



Health Information Exchange Legal Workgroup Meeting

December 5, 2016
2:00-4:00 p.m.

Teleconference Number: (888) 670-3525
Participant code: 306-590-4984#



Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Members

Kathy Pilkenton
AHCA, CHAIR

Kate Doyle
Florida Hospital Association

William Dillon
Messer, Caparello & Self,
P.A.

Diane Gaddis
Community Health Centers
Alliance

Diane Godfrey
Florida Hospital

Jan J. Gorrie
Ballard Partners

Gabriel Hartsell
Galloway, Johnson,
Tompkins, Burr & Smith,
PLC

Mike Hansen
Florida Council for
Community
Mental Health

Samuel Lewis
Feldman Gale, P.A.

Marjorie McNeill
Florida Health Information
Management Association

Julie Meadows-Keefe
Grossman, Furlow & Bayó

Kimberly Tendrich
Florida Department of
Health

Mary Thomas
FL Medical Association

Wences Troncoso
FL Association of Health
Plans



AGENDA

Health Information Exchange Legal Work Group

Meeting Date: December 5, 2016
Time: 2:00 p.m. – 4:00 p.m.

Location: Agency for Health Care Administration
Building 3, Conference Room D

Call-In Details: (888) 670-3525
Participant code: 306-590-4984#

TIME	ITEM	PRESENTER
Call to Order, Welcome and Roll Call		
10:00-10:05	Welcome Agenda Roll Call	Kathy Pilkenton Dana Watson
Review & Approve Minutes		
10:05-10:15	December 4, 2015 (meeting) (p. 1) March 28, 2016 (conf. call) (p. 4)	Kathy Pilkenton
Previous Action Items		
10:15-10:30	December 4, 2015	Heidi Fox
Program Updates		
10:30-10:45	Metrics and goals	Heidi Fox
Discussion Items		
10:45-11:45	Overview & Proposed Changes: Patient Look-Up Agreement (p. 6)	Heidi Fox
	Proposed Changes: Event Notification Service Agreement (p. 19)	Aaron Parsons
	Proposed Changes: Terms and Conditions (p. 29)	Heidi Fox
Meeting Summary, Next Steps & Adjourn		
11:45-12:00	Action Items	Heidi Fox

Next Meeting: December 2017

MINUTES

Health Information Exchange Legal Work Group Meeting (HIE LWG)

Meeting Date: December 4, 2015

Time: 10:00 a.m. – 12:00 p.m.

Location: Agency for Health Care Administration
Bldg.2, Conference Room F
2727 Mahan Drive
Tallahassee, FL 32308

Members Present: Kathy Pilkenton, Chair; Bill Bell, Florida Hospital Association; William P. Dillon, Messer, Caparello; Jarrod Fowler, Florida Medical Association; Diane Gaddis, Community Health Centers Alliance; Mike Hansen, Florida Council for Community Mental Health, Inc.; John Pingale as proxy for Samuel Lewis, Feldman Gale; Kimberly Tendrich, Florida Department of Health; and Wences Troncoso, Florida Association of Health Plans.

Members Absent: Diane Godfrey, Florida Hospital; Jan Gorrie, Ballard Partners; Gabriel Hartsell, Galloway, Johnson, Tompkins, Burr & Smith PLC; and Julie Meadows-Keefe, Grossman, Furlow and Bayó.

Staff Present: Vance Burns, Heidi Fox, Carrie Gaudio, Michael Hardy, Kevin Marker, Aaron Parsons and Dana Watson.

Meeting Materials: Agenda, Minutes of December 12, 2014 meeting, Proposed Changes to Patient Look-Up Agreement; Proposed Changes to Event Notification Service (ENS) Subscription Agreement; Automated Readmissions Addendum

Copies of meeting materials are posted at: <http://www.fhin.net/content/committeesAndCouncils/index.shtml>

Call to Order, Welcome and Roll Call

Ms. Kathy Pilkenton called the meeting of the Health Information Exchange Legal Work Group (HIE LWG) to order at 10:00 a.m., welcomed members and guests, and conducted the roll call. A quorum was present.

Review and Approval of Minutes

Ms. Pilkenton asked the committee to review the minutes from the December 12, 2014 meeting. The minutes were approved with no corrections.

Patient Look-up Service Agreement Changes

Ms. Heidi Fox gave a brief overview of the purpose and history in the development of the Florida Health Information Exchange (Florida HIE) subscription agreements. There is a separate agreement for each of the Florida HIE's services. Ms. Fox reported that there are no proposed changes to the Patient Look-Up (PLU) agreement at this time.

Proposed Changes to the Event Notification Service (ENS) Agreement

Ms. Fox reviewed the proposed changes to the ENS agreement. She directed the work group to Attachment A to the ENS Agreement.

The first change is in regards to the delivery of the subscriber's panels. The change specifies that to include a patient in the panel, the participant must have appropriate authorization from the patient, including explicit authorization to access information about certain sensitive conditions. This change makes explicit what was previously an implied requirement.

The only other change is in regards to forwarding alert messages. The change specifies that the health plan participants and accountable care organization participants must make a good faith effort to forward the alert to the appropriate primary care provider.

Work group member Wences Troncoso commented that the health plans in the Florida Health Plan Association have several issues with the ENS Agreement. He first mentioned the uniform contract and noted that each contract needed to be individual with each health plan. Next, Mr. Troncoso discussed the fact that there is currently no third party security verification. Harris offered to do an internal verification; however, the health plans requested that the verification be from a third party in alignment with current industry best practices.

Mr. Troncoso noted the indemnification language in the current Terms and Conditions. He suggests that large health plans would not sign an agreement with indemnification language included.

He also noted that this agreement refers to Accountable Care Organizations (ACO) when there is no such entity in Florida Statutes. Ms. Fox responded that the ACOs participating are fee for service Medicare Shared Savings ACOs. Work group member Jared Fowler from the Florida Medical Association suggested striking the ACO language from the agreement.

Ms. Fox asked the work group members to submit their comments on the proposed changes to the agreement to Vance Burns.

Automated Readmissions Addendum

Ms. Fox reported that at a hospital's direction, the Event Notification Service can compile that hospital's encounter data into a rolling 30-day panel. This hospital panel can then be used to alert the hospital whenever a patient is seen at another ENS hospital with 30 days of their initial discharge. This service would allow hospitals to easily track readmissions outside of their own hospital system. The service will possibly launch during the first quarter of 2016 and would provide additional revenue for the Florida HIE.

The Workgroup members had many questions about a hospital's right to this information. If the reason for treatment is not for the same problem as the original discharge, it should have no effect on the readmissions rates.

Agency Update

Ms. Fox reported on the operational status of the Florida HIE services and goals for 2016. She said that operational metrics are posted on the www.FHIN.net website. The metrics show the number of participants onboarding and in production, the number of transactions, and the number of covered beds as applicable.

Ms. Fox reported that as of December, 2015 there were over 200 hospitals in production capable of providing alerts to 5 health plans and 11 ACOs. ENS currently covers over one million subscribed lives with over 50,000 alerts per month.

She noted that there are currently ten live nodes in PLU representing 426 entities connected to Florida's Health Information Exchange. As of November 10, 2015, there were 202 users in the Direct Messaging service generating close to 5,000 transactions per month.

The Agency has set a goal of having 20 participants in ENS and expanding the number of organizations on PLU by 10% through direct participation or growth of participating nodes. The Florida HIE will continue the Direct Messaging service as an adjunct to other services.

Meeting Summary, Next Steps and Adjourn

Ms. Fox reviewed the action items for the Agency from the meeting as follows:

1. Work group members will submit their comments on proposed changes to the ENS agreement to Vance Burns on or before January 4, 2016.
2. AHCA attorneys will review Terms and Conditions indemnification language and comment to Vance Burns by January 4, 2016.

Adjournment:

There being no further business to discuss, the committee adjourned at 11:40 a.m.

MINUTES

Health Information Exchange Legal Work Group Conference Call (HIE LWG)

Meeting Date: March 28, 2016
Time: 2:00 p.m. – 3:00 p.m.
Location: Call-in Number: (888) 670-3525
Pass Code: 934-890-7894#

Members Present: Kathy Pilkenton, Chair; Bill Bell, Florida Hospital Association; William P. Dillon, Messer, Caparello; Jarrod Fowler, Florida Medical Association; Diane Gaddis, Community Health Centers Alliance; Diane Godfrey, Florida Hospital; Melanie Brown-Woofter, proxy for Mike Hansen, Florida Council for Community Mental Health, Inc.; Samuel Lewis, Feldman Gale; Kimberly Tendrich, Florida Department of Health; and Wences Troncoso, Florida Association of Health Plans.

Members Absent: Jan Gorrie, Ballard Partners; Gabriel Hartsell, Galloway, Johnson, Tompkins, Burr & Smith PLC; and Julie Meadows-Keefe, Grossman, Furlow and Bayó.

Staff Present: Vance Burns, Heidi Fox, Carrie Gaudio, Michael Hardy, Pamela King, Kevin Marker, Aaron Parsons and Dana Watson.

Meeting Materials: Proposed Changes to Event Notification Service (ENS) Subscription Agreement;

Copies of meeting materials are posted at: <http://www.fhin.net/content/committeesAndCouncils/index.shtml>

Call to Order, Welcome and Roll Call

Ms. Kathy Pilkenton called the meeting of the Health Information Exchange Legal Work Group (HIE LWG) to order at 2:00 p.m., welcomed members and guests, and had Vance Burns conduct the roll call. A quorum was present.

Proposed Changes to the Event Notification Service (ENS) Agreement

Ms. Fox informed the workgroup that they will be considering a proposed addendum to the ENS agreement. She introduced Mr. Aaron Parsons to lead the discussion.

Mr. Parsons presented on the benefits of allowing hospitals which provide encounter data to ENS to also receive encounter data from other participating hospitals. The benefits include better coordinated post-discharge care, reduced hospital readmissions, increased primary care utilization, medication reconciliation, transitional care management reimbursement opportunities, etc. Data could be provided based on the treatment relationship which exists between the hospital and the patient, given the patients' recent hospital encounter.

Mr. Parsons referenced the proposed addendum to the ENS subscription agreement presented at the previous HIE LWG meeting. The proposed addendum would allow the Florida HIE vendor to retain demographic information from the hospital encounter data for the purpose of building a subscription panel for interested hospitals. This subscription panel would then be used to identify patients' subsequent hospital encounters at other hospitals occurring within 30 days of a discharge from the interested hospital.

It was noted that signing the proposed addendum and receiving the readmissions alerts would be entirely voluntary. It was also noted that, if necessary, the primary complaint and diagnosis code fields could be removed before the readmission alerts are routed to the subscribing hospital. Mr. Parsons stated that the 30-day window for retaining encounter data and sending notification of subsequent hospital encounters was based

on the 30-day readmissions metric used by the Centers for Medicare and Medicaid Services (CMS) as part of the Hospital Readmissions Reduction Program.

