

Florida Health Information Exchange Subscription Agreement for Direct Secure Messaging Services

This Subscription Agreement, is a multi-party agreement by and between the undersigned vendor, Harris Corporation, under contract with the Agency for Health Care Administration (“AHCA”) for statewide health information exchange services (“Vendor”), and the other undersigned party (hereinafter referred to individually as “Participant”) and other Participants who have executed the same Subscription Agreement to subscribe to this Direct Secure Messaging Service. The Florida Health Information Exchange General Participation Terms and Conditions attached hereto are hereby incorporated by reference (hereinafter “General Terms and Conditions”). This Subscription Agreement, any exhibits, attachments, or amendments thereto, and the incorporated General Terms and Conditions, are hereinafter referred to as either “Subscription Agreement” or “Agreement.”

WITNESSETH:

WHEREAS, AHCA has been awarded a contract from U.S. Health and Human Services Office of the National Coordinator for Health Information Technology to provide funding to facilitate statewide health information exchange (“ONC Contract”);

WHEREAS, AHCA has engaged Vendor to facilitate said exchange and use as directed in the State of Florida 2010-2011 General Appropriations Act, Specific Appropriation 156A;

WHEREAS, Participant desires to subscribe to and utilize the Direct Secure Messaging Service offered by Vendor, and Vendor agrees to provide such service; and

WHEREAS, by subscribing to the Direct Secure Messaging Service, Participant desires to exchange Health Data with other Participants who have also executed a Subscription Agreement for the Direct Secure Messaging Service;

NOW THEREFORE, for and in consideration of the mutual covenants contained below and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto mutually agree to the following additional terms:

1. **Definitions:** All definitions in the General Terms and Conditions apply to this Subscription Agreement for Direct Secure Messaging Service, and the following additional definitions also apply to this Subscription Agreement for Direct Secure Messaging Service:
 - a. **Direct Secure Messaging Service** shall mean the service provided by Vendor on the Network wherein the Participant’s System may, on behalf of one of its authorized Participant Users, send or receive information and/or Health Data on an Individual to or from other Participants through the Network, and send or receive a response to or from other Participants that may include Health Data about that Individual.
 - b. **Participant Directory shall mean** a database accessible to Participants and Participant Users containing email addresses of Participants and Participant Users, attributes of the Participant and Participant Users, and entities (Participant) of which the Participant User is associated. The Participant Directory includes, but is not limited to, licensed health care providers, Medicaid providers, other state contracted health care providers, federal health care providers,

administrators of state health programs, health plans, and providers in other States that have executed an agreement for Direct Secure Messaging.

2. **Permitted Purposes for this Direct Secure Messaging Service:** Participant may send Health Data or use Health Data received by it from other Participants only for the following purposes (and the other Permitted Purposes in the General Terms and Conditions):
 - a. **Treatment.** Treatment of the Individual who is the subject of the Protected Health Information (“PHI”) requested or received by the Participant or Participant User.
 - b. **Health Care Operations.** Health Care Operations as defined in 45 CFR 164.501 and the requesting Participant or Participant User is requesting/accessing PHI for its own use. Participant shall only use the Minimum Necessary PHI for such Health Care Operations purposes.
 - c. **Public Health.** Public Health activities and reporting, ~~but only~~ to the extent permitted by Applicable Law.
 - d. **Payment.** Payment as defined in 45 CFR 164.501 and permitted by Applicable Law.
 - e. **Meaningful Use.** Any purpose to demonstrate meaningful use of certified electronic health record technology and the purpose is permitted by Applicable Law, including but not limited to the HIPAA regulations. “Meaningful use of certified electronic health record technology” shall have the meaning assigned to it in the regulations promulgated by the Department of Health and Human Services.
 - f. ~~Other. Any release or use of Health Data permitted by Applicable Law. HIPAA Authorization. Uses and disclosures pursuant to an Authorization provided by the individual or such individual’s personal representative as described in 45 C.F.R. § 164.502(g) of the HIPAA Regulations. Authorization shall have the meaning and include the requirements set forth at 45 CFR § 164.508 of the HIPAA Regulations and include any similar but additional requirements under Applicable Law.~~
3. **Responsibilities of Participants:**
 - a. **Compliance with General Terms and Conditions.** Participant agrees to comply with the General Participation Terms and Conditions which are incorporated by reference. Failure to comply with the General Terms and Conditions shall be grounds for suspension or termination of this Subscription Agreement.
 - b. **Network Operating Policies and Technical Requirements for Direct Secure Messaging Service.** All Participants agree and are required to meet and comply with the Network Operating Policies and Technical Requirements for this Direct Secure Messaging Service Agreement listed in *Attachment A* hereto.
4. **Vendor Responsibilities:**

