tracking System alone, is the basis for the infringement. Organization will pay all costs, including reasonable attorney’s fees, associated with such claim provided that VHHA promptly notifies Organization in writing of any such claim and permits Organization and its agents full control and sole authority in the defense and/or settlement of any such claim.
3. Indemnification by Organization. To the extent permitted under applicable state and federal law, Organization will indemnify and hold VHHA and its employees, agents, subcontractors and licensors harmless from and against any and all liability, loss, cost, fee, fine or damage (including reasonable attorney’s fees through final appeal) that is occasioned through use of Patient Tracking System by any of Organization, Organization Users, and Organization Unauthorized Users of Patient Tracking System, except to the extent such liability, loss, damage, cost or expense is caused by VHHA’s material breach of these Terms of Use, negligence, gross negligence or willful misconduct.
4. Reliance on Patient Tracking System. Organization acknowledges and agrees that (i) the information provided through Patient Tracking System is drawn from numerous sources and commingled on Patient Tracking System, and (ii) VHHA has not confirmed and is unable toconfirm the accuracy of any information placed on Patient Tracking System. The parties agree that VHHA merely receives data and information from multiple parties, which is commingled, and, therefore, shall not be held responsible by Organization for any quality issues, including negligence, detrimental reliance or any other theory. Organization shall be solely responsible for ensuring appropriate use by Organization and Organization Users of same and for communicating the contents of this Section F.4 to the Organization Users.
5. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, VHHA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW AS TO ANY MATTER WITH RESPECT TO PATIENT TRACKING SYSTEM, THE DOCUMENTATION OR ANY SERVICES PROVIDED BY VHHA UNDER THIS AGREEMENT. THERE IS NO WARRANTY THAT THE CONTENT OF PATIENT TRACKING SYSTEM IS TRUE, COMPLETE, CORRECT, OR ERROR-FREE, VIRUS-FREE OR UNINTERRUPTED. EXCEPT AS SET FORTH HEREIN, VHHA SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM INFRINGEMENT AND ANY IMPLIED WARRANTIES ALLEGEDLY ARISING FROM TRADE USAGE OR COURSE OF DEALING. PATIENT TRACKING SYSTEM IS NOT AN ELECTRONIC HEALTH RECORD NOR IS IT INTENDED TO REPLACE ANY OFFICIAL MEDICAL RECORDS MAINTAINED BY ORGANIZATION.VHHA MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER CONCERNING SUBMISSIONS SUBMITTED TO PATIENT TRACKING SYSTEM.
6. Assumption of the Risk for Acts and Omissions. Organization assumes the sole risk, liability and responsibility for: (a) the accuracy and completeness of the Organization Submissions to the extent it provides such information to Patient Tracking System and/or VHHA; (b) the transmission of Submissions to Patient Tracking System, if applicable; and (c) all use by Organization and its Users of Patient Tracking System.
7. Responsibility for Patient Care, Utilization Management and Quality Management. To the extent Organization is involved in patient care activities, utilization management activities and quality management activities for patients, Organization, its employees, agents and Users shall be solely responsible for all decisions related to these activities and the failure to act in regard to the patients.
8. DISCLAIMER OF INCIDENTAL, SPECIAL AND CONSEQUENTIAL DAMAGES. VHHA SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF PATIENT TRACKING SYSTEM BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY, EVEN IF VHHA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, EQUIPMENT USE, DATA OR INFORMATION OF ANY KIND.

G. REMEDIES

1. Liability Cap. VHHA’s maximum cumulative liability for damages for all matters arising out of or relating to these Terms of Use is the limit of any applicable insurance policy.
2. Suspension of Individual Organization Users by VHHA. In the event that VHHA has a reasonable belief that any act or omission of any Organization User or Organization Unauthorized User gaining access to Patient Tracking System through an Organization User has resulted in a breach of these Terms of Use by Organization, or may have compromised the security of Patient Tracking System or the security or confidentiality of information maintained on Patient Tracking System, VHHA shall have the right summarily to suspend such Organization User’s access to Patient Tracking System.
3. Termination for Breach. VHHA may terminate these Terms of Use immediately in the event Organization materially breaches its obligations hereunder. A material breach of the Agreement shall include but not be limited to: (a) the security of Patient Tracking System or any of the computer systems or networks of either party has been or is likely to be seriously compromised by such breach, in the opinion of VHHA, (b) such breach has been or is likely to result in a serious violation of the legal obligations of either party to patients with respect to the confidentiality of PHI, in the opinion of VHHA, (c) repeated failure of Organization to do the following: accurately assign roles and functions for Organization Users, monitor and ensure proper use of passwords by Organization Users, or monitor and ensure Organization User compliance with other Patient Tracking Policies and Procedures pertaining to security. VHHA shall be entitled to immediately seek defense and indemnification for any action arising out of Organization’s breach.

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