Mr. Bill Bell commented that the Florida Hospital Association believes that unnecessary hospital readmissions can be reduced through better coordinated follow-up care. He stated that receiving readmissions notifications through ENS could be helpful for hospitals.

Ms. Diane Godfrey inquired about which data elements the vendor would retain as part of the proposed readmissions alerting process. It was noted that the patient's name, gender, date of birth, and other demographic information would be copied from the encounter data, timestamped, and then entered into the vendor's MPI as part of the hospital's subscription panel. The encounter data would then be deleted and the information copied into the MPI would be deleted 30 days from the timestamp. A question was also raised about the ability of hospitals to opt out of providing encounter data to other hospitals that have decided to participate as subscribers to the service. Mr. Parsons noted that the ENS platform would provide access to the same encounter data to all subscribing organizations.

Mr. Samuel Lewis asked about only having records for a 30-day window. He also asked what action a hospital should take if a patient is readmitted within the 30 days. Mr. Parsons responded that the hospital can reach out to the prior hospital and/or to the patient's primary care provider to discuss the patient's medical history and treatment.

Ms. Pamela King reported that the stakeholders interested in the service feel that it would be a value to them and their operations. Mr. Parsons reminded the group that this is voluntary.

Mr. Samuel Lewis inquired if this is going to be a separate opt in/opt out issue or if hospitals already participating as data sources will automatically be included in alerts. Mr. Parsons responded that hospitals would need to opt in by signing the addendum in order to receive readmissions alerts.

Mr. Troncoso asked about the security controls around the service. Ms. Fox responded that the HIE vendor, Harris Corp., had provided a technical memorandum describing in detail how the security is provided. Harris did a HIPAA risk assessment as well. Mr. Troncoso inquired if any health plans had indicated interest. Ms. Fox will resend the technical memo to Mr. Troncoso and suggested a follow up conversation.

Mr. Troncoso asked if there was any proposed language to implement this change. Mr. Parsons stated that the proposed addendum is posted on www.fhin.net. He will send a copy of the Addendum to the work group.

Mr. Bell supports the change to the service as a voluntary option to the data sources to also receive notices for a minimal fee after a pilot program is complete.

No HIE LWG member stated any specific objections to the proposed addendum or readmissions alerting feature. Hearing no objections, the Agency noted its intent to move forward with the project.

Adjournment:

There being no further business to discuss, the committee adjourned at 3:00 p.m.

**Florida Health Information Exchange Subscription Agreement
for Patient Look-Up ~~and Delivery~~ Services**

~~This Subscription Agreement is a multi-party agreement by and between the undersigned vendor, Harris Corporation, and the other undersigned party (hereinafter referred to individually as "Participant") acting as a data source or recipient of data and other Participants who have executed the same Subscription Agreement to participate in the Patient Look-Up Service. This Florida Health Information Exchange Subscription Agreement for Patient Look-Up and Delivery Services ("Subscription Agreement"), effective on the Effective Date written below, is a multi-party agreement by and between the undersigned vendor, Harris IT Services 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 all other Participants who have executed the same Subscription Agreement. The undersigned Participant may be a Participant that will subscribe to Patient Look-Up ~~and Delivery~~ Services or the Florida Department of Health ("Public Health Participant"). Public Health Participant's access to the Patient Look-Up and Delivery Services shall be solely for purposes of facilitating Public Health Participant's access to medical information that Participants are required by law to provide to Public Health Participant for purposes of public health activities as authorized by law related to preventing and eliminating outbreaks of disease and making epidemiological investigations of reported cases of diseases of public health significance. 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 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 Patient Look-Up ~~and Delivery~~ Services offered by Vendor, and Vendor agrees to provide such service; and

WHEREAS, by subscribing to the Patient Look-Up ~~and Delivery~~ Services, Participant desires to exchange Health Data with other Participants who have also executed a Subscription Agreement for the Patient Look-Up ~~and Delivery~~ Services;

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 Patient Look-Up ~~and Delivery~~ Services, and the following additional definitions also apply to this Subscription Agreement for Patient Look-Up ~~and Delivery~~ Services:

a. Patient Look-Up 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 a request for Health Data on an Individual under its care (and with which it has a Treatment relationship) to or from other Participants through the Network, and send or receive a response to or from other Participants that includes any Health Data found for that Individual. Patient Look-Up Services shall include services provided by the Vendor on the

Network wherein for purposes of Public Health activities described in Section 381.0031(5), F.S. authorized personnel of the Florida Department of Health send a request for Health Data to Participants through the Network, as a public health participant, and receive a response from Participants that include any Health Data found for that individual.

- ~~a. **Delivery Service** means the service provided by Vendor on the Network wherein the Participant's System sends Health Data on an Individual under Participant's care (and with which it has a Treatment relationship) to other Participants and for Public Health reporting purposes authorized by law.~~
- ~~b. **Continuity of Care Document** means an electronic file that summarizes an Individual's medical status in a standard format for the purpose of information exchange. It contains a core data set of the most relevant administrative, demographic, and clinical information about an Individual's health care, covering one or more health care encounters.~~
- ~~c. **Florida Form** means the "Universal Patient Authorization Form for Full Disclosure of Health Information for Treatment and Quality of Care" adopted in Rule 59B-16.002, Florida Administrative Code.~~
- ~~d. **Authorization Form** means the Florida Form or its equivalent.~~

2. **Permitted Purposes for this Patient Look-Up and Delivery Services:** Participant agrees to allow its Health Data to be used or accessed by other Participants, and agrees that Participant shall use or access Health Data 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 User but only to the extent that these purposes are expressly permitted by the Individual in an Authorization Form or for a medical emergency as permitted in Applicable Law. The requesting Participant User must be a health care provider in a Treatment relationship with the Individual who is the subject of the PHI requested and must be requesting PHI solely for the Participant User's use in providing Treatment to the Individual.~~
- ~~a. _____~~
- ~~b. _____~~
- ~~e. **Health Care Operations.** Health Care Operations but only to the extent that these purposes relate to quality or other purposes expressly are permitted in 45 CFR 164.501, by the Individual in an Authorization Form and provided that the requesting Participant User has an established Treatment relationship with and relate to quality or other purposes permitted by the Individual in an Authorization Form and provided that the requesting Participant User has an established Treatment relationship with the Individual who is the subject of the PHI. ~~the Individual who is the subject of the PHI. The Participant User shall only use the Minimum Necessary PHI for such Health Care Operations purposes.~~~~
- ~~d.b. _____~~
- ~~e. _____~~
- f.c. **Public Health.** Public Health activities and reporting, but only to the extent permitted by Applicable Law as specified in 64D-3, Florida Administrative Code.

g.d. Disability Determination. Activities necessary for establishing whether an individual is eligible for Social Security disability payments by federal or state agencies where access to medical records is authorized by the patient for this purpose.

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. **Minimum Data Set for Patient Look-Up and Delivery Services.** All Participants that allow their respective Participant Users to access Health Data through the Network for Patient Look-Up and Delivery Services shall have a corresponding reciprocal duty to provide Health Data to the Network for sharing with other Participants for the Permitted Purposes listed herein. The Participants agree that they each shall make good faith efforts to make available, at a minimum, the following information to be transmitted consistent with Integrating the Healthcare Enterprise (IHE) IT Infrastructure Profiles that promote the coordinated use of established standards (such as Cross-Community Access (XCA) and HL7), in a Continuity of Care Document, using a current version of Consolidated Clinical Data Architecture (CCDA), including required and optional sections, in accordance with Applicable Law specific to the Participant:
 - i. For Participants with emergency department visits, encounter information for each emergency department visit, and for Participants with primary care or hospital visits, encounter information for such visits. Encounter information shall include: patient demographic information, reason for visit, treating health care provider(s), date of visit, place of visit, diagnoses, and procedures.
 - ii. Vital signs, pathology reports, radiology studies and reports, discharge summaries, medications, alerts (i.e., allergies), immunizations, patient functional status, laboratory test results, and other diagnostic test results to the extent that Participants have such data and have the capability to submit such information electronically.
 - ~~iii.~~ Participants shall not filter their data, but rather make the health information for all its patients available in accordance with Network Operating Policies and Technical Requirements for this Patient Look-Up and Delivery Services Agreement except that Participant may filter data where 42 CFR Part 2 is applicable or for Individuals who have requested, and Participant has granted, a restriction of the Individuals' data as permitted by the HIPAA Regulations 45 CFR § 164.522(a), HITECH, and other Applicable Law.
 - ~~iii.~~iv. Participant agrees to post a re-disclosure prohibition notification upon each instance in which Health Data is accessed by a Participant indicating types of conditions or circumstances subject to such restrictions under Applicable Law in the notice. The Participants agree that Vendor has no obligation to verify the existence, placement or frequency of the Re-Disclosure Notice used by a Participant or Participant's compliance with Applicable Law regarding re-disclosure.

~~iv.v.~~ Participants may, and are encouraged to, make available, in addition to the minimum set of data required by this Section, to the Network any and all data that may be relevant to the clinical care of a patient and necessary for the Permitted Purposes. Notwithstanding any of the foregoing, Participants shall not submit or make available Psychotherapy Notes as that term is defined in 45 CFR § 164.501 of the HIPAA Regulations.

- c. **Patient Look-Up ~~and Delivery~~ Services Access.** Participants may allow a health care provider ~~authorized to write prescriptions in Florida~~ to access Health Data through the Network as a Participant User of the Participant regardless of whether the provider shares data through the Network. ~~The Participant must notify the Vendor of the access of providers not sharing data by monthly reporting number of transactions in which documents were retrieved by such providers. The transaction report shall be submitted to the Vendor no later than 10 days following the applicable calendar month. Participants agree that they will make a good faith effort to increase data sharing by Participant Users and cooperate with AHCA in this effort.~~
- d. **Network Operating Policies and Technical Requirements for Patient Look-Up and Delivery Services.** All Participants agree and are required to meet and comply with the Network Operating Policies and Technical Requirements for this Patient Look-Up and Delivery Services Agreement listed in *Attachment A* hereto, except for Public Health Reporting Participants that receive delivery services only as authorized by law. Public Health Reporting Participants are responsible for meeting the technical requirements for installation, maintenance and hosting of the Vendor's integration package only.

4. **Vendor Responsibilities:**

- a. Vendor will provide the Patient Look-Up and Delivery Services for Participant to utilize and additional services to facilitate participation as approved by AHCA.
- b. Vendor will provide the Service Level Agreements for ~~the system response times, availability of central infrastructure and help desk response times specified in the Vendor's contract with AHCA~~ availability of Patient Look-Up Services as outlined in Attachment B to this Subscription Agreement.
- c. ~~Vendor will retain audit trail data for a terminated Participant for eight (8) years. In the event of termination of AHCA's contract with the Vendor, the terms and conditions of this Agreement as provided in Section 15.g of the General Terms and Conditions shall apply. Unless required by law, Vendor will not disclose to any third party audit trail data which will be considered collectively and individually a trade secret in accordance with Section 812.081, Florida Statutes.~~
- d. Vendor hereby grants to Participant, as applicable, a perpetual, ~~non-exclusive~~ license to the "Full Express" or the "Express Lite" interface software, ~~whichever Participant is using~~, which Participant may continue to use after the Subscription Agreement is terminated (however, Participant would not be permitted to utilize the Patient Look-Up ~~and Delivery~~ Services on the Network after the Subscription Agreement is terminated).