1.15.2013

- a. Vendor will provide the Direct Secure Messaging Service as a Web-mail client via web browser for Participant to utilize. Vendor may offer connections to other email clients which may be used by Participants and Participant Users if available.
 - b. Vendor will provide the Service Levels for availability of central infrastructure and help desk response times specified in the Vendor's contract with AHCA.
 - c. Unless required by law, Vendor will not disclose to any third party audit trail data and the Participant Directory including all related account registry data which will collectively and individually be considered a trade secret in accordance with Section 812.081, Florida Statutes. Vendor will retain the audit trail data of transactions for a terminated Participant for eight (8) years. In the event of termination of AHCA's contract with the Vendor, the Vendor will transfer the audit trail data and Participant Directory with the account registry data to the Agency's current Vendor.
 - d. Vendor will establish message, including any attachments, and mailbox size limits which will be posted on the Vendor's website with an explanation of what happens when the limits are exceeded. These limits may change during the term of this agreement with notice posted 30 days in advance.
 - e. Vendor's role is only to facilitate the exchange of information and/or Health Data through the operation of the Network, in accordance with Vendor's agreement with AHCA and as provided in this Subscription Agreement. Vendor has no role in verifying the accuracy of any messages, nor verifying whether a Participant is authorized to send, receive, use or disclose particular information and/or Health Data.
5. **Fees:** Vendor reserves the right to begin charging a fee after July 1, 2013 upon ninety (90) days written notice to Participants, subject to AHCA approval. The monthly fee will be waived for participants that are government entities. The monthly fee will be waived for health care providers subject to 90 days written notice. The fee may be changed upon ninety (90) days written notice to Participants except for a fee reduction which can go into effect immediately upon AHCA approval.
6. **Miscellaneous:** If a provision of this Subscription Agreement conflicts with a provision in the General Terms and Conditions, the provision of this Subscription Agreement controls. Notices under this Agreement shall be given to the parties' respective address listed in **Attachment B** to this Subscription Agreement.
7. **Effective Date of this Subscription Agreement:** This Subscription Agreement and the Terms and Conditions become effective on the date that Participant or Participant User accepts such Agreements through the Direct Secure Messaging registration process.

IN WITNESS WHEREOF, this Subscription Agreement has been entered into and executed by officials duly authorized to bind their respective parties.

"Vendor"

Harris Corporation

By: _____

Printed Name: _____

Title: _____

| 1.15.2013

Date Signed: _____

DRAFT

Attachment A

Network Operating Policies and Technical Requirements Specific to the Direct Secure Messaging Service

In addition to the other provisions in this Subscription Agreement (including the General Terms and Conditions), all Participants agree and are required to meet and comply at all times with the following Network Operating Policies and Technical Requirements for this Direct Secure Messaging Service Agreement:

- Minimum Technical Requirements for Web-mail. Participant will be responsible for registration of the entity for participation and verification of any of its Participant Users who register. Participant must provide a web browser. A separate account is required for each User with a username and password to login.

Participant authorizes the system to encrypt email on behalf of Participant and Participant Users using a common DSM organizational certificate which is necessary to protect data when it is transmitted over the internet.

- Participant Directory. Participant agrees to accurately complete its registration information in the Participant Directory as part of the registration process as applicable and maintain the accuracy of the information in the Participant Directory. Participant agrees to require that its Participant Users maintain the accuracy of the information contained in the Participant Directory. Participant agrees to have its registration information checked for consistency with other information sources by the Vendor and understands that inconsistencies will terminate the registration process or this agreement unless corrected by the Participant or Participant User.
- Accounting of Disclosures. Participant and Participant Users are responsible for maintaining records for Accounting of Disclosures purposes.
- Re-disclosure Prohibition Notice. Participant and Participant Users agree to give notice of re-disclosure prohibition as required by 42 C.F.R. Part 2 Confidentiality of Alcohol and Drug Abuse Patient Records or other Applicable Law.

Attachment B

Addresses for Notice

For notices to Participant, the Vendor will use the Organization's information obtained through the Direct Secure Messaging registration process.

For notices to Vendor, use:

Harris Corporation
1025 West NASA Boulevard
Melbourne, Florida 32919
ATTN: General Counsel

For notices to AHCA, use:

Attention: Heidi Fox, Health Information Exchange Project Director
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 13
Tallahassee, FL 32308
Tel: (850) 412-3749