- e. Vendor's role is to facilitate exchange of 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 whether a Participant is authorized to send, receive, use or disclose particular Health Data.

5. **Fees:** Participants are charged an annual ~~a quarterly~~ fee by the Vendor, subject to AHCA approval. ~~Vendor shall inform Participants of whether an increase is solely due to operating costs or includes an increase in Vendor fees. The Vendor will provide additional explanations about the changes to Participants such as regulatory requirements or other factors that impact operating costs as applicable.~~ 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~~. The fee schedule is displayed in Exhibit 1.
6. **Term and Termination:** This Agreement will continue until and unless the Vendor or Participant terminates this agreement. Such termination may be effected as provided for in the General Terms and Conditions, or additionally, the Vendor may terminate this Agreement without cause by providing the Participant with at least thirty (30) days prior written notice.
7. **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 CB** to this Subscription Agreement.
8. **Signatories:** If the Participant is an information technology vendor as determined by AHCA, a health care provider authorized to write prescriptions in Florida or a health care facility licensed by AHCA that will share Health Data through the Network must co-sign the agreement. Such information technology vendors further acknowledge that even though they are deemed to be a "Participant" under this Agreement, the limitations on the use of Health Data may preclude such information technology vendors from accessing or otherwise using Health Data. Such information technology vendors represent and warrant that they are not bound by any contract or commitment that seeks or otherwise purports to limit an information technology vendor's liability under this Agreement. Such information technology vendors also agree that they will not enter into any contract or commitment with any health care providers, health care facilities, or other third parties that seek or otherwise purport to limit an information technology vendor's liability to any other Participant or to Vendor, and further agree that any such contract or commitment entered into in contravention of this provision shall be deemed void and unenforceable.
9. **Effective Date of this Subscription Agreement:** This Subscription Agreement and the General Terms and Conditions become effective when fully executed.

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

"Vendor"
Harris IT Services Corporation

By: _____ Date Signed: _____

Printed Name: _____

11.3.2015

Title: _____

“Participant” or “Public Health Participant”

Entity Name: _____

By: _____ Date Signed: _____

Printed Name: _____

Title: _____

“Health Care Provider Co-signer”

Entity Name: _____

By: _____ Date Signed: _____

Printed Name: _____

Title: _____

DRAFT

Attachment A

Network Operating Policies and Technical Requirements Specific to the Patient Look-Up and Delivery Services

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 Patient Look-Up ~~and Delivery~~ Services Agreement:

1. Minimum Technical Requirements. Participant will be responsible for installing, maintaining and hosting the Vendor's ~~integration package~~ interface software (gateway) on (either "Full Express" or "Express Lite" software) on Participant's own computer to enable connectivity to the Network for the Patient Look-Up ~~and Delivery~~ Services including installing and maintaining updates and upgrades. Participant's machine must meet the following requirements for hosting the Vendor's integration package:
 - A virtual machine environment that can host the Express VMware disk image (.ova format) or Vendor approved interface software (gateway).
 - An enterprise master patient index (MPI)
 - A clinical data repository
 - For Vendor's ~~interface~~ "Express Lite" software (gateway): (for Participants that already have an enterprise master patient index (MPI) and a clinical data repository);
 - the minimum system resources that should be allocated to the virtual machine are:
 - 4 CPU cores
 - 8GB of RAM
 - 100GB of available disk space
 - The recommended system resources that should be allocated to the virtual machine are:
 - 8 CPU cores
 - 16 GB of RAM
 - 500 GB of available disk space
 - ~~For Vendor's "Full Express" software (for Participants that do not already have an MPI or a clinical data repository), the minimum system resources that should be allocated to the virtual machine are:~~
 - ~~8 CPU cores~~
 - ~~16GB of RAM~~
 - ~~500GB of available disk space~~
 - Network access between the Vendor's interface software (Express software gateway) and (either "Express Lite" or "Full Express") and the Participant's health information exchange system for the exchange of clinical system data for the Patient Look-Up ~~and Delivery~~ Services.

The Participant shall maintain availability of its data for query on a 24 hour/7 day basis with the exception of routine and unexpected maintenance, at greater than 99% uptime monthly. ~~The Participant shall make its data available for a minimum look-back period of 18 months up to and including current available data and update the available data daily.~~

~~2. Minimum Unique Patient Data Available. The desired minimum is 250,000 unique patients made available to the network for Patient Look Up and Delivery Services on a continual daily basis. The Participant must be able to make data available to the network for Patient Look Up and Delivery Services on a continual daily basis and document the minimum unique patient data made available.~~

~~3. Universal Patient Authorization Form.~~

- ~~● Form Used. Participant agrees to review the Florida Form and determine the equivalency of forms in use by Participant and Participant Users to that of the Florida form. Participant represents and warrants to Vendor and the other Participants that, except as otherwise permitted by Applicable Law, Participant shall access Health Data only for those Individuals who have signed an Authorization Form. The Participants agree that Vendor has no obligation to verify the existence or legal sufficiency of any Authorization Form used by a Participant or signed by an Individual.~~
- ~~● General Policy. Participant agrees to require that its Participant Users obtain proper patient (or legal representative) signature on the Authorization Form prior to issuing a request to the Network's Patient Look Up and Delivery Services for Health Data on such Individual.~~
- ~~● Medical Emergency Exception. As an exception to the foregoing, a Participant User may issue the request for and have access to the patient's Health Data without written patient authorization or consent in the event of a medical emergency when the patient or his/her legal representative is unable or unavailable to authorize access and where the Participant User making the request is a health care provider who has a need for the information about the patient for the purpose of treating a condition which poses an immediate threat to the health of any individual, and which requires immediate medication intervention. In the event of an emergency access to the patient's Health Data, written documentation in the patient's record immediately following the disclosure shall be made by the requesting Participant User and must include the name of the medical personnel to whom disclosure was made and his/her affiliation with any health care facility, the name of the individual making the disclosure (as applicable), the date and time of the disclosure, and the nature of the emergency. Health care providers subject to 42 CFR Part 2 are responsible for placing information regarding the emergency access from the patient lookup service audit log in their records as required by 42 CFR Part 2.~~
- ~~● Re Disclosure Notice. Participant agrees to post a re-disclosure prohibition notification upon each instance in which Health Data is accessed by a Participant indicating types of conditions or circumstances subject to such restrictions under Applicable Law in the notice. The Participants agree that Vendor has no obligation to verify the existence, placement or frequency of the Re Disclosure Notice used by a Participant or Participant's compliance with Applicable Law regarding re-disclosure.~~
- ~~● Audit. Participant agrees to develop an audit plan to conduct random audits of its Participant Users of the Network to verify that Participant Users have obtained proper, signed patient Authorization Forms, to the extent required by Applicable Law, regarding access to the Health Data from the Network and if applicable, documentation of emergency access of Health Data from the Network, which audit plan will be provided to Vendor within forty five (45) days of going live with the Patient Look Up and Delivery Services. Participant agrees to perform the minimum audits proposed in the plan submitted by the Participant. Participant is not precluded from performing other audits in addition those proposed in the audit~~

~~plan. Vendor shall forward audit plans submitted to other Participants upon request and to AHCA upon receiving.~~

- ~~• Production of Documentation. Participants must send documentation upon request of patient authorization or medical emergency access to the PLU Privacy Manager of another Participant whose Health Data was accessed. A PLU Privacy Manager may report failure to receive a response for documentation of patient authorization to AHCA detailing the date of request, subsequent follow up requests and who was contacted in addition to the PLU Privacy Manager.~~

~~4.2. Minimum Patient Data Set for Patient Look-Up Requests. Participant agrees to provide and accept the patient's full first name, and last name, gender and birth date in making and receiving requests for data in the Patient Look-Up Services. Participants may provide and accept additional data elements if such data elements are not required in completing a request for data in the Patient Look-Up Service.~~

~~5. Public Health Participant will be responsible for maintaining the technical requirements for the Public Health Participant's access to Patient Look Up and Delivery Services.~~

~~6.3. Web Access Controls. Participants that offer web portal or email access to Patient Look-Up and Delivery Services and their Participant Users shall establish procedures to ensure that former Participant Users cannot access the Patient Look-Up and Delivery Service. Participants will establish procedures such that Participant Users request termination of access of individuals that are no longer to have access to the Participant within 24 hours of occurrence, and there is a mechanism to assure the termination of Participant User access to the PLU service.~~

~~7. Patient Look Up Privacy Manager. Participant will designate an individual ("PLU Privacy Manager") that will have access to the PLU audit log using an account established by the Vendor. The PLU Privacy Manager will respond to requests for information and documentation from the PLU Privacy Manager of other Participants whose Health Data was accessed. The PLU Privacy Manager will perform other duties as determined by the Participant which may include review of audit logs, requesting information from other Participants about their patient look up requests, development of audit log review best practices in coordination with other PLU Privacy Manager, development and performance of patient authorization audit plans, or other duties as determined by the Participant.~~

Attachment B
Service Level Agreement for the Patient Look-Up Service

The Vendor shall provide service levels commensurate with health care industry standards. The Vendor shall track downtime/uptime and other statistics necessary for determining the service level achieved.

The Service Level Agreements (SLAs) are outlined in Table 1, as the technical performance measures for the Florida HIE. These SLAs identify the system response times, availability of central infrastructure, and the help desk response times.

The system response time SLAs have been designed with multiple levels. The first level, considered the nominal response time, indicates the response time for ninety percent (90%) of the requests issued to the system, will be three (3) seconds. The second level allows for the remaining ten percent (10%) of the requests to be responded to within five (5) seconds. This is designed to address the peak volume loads experience by the Florida HIE.

The Vendor shall capture the necessary system events to monitor, verify and report on the SLA commitments. The measurements of the various service levels captured from Florida HIE production sites will be provided as part of the Monthly Statistical Report deliverables. The Vendor shall also report service level information to participants on a monthly basis.

The Vendor shall make available to Participants the formula used to determine the SLA penalty as applicable. If agreeable to the Participants, the Participants will receive additional services equivalent to the value of the SLA penalties incurred. Service equivalent work must be performed during the month subsequent to the month in which the SLA was not met or such time as mutually agreed upon by the Vendor and Participants.

<u>*NOTE: SOME SLA SPECIFICATIONS ARE UNDER REVIEW AND ARE NOT INCLUDED IN THIS DRAFT</u>					
<u>Vendor SLAs for PLU</u>					
<u>SLA Name</u>	<u>Description</u>	<u>Target</u>	<u>SLA</u>	<u>Penalties</u>	<u>Verifying SLAs</u>
<u>PLU</u> <u>Central Infrastructure Availability</u>	<u>Ability to deliver PLU services from the Florida HIE excluding planned maintenance windows.</u>	<u>100%</u>	<u>99.9%</u>		
<u>eHealth Exchange Response Time</u>	<u>Time to respond to Florida HIE requests related to queries made via the eHealth Exchange</u>	<u>Each Response < 1s</u>	<u>90% < 3s 100% < 5s</u>		

	<u>(excluding network/participant system latencies)</u>				
<u>Gateway Response Time</u>	<u>Time to Respond to Florida HIE requests for Patient Look-Up Patient Discovery, Document Query, and Document Retrieve services.</u>	<u>Average < 1 s</u>	<u>Average < 5s</u>		
<u>PLU Services General Support</u>	<u>Response to queries and questions from participants related to general support</u>	<u>< 4 business hours</u>	<u>< 8 business hours</u>		

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Attachment CB

Addresses for Notice

For notices to Participant, use:

Attention: _____

Organization: _____

Address: _____

City/State/Zip: _____

Email: _____

For notices to Vendor, use:

Harris IT Services Corporation
2235 Monroe Street
Herndon, VA 20171
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 16
Tallahassee, FL 32308
Tel: (850) 412-3749

Exhibit 1
~~2015~~-PLU Fee Schedule*

Participant organizations are charged as follows:

- Participants are charged a ~~\$7449~~,000 base annual fee, including maintenance, plus a per licensed bed fee of \$14 excluding skilled nursing if on-boarding after July 1, 2014; participants are charged a \$39,000 base annual fee plus a per licensed bed fee of \$14 excluding skilled nursing if on-boarded prior to July 1, 2014
- Participants are charged a PLU maintenance fees of \$25,000 assessed annually starting July 1, 2014
- As applicable, participants are charged a \$12,000 ~~self~~-onboarding fee for testing and technical assistance per 100 hours
- Payment of maintenance fees is due from organizations in production or in process of onboarding and base fees plus bed fees are due from organization requesting validation testing for production

*Fees are subject to change upon ninety (90) days written notice to Participants.

Florida Health Information Exchange Subscription Agreement for Event Notification Service

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”) acting as a data source or recipient of data and other Participants who have executed the same Subscription Agreement to ~~subscribe to this participate in the~~ Event Notification 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 engaged Vendor to facilitate said exchange and use as directed in the State of Florida 2010-2011 General Appropriations Act, Specific Appropriation 156A;~~

~~WHEREAS, the purpose of the Event Notification Service is to support coordination of care activities and to enable health plans to engage members’ primary care providers which will be sent the encounter alerts for patients under their care; and~~

WHEREAS, Participant desires to subscribe to and utilize the Event Notification Service offered by Vendor, and Vendor agrees to provide such service;

WHEREAS, by subscribing to the Event Notification Service, Participant desires to exchange Health Data with other Participants who have also executed a Subscription Agreement for the Event Notification 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 Event Notification Service, and the following additional definitions also apply to this Subscription Agreement for Event Notification Service:
 - a. **Event Notification Service (ENS)** shall mean the service provided by Vendor on the Network wherein the Participant may receive information and/or Health Data on an Individual from other Participants acting as a data source through the Network.
 - b. **Alert Message** shall mean the specific Health Data delivered by the ENS.
 - c. **Encounter Data** shall mean specific Health Data made available by Participants for matching with individuals in the Panel to enable creation of the Alert Message.

d. Panel shall mean a listing of patients or members with identifying information to be used in matching to the Encounter Data received from Participants.

2. **Permitted Purposes for this Event Notification Service:** Participant may 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”) received by the Participant or Participant User.
- b. **Health Care Operations.** Health Care Operations as defined in 45 CFR 164.501 and provided that the Participant or Participant User is receiving the PHI for their own use. ~~Participant shall only use the Minimum Necessary PHI for such Health Care Operations purposes.~~
- c. **Public Health.** Public Health activities and reporting 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 and consistent with any limitations set forth in the ~~Florida Health Information Exchange~~ General Terms and Conditions.

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 ENS.** All Participants agree and are required to meet and comply with the Network Operating Policies and Technical Requirements for this Event Notification Service Agreement listed in *Attachment A* hereto.

4. **Vendor Responsibilities:**

- a. Vendor will provide the Event Notification Service by performing a matching of Encounter Data received from Participants acting as a data source to Panels received from Participants acting as recipients of data and by delivering of the resulting Alert Messages to the appropriate recipient. and a Upon advance request, a copy of each Alert Message can be provided to the Participant that provided the Encounter Data. The Alert Messages will be delivered using secure file transfer protocol (sFTP), the Florida Health Information Exchange Direct Messaging Service, or another means of secure delivery as mutually agreed by the parties to this Agreement.
 - b. Vendor will provide the Service Levels for availability of Event Notification Service response time and help desk response times specified in the Vendor's contract with AHCA as outlined in Attachment C to this Subscription Agreement.
 - c. Unless required by law, Vendor will not disclose to any third party audit trail data which will collectively and individually be considered a trade secret in accordance with Section 812.081, Florida Statutes.
 - ~~e.d. Vendor will retain the audit trail data of transactions Alert Messages 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 to AHCA's current Vendor. Participant shall retain audit trail data of transactions as applicable by (specific citation).~~
 - ~~d.e.~~ Vendor will maintain the confidentiality of ~~the patient or member~~ Panels received from Participants, and will not use the Panel for any purpose not expressly permitted by ~~the Participant~~ this Agreement.
 - ~~e.f.~~ Vendor will maintain the confidentiality of the Encounter Data received from Participants acting as a data source, destroying the data immediately after use by the Vendor.
 - ~~f.g.~~ Vendor's role is to facilitate the exchange of 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 Health Data received from Participants or verifying whether a Participant, Participant User, or other individuals designated by Participant to receive Alert Messages are authorized to send, receive, use or disclose particular information and/or Health Data. Vendor will not collect information from the content of Alert Messages.
5. **Fees:** Participant recipients of Alert Messages are charged an annual fee by the Vendor which may be billed quarterly as determined by the Vendor, ~~subject to AHCA approval~~. 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~~. The fee schedule is displayed in Exhibit 1.

6. **Term and Termination:** This Agreement will continue until and unless the Vendor or Participant terminates this agreement. Such termination may be effected as provided for in the General Terms and Conditions, or additionally, the Vendor may terminate this Agreement without cause by providing the Participant with at least thirty (30) days prior written notice.
7. **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 email or physical address listed in ***Attachment B*** to this Subscription Agreement.
8. **Effective Date of this Subscription Agreement:** This Subscription Agreement and the General Terms and Conditions become effective when fully executed. This Agreement supersedes any former agreement for the Event Notification Service.

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: _____

Date Signed: _____

Participant acting as Data Source

Entity Name: _____

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

Participant acting as Recipient of Data

Entity Name: _____

By: _____

Printed Name: _____

Title: _____

4.1.2015

Date Signed: _____

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Attachment A

Network Operating Policies and Technical Requirements Specific to the Event Notification 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 Event Notification Service Agreement:

1. Delivery of Encounter Data. Participants acting as a data source will cooperate with the Vendor to establish a mechanism by which Encounter Data may be transmitted to the Vendor. The Encounter Data shall contain ~~discharge~~ data including, but not limited to, hospitalizations and emergency department visits with sufficient information to permit the Vendor to match the patient with the individuals listed in the Panels submitted by Participants. The Encounter Data may include, but not be limited to, observation visits, urgent care visits, ~~and admission, discharge, and transfers~~ data as elected by the data source. Participants acting as a data source shall filter restricted self-pay Encounter Data in compliance with 45 CFR § 164.522(a)(1)(vi) data and data subject to 42 CFR Part 2 which must be excluded. In order to assure that restricted data is filtered, all self-pay Encounter Data may be excluded by the data source.
2. Delivery of Panels. Participant recipients of data shall provide a Panel of members or patients to Vendor consistent with templates that the Vendor shall provide to Participant. Thereafter, the Participant will provide Vendor with updates to the Panel as appropriate.
3. Delivery of Alert Messages. Participants are responsible for identifying their Participant Users or other individuals to receive Alert Messages. Participant recipients of data are responsible for assuring that the individuals receiving the Alert Messages have patient authorization to access and use the data required by applicable law.
- ~~4. Forwarding Alert Messages. Participant recipients that are health plans will forward the Alert Message to the appropriate primary care provider of a member as soon as reasonably practicable upon receipt in a manner consistent with applicable law.~~
- ~~5. Acknowledgement. Participant recipients that are health plans acknowledge that data sources receive a copy of Alert Messages sent to the health plan and thereby agree to accept copies of the Alerts Messages received by a data source as confirmation of alert receipt by the health plan.~~
- 6.4. Maintenance of Records. Participants are responsible for maintaining records for Accounting of Disclosures, public records, if applicable, records discovery, or any other purposes required by Applicable Law or the policies of the Participant. Any vendor

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support for the retrieval of records or other record handling requested or caused by the Participant will be subject to a fee to be paid by the Participant to the Vendor.

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Attachment B

Addresses for Notice

For notices to Participant, use:

Attention: _____

Organization: _____

Address: _____

City/State/Zip: _____

Email: _____

For notices to Vendor, use:

[Harris Corporation](#)
[1025 West NASA Boulevard](#)
[Melbourne, Florida 32919](#)
[ATTN: General Counsel](#)
[Harris IT Services Corporation](#)
[2235 Monroe Street](#)
[Herndon, VA 20171](#)
[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 16
Tallahassee, FL 32308
Tel: (850) 412-3749

Attachment C

Service Level Agreement for the Event Notification Service

The Vendor shall provide service levels commensurate with health care industry standards. The Vendor shall track downtime/uptime and other statistics necessary for determining the service level achieved. The Service Level Agreements (SLAs) outlined in Table 1, Vendor SLAs for ENS, identify central infrastructure availability and general support response time. SLAs do not include a commitment to provide Health Data from specific facilities or to ensure the accuracy of Health Data provided by Participant data sources.

<u>*NOTE: SLA SPECIFICATIONS ARE UNDER REVIEW AND ARE NOT INCLUDED IN THIS DRAFT</u>					
Table 1: Vendor SLAs for ENS					
<u>SLA Name</u>	<u>Description</u>	<u>Target</u>	<u>SLA</u>	<u>Penalties</u>	<u>Verifying SLAs</u>
<u>ENS Central Infrastructure Availability</u>	<u>Ability to deliver Alert Messages from the Florida HIE excluding planned maintenance windows during non-business hours with prior notice to Participant recipients during business hours (6 am to 6 pm ET Monday - Friday).</u>	<u>100%</u>	<u>99.4%</u>		
<u>General Support Questions Response Time</u>	<u>Response to queries and questions from participants related to general support</u>	<u>< 4 business hours</u>	<u>< 8 business hours</u>		

Exhibit 1
ENS Fee Schedule

Participant organizations are charged as follows:

- Participant recipients of data are charged \$1.50 per patient per year for each of the initial 50,000 patients and \$0.25 per patient per year for each patient thereafter.
- The ~~Vendor may specify a minimum Panel size or an equivalent~~ minimum annual fee for participant recipients of data is \$7,500.
- There are no fees to Participants acting solely as a data source; ~~vendor may offer discounted fees to~~ participants acting as a data source which desire to also participate as recipients of data are charged \$0.50 per patient per year for each of the initial 50,000 patients and \$0.25 per patient per year for each patient thereafter.

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Florida Health Information Exchange General Participation Terms and Conditions

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Florida Health Information Exchange General Participation Terms and Conditions

The following Florida Health Information Exchange General Participation Terms and Conditions (hereinafter "General Terms and Conditions") apply to the use of services offered as part of the Florida Health Information Exchange program and are incorporated by reference into the Subscription Agreements related thereto. Each Subscription Agreement is a multi-party agreement and establishes the provisions and obligations to which all signatories ("parties") agree. These General Terms and Conditions, together with the Subscription Agreements, set forth the provisions governing accessing Health Data through the Network.

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meaning ascribed to them below. All defined terms are capitalized throughout this Agreement.
 - a. **Agreement** shall mean a Subscription Agreement together with these General Terms and Conditions, which are incorporated into each Subscription Agreement by reference.
 - b. **AHCA** shall mean the Agency for Health Care Administration, a State of Florida agency.

~~2.~~
Applicable Law shall mean all applicable statutes, rules and regulations of Florida, as well as all applicable federal statutes, rules, and regulations.

~~c.~~

~~3.~~
d. Breach shall mean an impermissible use or disclosure under the Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) that compromises the security or privacy of the protected health information.

~~Breach excludes:~~

~~(i) Any unintentional acquisition, access, or use of protected health information by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.~~

~~(ii) Any inadvertent disclosure by a person who is authorized to access protected health information at a covered entity or business associate to another person authorized to access protected health information at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.~~

~~(iii) A disclosure of protected health information where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.~~

~~Except as provided in (i) through (iii) above of this definition, an acquisition, access, use, or disclosure of protected health information in a manner not permitted under the Privacy Rule is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:~~

~~(i) The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;~~

~~(ii) The unauthorized person who used the protected health information or to whom the disclosure was made;~~

~~(iii) Whether the protected health information was actually acquired or viewed; and~~

~~(iv) The extent to which the risk to the protected health information has been mitigated.~~

a-e. Business Associate shall mean the Vendor when it, pursuant to this Agreement:

- i. on behalf of a Covered Entity Participant, but other than in the capacity of a member of the workforce of such Covered Entity, performs, or assists in the performance of:
 1. a function or activity involving the use or disclosure of PHI, or
 2. any other function or activity regulated by the HIPAA Privacy Rule, or
- ii. provides, other than in the capacity of a member of the workforce of a Covered Entity Participant, consulting, data aggregation (as defined in 45 CFR § 164.501), management, administrative, or other services to or for a Covered Entity Participant, where the provision of the service involves the disclosure of PHI from such Covered Entity Participant, or from another business associate of the Covered Entity Participant to the Business Associate.

b-f. Common Network Resource shall mean software, utilities and automated tools made available for use in connection with the Network and which have been designated as a "Common Network Resource" by Vendor.

e-g. Covered Entity shall mean a Participant that is a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR Parts 160, 162, or 164; or a health plan as that term is defined at 45 CFR Part 160.103.

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d.h. **Designated Record Set** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

e.i. **Discloser** shall mean Vendor or a Participant that discloses Proprietary Information to a Receiving Party.

f.j. **Dispute** shall mean any controversy, dispute, or disagreement arising out of or relating to this Agreement.

g.k. **Health Care Operations** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

h.l. **Health Data** shall mean that information which is requested, disclosed, stored on, made available on, or sent by a Participant, or requested or sent by Vendor (only for operational purposes) through the Network. This includes, but is not limited to, Protected Health Information (PHI), individually identifiable health information, de-identified data, or limited data sets (as defined in the HIPAA Regulations), pseudonymized data, metadata, and schema.

i.m. **HHS Secretary** shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

j.n. **HIPAA Regulations** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160, 162 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) of the American Recovery and Reinvestment Act of 2009, as in effect on the date of this Agreement and as may be amended, modified, or renumbered.

k.o. **HITECH** shall mean the Health Information Technology for Economic and Clinical Health Act of 2009 (which is part of the American Recovery and Reinvestment Act of 2009 (ARRA)), and any of its implementing regulations.

l.p. **Individual** shall mean a person who is the subject of PHI, and shall have the same meaning as the term "individual" as defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

m.q. **Individually Identifiable Health Information** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.

n.r. **Material** shall mean, for the purposes of Section 4 (Network Operating Policies and Technical Requirements) only, the implementation of, or change to, a Network Operating Policy or Technical Requirement that will: (i) have a significant adverse operational or financial impact on at least 20% of Participants; (ii) require at least 20% of Participants to

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materially modify their existing agreements with or policies or procedures that govern Participant Users or Participant's subcontractors.

~~g-s.~~ **Minimum Necessary** shall refer to the standard set forth at 45 CFR § 164.502(b) and 164.514(d) of the HIPAA Regulations.

~~p-t.~~ **Network** shall mean the network operated by Vendor that allows for the exchange of Health Data and/or information between and among Participants and Participant Users, as specifically described in this Agreement for:

- i. Direct exchange, as applicable or
- ii. Search, retrieval and/or delivery as applicable.
- ~~iii. Alerting Services.~~

~~q-u.~~ **Network Operating Policies and Technical Requirements** shall mean the policies and procedures that Participant must have in place and the technical requirements that must be met by a Participant for participating in the Network and sending and/or receiving Health Data (as applicable) for the particular service(s) to which Participant is subscribed, which Network Operating Policies and Technical Requirements are set forth for each subscribed service and as are amended from time to time in accordance with Section 4 (Network Operating Policies and Technical Requirements).

~~r-v.~~ **Notice** or **Notify** shall mean a written communication, unless otherwise specified in this Agreement, sent to the appropriate party's representative at the address listed in the Subscription Agreement in compliance with Section 20 of this Agreement.

~~s-w.~~ **Participant** shall mean any organization that (i) meets the requirements for participation in the Network as contained in the applicable Network Operating Policies and Technical Requirements, (ii) is accepted by Vendor and the Agency for Health Care Administration (AHCA) for participation, and (iii) is a signatory to this Agreement.

~~x.~~ **Participant Users** shall mean those persons who have been authorized by Participant to access Health Data through the Network and in a manner defined by the respective Participant, in compliance with the terms and conditions of this Agreement and Applicable Law. "Participant Users" may include, but are not limited to, health care providers and employees, contractors, or agents of a Participant.

~~t-y.~~ **Payment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

~~u-z.~~ **Permitted Purposes** shall mean the reasons for which Participant Users may legitimately exchange or use Health Data through the Network as defined in Section 3.

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~~v~~-aa. **Proprietary Information**, for the purposes of this Agreement, shall mean proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such or that is commonly understood to be proprietary information. Proprietary Information includes, but is not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, processes and security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Discloser; and (iii) information or reports provided by a Discloser to a Receiving Party pursuant to this Agreement. Notwithstanding any label to the contrary, Proprietary Information does not include Health Data; any information which is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it; is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party's written records; or, is independently developed by Receiving Party without reference to, reliance on, or use of, Discloser's Proprietary Information.

~~w~~-bb. **Protected Health Information** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations, and may also be referred to as PHI.

~~x~~-cc. **Psychotherapy Notes** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

~~y~~-dd. **Qualified Service Organization** shall have the same meaning as 42 CFR § 2.11, and may also be referred to as a QSO.

~~z~~-ee. **Receiving Party** shall mean a Participant or AHCA that receives Proprietary Information from a Discloser.

~~aa~~-ff. **Recipient** shall mean the person(s) or organization(s) that receives Health Data through the Network for a Permitted Purpose. "Recipients" may include, but are not limited to, Participants, Participant Users, and Vendor.

~~gg~~. **Required By Law** shall have the meaning set forth at 45 CFR § 164.103 of the HIPAA Regulations.

~~bb~~-hh. **Security Standards** shall mean the standards outlined in HIPAA regulations 42 CFR Part 160 and 45 CFR Part 164.

~~ee~~-ii. **System** shall mean software, portal, platform, or other electronic medium controlled by a Participant through which the Participant sends, receives, discloses or uses Health Data through or from the Network. For the purposes of this definition, it shall not matter whether the Participant controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.

~~dd~~-jj. **Treatment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

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4.2. Administration of the Network.

- a. **Vendor Role.** AHCA has engaged Vendor to administer the Network. The parties acknowledge that Vendor has no control over the content of the Health Data available through the Network, or the activities of the Participants and Participant Users. The accuracy of any Health Data, as well as the authority of any Participant Users to access or disclose Health Data are the responsibility of the Participants and not Vendor. Participant acknowledges that Vendor's obligations are limited to implementing and maintaining the technical infrastructure of the Network in addition to other activities specified in this Agreement, as well as the following administrative activities:
 - i. New Participants. Vendor will review, evaluate and act upon requests submitted by organizations that want to become a Participant to a particular service on the Network, and determine whether such organizations meet the technical and operational requirements established by AHCA and Vendor to become new Participants, and execute one or more Subscription Agreements with any such new Participants, when appropriate. No further action or approval is required by other Participants for the addition of new Participants pursuant to this section, ~~and All Participants will be notified by Vendor of new Participants being added prior to the new Participant accessing or using the Network. all Participants will be listed publicly.~~
 - ii. Vendor Responsibilities and Subcontractors. Vendor may delegate responsibilities related to the Network administration to one or more subcontractors. Vendor shall ensure that any subcontractor executes an agreement that only specifically authorized representatives of its subcontractor shall be granted access to the Network in connection with subcontractor's responsibilities, that the subcontractor will comply with the Business Associate provisions of this Agreement (detailed in Section 12) and the Qualified Service Organization provisions of this Agreement (detailed in Section 13), and will comply with the confidentiality provisions of this Agreement and Applicable Law. The Participants acknowledge and agree that access to Health Data, Proprietary Information (if necessary), and other relevant data (including aggregate data) shall be granted to Vendor for all of its functions and obligations under this Agreement and shall be granted to Vendor's subcontractors for the sole purpose of assisting Vendor in maintaining the technical operations of the Network. Vendor shall give notice to the Participants of who it is using as subcontractors for any work on the Network. Vendor and any of its subcontractors shall employ security mechanisms that are consistent with the Security Standards of the HIPAA Regulations to provide for the security of the information. Further, Vendor will not store, transmit or access any Health Data outside of the United States of America, and Vendor will not permit any subcontractors to, store, transmit, or access any Health Data outside of the United States of America.
- b. **Business Associate of Covered Entity Participants.** Vendor is a Business Associate of each Participant who is considered a "covered entity" under HIPAA Regulations. The provisions governing this Business Associate relationship are included in Section 12 of this Agreement.

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- c. **Qualified Service Organization of Participants with 42 CFR Part 2 Program(s).** Vendor is a Qualified Service Organization of Participants who have programs covered by 42 C.F.R. Part 2 (certain federally-funded substance abuse treatment programs). The provisions governing this Qualified Service Organization relationship are included in Section 13 of this Agreement.
- d. **Additional Sources of Health Data.** AHCA or Vendor may enter into agreements with other entities who can serve as a source of PHI or other data for the Network (e.g., private lab test results, prescription history from a pharmacy benefit manager, immunization registry data) that would be beneficial to the Network and/or to Participants and make that available through the Network for certain services. If applicable to this Agreement, such agreements shall not be inconsistent with the provisions of this Agreement, and Participant shall treat such Health Data from such additional sources in the same manner as other Health Data on the Network. ~~A listing of all data sources will be kept publicly available. Ten-day advance notice of any new sources of Health Data shall be given by AHCA and/or Vendor to the Participants that would have access to such additional data sources.~~
- e. **Provision of Network Equipment and Software.** Vendor will provide the computer software necessary to allow Participants to access Health Data on the Network; however, Participants must also have the software and other infrastructure that meets the applicable Network Operating Policies and Technical Requirements for the particular service(s) Participant is subscribed to in order to interface with Vendor's system. ~~Participants shall arrange for their own carrier lines, computer terminals or personal computers, printers, or other equipment for accessing the Network, and shall ensure that they are properly configured to access the Network including but not limited to the base workstation operating system, web browser and Internet connectivity. Any equipment, software, or intellectual property provided by Vendor to Participants shall remain the property of Vendor, unless otherwise specified in Vendor's agreement with AHCA. From time to time, grants and contracts in which the Participants, Vendor and/or AHCA agree to participate that relate to the use and disclosure of Health Data may provide for the purchase of additional equipment related to the Network. The ownership of any such equipment shall be governed by the relevant grant or contract. Any equipment or communication lines supplied by individual Participants shall remain the sole property of the supplying Participant.~~
- f. ~~**Accounting of Disclosures.** Upon Participant's written request, Vendor shall provide an accounting of disclosures of PHI made by Participant via the Network within ten (10) business days of such request, in order for Participant (or Participant's Users) to comply with HIPAA, HITECH and all Applicable Law. The Vendor shall not, and shall not be required to, accept and respond to direct inquiries from a Participant's, or a Participant User's, patient or their legal representative. The Vendor shall refer all inquiries from individuals to their known Participants for response.~~

5.3. Use of Health Data.

- a. **Subscription Agreement.** Participants enter into a Subscription Agreement with Vendor for each health information exchange service that it desires to participate in and allow its Health Data to be utilized for, and Participant's Health Data will only be used for those Permitted Purposes listed below and those specified in the Subscription Agreement(s) for

Commented [GC1]: Accounting of Disclosures – given that only metadata is retained, further counsel will be needed to advise on this language.

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the particular service(s) to which Participant has subscribed by executing the Subscription Agreement(s). As health information exchange services are introduced by AHCA and/or Vendor, all Participants will be informed of the new service and what Health Data would be utilized and for what Permitted Purpose and/or provided a separate Subscription Agreement if not already covered or addressed by an existing Subscription Agreement.

- b. **Permitted Purposes.** The Network shall be used only for Permitted Purposes listed below. Each Participant shall require and ensure that its Participant Users only use the Network for the Permitted Purposes. Participants shall ensure that they have obtained any authorization and consents from Individuals that may be required under Applicable Law ~~prior to for~~ requesting or accessing Health Data via the Network for particular Individuals.
- i. **Execution of Vendor's Duties under this Agreement.** The Vendor shall have access to the Health Data, but only for the express purpose of connecting the Participants, ~~and facilitating the delivery of the Health Data on behalf of such Participants, supporting operations as needed,~~ and otherwise fulfilling its obligations under the Agreement. Vendor shall have no rights to access or use any Health Data beyond that limited purpose. ~~Vendor shall not store any Health Data, except to the extent necessary for temporary cache or similar purposes as approved by AHCA and the Participants, and except in circumstances where the Vendor will be hosting certain data at the request of AHCA and any applicable Participant whose data is involved. Vendor does not claim any ownership in any of the content, including any text, data, information, images, sound, video or other material, that Participant may send, store or receive via the Network.~~
- ~~ii. **Network Reports.** If AHCA or the Florida Department of Health is required to arrange for certain reports and evaluations of the Network under a federal grant or contract, all Participants agree to permit Vendor to generate such reports and provide such information as may be necessary for such required evaluation which will be detailed in a written notice to Participants. Such reports shall not include individually identifiable health information. To the extent reports need to be prepared by Participants for compilation by the Vendor including the removal of identifiers by the Participants, Participants agree to prepare such reports if feasible based on the costs and availability of funding as determined solely by the Participant. To the extent that Participant determines the preparation of all or a portion of such reports is not feasible, Participant shall have no obligation in connection with such reports.~~
- ~~iii. **Other Specified Purposes Listed in a Subscription Agreement.** Each Subscription Agreement contains one or more specific permitted purposes for which the Participant who executes such Subscription Agreement is using the Network. Those specified permitted purposes in each Subscription Agreement only apply to those Participants who have subscribed to that same service.~~
- c. **Permitted Future Uses (Re-Disclosure).** Subject to Section 15.g. (Disposition of Health Data on Termination), Recipients may retain, use and re-disclose Health Data received in response to a request in accordance with Applicable Law and the Recipient's policies and procedures.

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- d. **Management Uses.** The Vendor may request information from Participant related to potential breach or other security or technical issue, and Participant shall not unreasonably refuse to provide information to Vendor for such purposes. Notwithstanding the preceding sentence, in no case shall a Participant or Vendor be required to disclose PHI to the Vendor in violation of Applicable Law. Any information, other than Health Data, provided by a Participant to the Vendor shall be treated as Proprietary Information in accordance with Section 11 (Proprietary Information) of this Agreement unless agreed otherwise. Vendor shall have access to all Health Data and Proprietary Information necessary in order to fulfill its duties under this Agreement.
- e. **Prohibited Purposes.** Neither AHCA, nor Vendor, nor any Participant, may access or use the Health Data or any Proprietary Information of another party to compare patient volumes, practice patterns, or make any other comparison without all Participants' written approval. AHCA shall not have access to any Participant's Health Data on the Network, unless expressly approved in writing by a Participant and with any required patient authorizations or consents. Other uses of the Health Data (including but not limited to the Vendor reselling de-identified data) are expressly prohibited under this Agreement without prior written approval from AHCA and any Participant whose data would be involved.

~~f. **Cooperation by Participants in Network Evaluations.** The Participants agree to cooperate in studies conducted from time to time by AHCA or its agent related to various issues surrounding the Network, including, but not limited to, a project evaluation required by a federal grant or contract with AHCA or the Florida Department of Health, and the efficacy and usefulness of the Network. Such cooperation by the Participants may include, but not be limited to, participation in interviews, the completion of surveys, and the submission of other written or oral evaluations.~~

6.4 Network Operating Policies and Technical Requirements

- a. **General Compliance.** Each Participant shall comply with the Network Operating Policies and Technical Requirements that are applicable to the health information exchange services that Participant has subscribed to through its Subscription Agreement(s).
- b. **Adoption of Network Operating Policies and Technical Requirements.** The Participants hereby grant the Vendor the power to adopt new Network Operating Policies and Technical Requirements, and to adopt amendments to, or repeal and replacement of, the same at any time through the Change Process described in the next subsection. Unless otherwise Required By Law, required by a federal grant or contract with AHCA or the Florida Department of Health, or necessary to maintain the stability of the Network, these Network Operating Policies and Technical Requirements shall not alter the relative rights and obligations of the parties under the Agreement and shall not be inconsistent with the Agreement.
- c. **Change Process.**

- i. **Determination of Materiality.** Vendor shall provide reasonable advance notification to all Participants subscribed to a particular service of any proposed new, or change to existing, Network Operating Policies and Technical Requirements that apply to that particular service. Vendor shall consider feedback from all Participants including any comments on fiscal impact and then determine, in its sole discretion, whether such proposal is Material. If the Vendor determines that the proposal is not Material, then Vendor shall follow the change process in the Section 4(c)(ii). If the Vendor determines that the proposal is Material, then Vendor shall follow the change process in Section 4(c)(iii).
- ii. **Non-Material Changes.** Vendor may implement any new Network Operating Policies and Technical Requirements, or amend, or repeal and replace any existing Network Operating Policies and Technical Requirements, for a particular service at any time by providing all Participants and AHCA notice of the change at least thirty days prior to the effective date of the change so long as the new or amended Network Operating Policies and Technical Requirements to the particular service are not Material. Within fifteen days of receiving notice of the non-Material change, a Participant or AHCA may request that Vendor delay implementation of the change based on unforeseen complications or other good cause. Vendor shall respond to a request to delay implementation within seven days of receiving the request.
- iii. **Material Changes.** A material change to Network Operating Policies and Technical Requirements shall be made by an amendment to the Agreement as provided in Section 21.d. (Amendments).
- iv. **Change Required to Comply with Federal or Florida State Law, Federal Contract Requirements, or for the Stability of the Network.** If a new or changed Network Operating Policy and Technical Requirement for a service is required for Vendor, AHCA, or the Participants to comply with federal statutes or regulations, or Florida statutes or regulations, or requirements of a federal contract with AHCA or the Florida Department of Health, or to maintain the stability of the Network (e.g., the performance and integrity of data exchanged among Participants), Vendor shall seek input from all Participants and AHCA prior to implementing such change, but is not required to follow the processes required by Sections 4(c)(ii) and (iii) above. Vendor shall not require Participants to comply with such new or changed Network Operating Policies and Technical Requirements prior to the legally required effective date of such federal or Florida state statute or regulation, or federal contract deadline, as applicable. Vendor shall notify Participants and AHCA immediately in the event of a change that is required in order to comply with federal or Florida state statute or regulation, or federal contract requirements, or to maintain the stability of the Network.
- v. **Participant Duty to Terminate Participation or Subscription, as Applicable.** If, as a result of a change made by Vendor in accordance with this Section 4(c), a Participant will not be able to comply with the Network Operating Policies and Technical Requirements for that service or does not otherwise desire to continue subscribing to the particular service, then such Participant shall terminate its

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subscription to that service in accordance with the relevant Subscription Agreement's terms.

7.5. Requirements for Participants.

- a. **Compliance.** All use of and interactions with the Network by Participant (and Participant's Users) shall comply with all applicable Network Operating Policies and Technical Requirements, these General Terms and Conditions, any Subscription Agreement(s) between Vendor and Participant, any agreements between Participant and its Participant Users, and Applicable Law. Nothing in this Section shall require a disclosure that is contrary to a restriction (granted by the Participant) placed on PHI by a patient pursuant to Applicable Law. Participant shall be solely responsible for maintaining patient medical records, as applicable, in accordance with Applicable Laws, and shall not rely upon Health Data transmitted to, and temporarily stored on, the Network for meeting Participant's obligations under any such laws.
- b. **Participant's Users and System Access Policies.** Each Participant shall have written policies and procedures in place that govern its Participant Users' ability to access information on or through the Participant's System and through the Network ("Participant Access Policies"). Each Participant acknowledges that Participant Access Policies will differ among them as a result of differing Applicable Law and business practices. At a minimum, each Participant shall ensure that it has a valid and enforceable written agreement with each of its Participant Users, and/or policies and procedures that Participant Users are required to comply with, that ensure that any Health Data accessed by its Participant Users is: (i) for a Permitted Purpose; (ii) supported by appropriate legal authority for obtaining the Health Data; (iii) requested and viewed by a Participant User with the legal authority to have such access, and (iv) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Participant. Further, each Participant shall employ a process for identity proofing that meets or exceeds National Institutes of Standards and Technology (NIST) Level 3 requirements in effect as of the date of execution of this Agreement by which the Participant, or its designee, validates sufficient information to uniquely identify each person seeking to become a Participant User prior to issuing credentials that would grant the person access to the Participant's System. Participant is solely responsible for authenticating Participant's own Participant Users for that access. Each Participant represents that it shall have the ability to monitor and audit all access to and use of its System related to this Agreement, for system administration, security, and other legitimate purposes. Each Participant agrees to enforce the provisions of this Agreement including but not limited to any provisions regarding limitations on Permitted Purposes for access to the Health Data and any confidentiality provisions of this Agreement by appropriately training all Participant Users, and disciplining individuals within each Participant's organization who violate such provisions pursuant to each Participant's respective Participant Access Policies. ~~Participant shall also require that its Participant Users keep on file any signed patient authorization or consent forms that may be required for documentation regarding access to Health Data from the Network, as well as any documentation of emergency accesses of Health Data from the Network (pursuant to any applicable Network Operating Policies and Technical Requirements).~~

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- c. **Other Impermissible Purposes.** Participant shall not use the Network or permit any Participant User to use the Network to conduct any business or activity, or solicit the performance of any activity, which is prohibited by or would violate any Applicable Law or legal obligation, or for purposes that may create civil or criminal liability, including but not limited to: (i) uses which are defamatory, deceptive, obscene, or otherwise inappropriate; (ii) uses that violate or infringe upon the rights of any other person, such as unauthorized distribution of copyrighted material; (iii) "spamming," sending unsolicited bulk e-mail or other messages on the Network or sending unsolicited advertising or similar conduct; (iv) threats to or harassment of another; (v) knowingly sending any virus, worm, or other harmful component; and (vi) impersonating another person or other misrepresentation of source.
- d. **Cooperation.** To the extent not legally prohibited, each Participant shall: (i) cooperate fully with Vendor and each other Participant with respect to such activities as they relate to this Agreement; (ii) provide such information to Vendor and/or each other Participant as they may reasonably request for purposes of performing activities related to this Agreement, (iii) devote such time as may reasonably be requested by Vendor to review information, meet with, respond to, and advise Vendor or other Participants with respect to activities as they relate to this Agreement; (iv) provide such reasonable assistance as may be requested by Vendor when performing activities as they relate to this Agreement; and (v) subject to a Participant's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting a Participant's Proprietary Information, provide information and assistance to Vendor or other Participants in the investigation of Breaches and Disputes. In no case shall a Participant be required to disclose PHI in violation of Applicable Law. In seeking another Participant's cooperation, each Participant shall make all reasonable efforts to accommodate the other Participant's schedules and operational concerns. A Participant shall promptly report, in writing to any other Participant, and Vendor, any problems or issues that arise in working with the other Participant's employees, agents, or subcontractors that threaten to delay or otherwise adversely impact a Participant's ability to fulfill its responsibilities under this Agreement.
- e. **Backup.** Participant is responsible for developing and maintaining backup procedures to be used in the event of a failure or unavailability of the Network, and is responsible for implementing any such backup procedures, as determined necessary by Participant.

8.6. Enterprise Security.

- a. **Safeguards.** Vendor and each Participant shall be responsible for maintaining a secure environment and appropriate safeguards that supports access to, use of, and the continued development of the Network. ~~Each Participant and Vendor shall use appropriate safeguards to prevent use or disclosure of PHI by such party other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of PHI through the Network.~~ Appropriate safeguards for Participants and Vendor shall be those identified in the HIPAA Security Rule, ~~425~~ CFR Part 160 and ~~45~~ CFR Part 164, ~~Subparts A and C,~~ regardless of whether Participant is subject to HIPAA Regulations. Participants shall also be required to comply with any

applicable Network Operating Policies and Technical Requirements that may define expectations for Participants with respect to enterprise security.

- b. **Malicious Software.** In participating in the Network, each Participant and Vendor shall ensure that it employs security controls that meet applicable industry or Federal standards so that the information and Health Data being transmitted and any method of transmitting such information and Health Data will not introduce any viruses, worms, unauthorized cookies, Trojans, malicious software, "malware," or other program, routine, subroutine, or data designed to disrupt the proper operation of a System, the Network or any part thereof, or any hardware or software used by a Participant or Vendor in connection therewith, 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 a System or the Network or any part thereof or any hardware, software or data used by a Participant or Vendor in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable. In the absence of applicable industry standards, each Participant and Vendor shall use all commercially reasonable efforts to comply with the requirements of this Section.
- c. **Other.** Participant will not knowingly use the Network, and will not permit any of its Participant Users to use the Network, (i) in a manner that significantly and adversely affects the performance or availability to other Participants of the Network, (ii) in a manner that interferes in any way with Vendor's computers or network security, or (iii) to attempt to gain unauthorized access to Vendor's or any Participant's computer system.

9.7. Breach Notification.

- a. **Procedure for Notification of Vendor and Impacted Participants.** Each party to this Agreement agrees that without unreasonable delay but not later than two (2) business days after determining that a Breach occurred, the party responsible for the Breach will notify AHCA, the Vendor and all Participants likely impacted by the Breach of such Breach. The notification should include sufficient information for the other notified parties to understand the nature of the Breach. For instance, such notification could include, to the extent available at the time of the notification, the following information:
 - i. One or two sentence description of the Breach
 - ii. Description of the roles of the people involved in the Breach (e.g., employees, Participant Users, service providers, unauthorized persons, etc.)
 - iii. The type of PHI Breached
 - iv. Participants likely impacted by the Breach
 - v. Number of Individuals or records impacted/estimated to be impacted by the Breach
 - vi. Actions taken by the Participant to mitigate the Breach
 - vii. Current status of the Breach (under investigation or resolved)
 - viii. Corrective action taken and steps planned to be taken to prevent a similar Breach.

The notifying party shall have a duty to supplement the information contained in the notification as it becomes available and cooperate with other Participants and Vendor, subject to Section 5(d)(v). The notification required by this Section shall not include any PHI.

- b. **Summary Notification to Non-Impacted Participants.** Vendor will notify the Participants of any Breach. Vendor will provide, in a timely manner, a summary to such Participants that does not identify any of the Participants or Individuals involved in the Breach.
- c. **Proprietary Information.** Information provided by a Participant in accordance with this Section, except Health Data, may be "Proprietary Information." Such "Proprietary Information" shall be treated in accordance with Section 11 (Proprietary Information).
- d. **Legal Obligations.** This Section shall not be deemed to supersede or relieve a party's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law, including, but not limited to, those related to Individuals. The parties shall work together to coordinate any notification to Individuals, the federal government, and any public announcement regarding the Breach that may be required by Applicable Law or the policies of a party.
- e. **Consumer Complaints.** Within two (2) business days of Vendor's receipt of specific consumer complaints about privacy and security received from consumers, Vendor will refer all such consumer complaints to the appropriate Participant to investigate as a possible breach. At the same time that Vendor refers such consumer complaints to the appropriate Participant, but not earlier, Vendor shall notify the AHCA contract manager that the consumer complaints were referred to the Participant for investigation. The Vendor shall maintain a record of the date the complaint was received, date of referral to the appropriate Participant, description of complaints, available contact information about the consumer, and Participant and Participant Users identified in the complaint.

10.8. **Representations and Warranties.** The parties hereby represent and warrant the following as it applies to them respectively:

- a. **Accurate Participant Information.** Except to the extent prohibited by Applicable Law, each Participant has provided, and will continue to provide Vendor with all information reasonably requested by them necessary to discharge their duties under this Agreement or Applicable Law, including during the Dispute Resolution Process. Any information provided by a Participant to Vendor shall be responsive and accurate, including any information provided by Participant during any registration process for a particular service; however, this representation shall not extend to any Health Data. Each Participant shall provide notice to Vendor if any information previously provided by the Participant (other than Health Data) materially changes. Each Participant acknowledges that Vendor reserves the right to confirm or otherwise verify or check, in its sole discretion, the completeness and accuracy of any registration or other information provided by Participant at any time and each Participant will reasonably cooperate with Vendor in such actions, given reasonable prior notice. Notwithstanding the foregoing, Vendor is entitled to rely on the accuracy of information provided by each Participant, and Vendor has no duty to confirm, verify, or check the completeness and accuracy of any information.
- b. **Execution of this Agreement.** Prior to participating in the Network, each Participant shall have executed a Subscription Agreement and returned an executed copy to Vendor. In doing so, the Participant affirms that it has full power and authority to enter into and

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perform this Agreement and has taken whatever measures necessary to obtain all required approvals and consents in order for it to execute this Agreement. The representative signing this Agreement on behalf of the Participant affirms that he/she has been properly authorized and empowered to enter into this Agreement on behalf of the Participant. Similarly, Vendor affirms that its representatives signing this Agreement are duly authorized and that Vendor has full power and authority to enter into and perform this Agreement.

- c. **Agreements with Subcontractors.** To the extent that a Participant uses subcontractors in connection with the Network or its use of Health Data obtained from the Network, each Participant affirms that it has valid and enforceable agreements with each of its subcontractors that require the subcontractor to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of any Health Data to which it has access; (iii) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Participant; and (iv) reasonably cooperate with Vendor and the other Participants to this Agreement on issues related to the Network, under the direction of Participant.
- d. **Accuracy of Health Data and Authority to Transmit, Receive and/or Disclose (as applicable).** Each Participant hereby represents that at the time of transmission, that (i) the Health Data it provides pursuant to its Subscription Agreement is an accurate representation of the data contained in or available through its System subject to the limitations set forth in Section 9.d. (Incomplete Medical Record), (ii) the Health Data it provides is sent from a System that employs security controls that meet industry standards so that the information and Health Data being transmitted are intended to be free from malicious software in accordance with Section 6.b. (Enterprise Security, Malicious Software), (iii) the Health Data it provides is provided in a timely manner and in accordance with applicable Network Operating Policies and Technical Requirements, (iv) that Participant is authorized to provide or make such Health Data available through the Network under the terms of this Agreement without violating any rights, including copyrights, of third parties, and (v) that Participant has met any requirements under Applicable Law including but not limited to obtaining any consent or authorization(s) from the individual who is the subject of the Health Data, or their legally authorized representative, if required. ~~before making a request for such individual's Health Data through the Network.~~ OTHER THAN THE REPRESENTATIONS IN THIS PARAGRAPH, NEITHER VENDOR NOR PARTICIPANT MAKE ANY OTHER REPRESENTATION, EXPRESS OR IMPLIED, ABOUT THE HEALTH DATA. MORE SPECIFICALLY, THE HEALTH DATA MADE AVAILABLE THROUGH THE NETWORK IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE PARTICIPANT OR AHCA OR VENDOR BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, 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 PARTICIPANT, AHCA AND/OR VENDOR HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTICIPANT, VENDOR AND AHCA DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY

TELECOMMUNICATION SERVICE PROVIDERS, OR OTHER THIRD PARTIES OR DUE TO HARDWARE OR SOFTWARE FAILURES.

- e. **Absence of Final Orders.** Each party hereby represents and warrants that, as of the Effective Date, it is not subject to a final order issued by any Federal, State, local or international court of competent jurisdiction or regulatory or law enforcement organization, which will materially impact the party's ability to fulfill its obligations under this Agreement. Each party shall inform the Vendor if at any point during its participation in the Network it becomes subject to such an order; Vendor will inform all Participants if a Participant informs Vendor that the Participant is subject to such an order.

11.9. Disclaimers.

- a. **Accuracy of Patient Record Matching.** Each Participant acknowledges that there could be errors or mismatches when matching patient identities between disparate data sources, but Vendor will take commercially reasonable measures to help ensure accurate patient matching occurs, if Vendor is involved in matching for the particular service to which Participant is subscribed. Participant is solely responsible for ensuring that any PHI obtained through the Network relates to a particular Individual as intended by the Participant and for the immediate destruction of any PHI obtained inadvertently.
- b. **Accuracy of Health Data.** Nothing in this Agreement shall be deemed to impose responsibility or liability on a Participant or on Vendor or AHCA related to the clinical accuracy, content or completeness of any Health Data provided pursuant to this Agreement.
- c. **Reliance on a System.** Participants may not rely upon the availability of a particular Participant's Health Data, if such Health Data is provided as part of the particular service to which Participant is subscribed.
- d. **Incomplete Medical Record.** Each Participant acknowledges that Health Data may not include the Individual's full and complete medical record or history.
- e. **Use of Network in an Emergency.** Participant and Participant Users are responsible for determining the appropriate use of the Network for communications or transactions concerning or supporting treatment in an emergency or other urgent situation. Further, to the extent that a Participant needs patient information in an emergency or on an urgent basis, Participant and Participant Users retain sole responsibility for communicating directly to any provider, including Participants according to Participant's own policies and procedures, and Participant agrees that it will not rely upon the Network or the Vendor for delivery of such messages or to obtain patient information.
- f. **Patient Care.** Health Data obtained through the Network is not a substitute for any Participant or Participant User, if that person/entity is a health care provider, obtaining whatever information he/she/it deems necessary, in his/her professional judgment, for the proper treatment of a patient. The Participant or Participant User, if he/she/it is a health care provider, shall be responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients

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and clients resulting from, or in any way related to, the use of the Network or Health Data made available thereby. None of the Participants or Vendor, by virtue of executing this Agreement, assumes any role in the care of any patient.

- g. **Carrier Lines.** All Participants acknowledge that the exchange of Health Data between Participants through the Network is to be 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 Participants' or Vendor's control. Provided a Participant and Vendor use reasonable security measures, no less stringent than those directives, instructions, and specifications contained in this Agreement, the Participants and Vendor assume no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted over those carrier lines, which are beyond the Participants' and Vendor's control, or any delay, failure, interruption, interception, loss, transmission, or corruption of any Health Data or other information attributable to transmission over those carrier lines which are beyond the Participants' and Vendor's control. Use of the carrier lines is solely at the Participants' and Vendor's risk and is subject to all Applicable Laws.

~~12.10.~~ **License to Common Network Resources.** Participant is hereby granted a nonexclusive, nontransferable, revocable and limited license to Common Network Resources solely for use as a Participant under this Agreement. Participant shall not (a) sell, sublicense, transfer, exploit or, other than pursuant to this Agreement, use any Common Network Resources for Participant's own financial benefit or any commercial purpose, or (b) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code to any Common Network Resources. THE COMMON NETWORK RESOURCES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

~~13.~~ **Proprietary Information.** Each Receiving Party shall hold Proprietary Information in confidence and agrees that it shall not, during the term or after the termination of this Agreement, disclose to any person or entity, nor use for its own business or benefit, any information obtained by it in connection with this Agreement, unless such use or disclosure is permitted by the terms of this Agreement. Proprietary Information may be disclosed under operation of law, provided that the Receiving Party immediately notifies the Discloser of the existence, terms and circumstances surrounding such operation of law to allow the Discloser its rights to object to such disclosure. If after Discloser's objection, the Receiving Party is still required by law to disclose Discloser's Proprietary Information, it shall do so only to the minimum extent necessary to comply with the operation of the law and shall request that the Proprietary Information be treated as such.

~~11.~~

~~14.~~

~~12.~~ **Business Associate Provisions.** As stated in Attachment A, the Business Associate Provisions shall apply as appropriate.

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~~This Section 12 shall only apply in the event that a Participant is a Covered Entity. Vendor is hereby a Business Associate of any such Covered Entity Participant and this Section 12 applies if and to the extent that Vendor meets the definition of Business Associate with respect to such Covered Entity Participant.~~

~~Limits on Use and Disclosure:~~

~~Use Under This Agreement. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law. Business Associate may use and disclose PHI to perform those functions, activities, or services that Business Associate performs for, or on behalf of, each Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate HIPAA or HITECH if done by a Covered Entity, including but not limited to accessing and transmitting PHI on the Network and maintaining the Network, and making disclosures to Participants for Permitted Purposes. Any such use or disclosure allowed by this subsection shall be limited to those reasons and those individuals as necessary to meet the Business Associate's obligations under this Agreement.~~

~~Other Disclosures. Business Associate will not make the following disclosures that are otherwise allowed to be made by a Covered Entity under 45 CFR § 164.512 unless compelled to do so by law or unless such a disclosure is specifically authorized or required by this Agreement:~~

~~About victims or abuse, neglect, or domestic violence;
For health oversight activities;
For judicial and administrative proceedings;
For law enforcement purposes;
About decedents;
For cadaveric organ, eye, or tissue donation purposes;
To avert a serious threat to health or safety;
For specialized government functions;
For workers' compensation purposes;
For marketing purposes;
For fundraising purposes.~~

~~If Business Associate is requested to make a disclosure for one of the foregoing reasons, it shall forward such request to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response. Business Associate shall make PHI available to the Covered Entity for the foregoing reasons if requested to do so in writing by the Covered Entity for the Covered Entity to coordinate and prepare a timely response.~~

~~Use of PHI for Management and Administration or Legal Responsibilities of Business Associate. Notwithstanding Section 12.a. of this Agreement, Business Associate may use and disclose PHI received by the Covered Entity pursuant to this Agreement for: (1) the proper management and~~

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~~administration of the Business Associate; or (2) to carry out the legal responsibilities of the Business Associate. However, the Business Associate will only be allowed to disclose PHI for the aforementioned uses if: (1) the disclosure is Required By Law; or (2) the Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required By Law and for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances in which the person is aware of a confidentiality breach of PHI.~~

~~Data Aggregation Services. With respect to PHI received by the Business Associate in its capacity as the Business Associate of the Covered Entity, Business Associate may combine such PHI it has received from the Covered Entity with the PHI received by the Business Associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the Health Care Operations of the respective Covered Entities, if data analyses is part of the services that Business Associate is to provide under this Agreement, as permitted by 45 CFR § 164.504(e)(2)(ii)(D).~~

~~Safeguards. Business Associate agrees to use reasonable and appropriate administrative, physical and technological safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. In addition, Business Associate shall implement such safeguards and security measures as are necessary to comply with the HIPAA Security Rule as set forth in 45 CFR Parts 160 and Subparts A and C of Part 164. Business Associate shall provide periodic reports to AHCA related to the security measures implemented by Business Associate for the Network, including any material security incidents that have arisen since any prior report. Such report will also be made available to any Participant, upon request. A material security incident is one that results in unauthorized access, use, disclosure, modification, destruction of PHI, or interference with system operations. Security incidents that do not result in such an outcome include, but are not limited to, pings on a firewall, attempts to log on to a system with an invalid password or username, malware, and denial of service attacks that do not result in a server being taken off line. This Agreement constitutes notice to the Covered Entity that such unsuccessful security incidents occur.~~

~~Report of Improper Use or Disclosure. Business Associate agrees to promptly report to a Covered Entity any use or disclosure of the Covered Entity's PHI not provided for by this Agreement of which Business Associate becomes aware. Business Associate is also subject to the requirements in Section 7 (Breach Notification) of this Agreement.~~

~~Agents and Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by the Business Associate on behalf of, a Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to PHI.~~

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~~Access to Records To Fulfill Request by Individual. Business Associate shall not respond directly to requests from Individuals for access to their PHI in a Designated Record Set. Business Associate will refer such Individuals to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response to the Individual.~~

~~Access to Records by HHS Secretary. Business Associate shall make its records, books, agreements and policies, and procedures relating to the administrative, physical and technical safeguards and the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the HHS Secretary for purposes of determining Covered Entity's or Business Associate's compliance with HIPAA and HITECH.~~

~~Amendments to PHI. Business Associate shall have no obligation to initiate or make PHI amendments to other Participants on the Network. Business Associate shall not respond directly to requests from Individuals for amendments to their PHI. Business Associate will refer such Individuals to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response to the Individual.~~

~~Accounting of Disclosures. See Section 2(f) of this Agreement for Business Associate's obligations regarding accounting of disclosures under 45 CFR 5.164.528 and as amended by HITECH (Subtitle D Section 13405) and its implementing regulations.~~

~~Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure by Business Associate in violation of the requirements of this Agreement.~~

~~15-~~

~~16-13. **Qualified Service Organization Provisions.** As stated in **Attachment B, Qualified Service Organization Provisions** shall apply as appropriate.~~

~~This Section 13 shall only apply in the event that a Participant is or has a program subject to 42 CFR Part 2 or transmits Health Data from or other data about clients in a program subject to 42 CFR Part 2.~~

~~Vendor's Role. Vendor is a Qualified Service Organization or QSO of Participant for the purpose of providing the services specified in this Agreement for Participant, which include but are not limited to data processing, holding and storing information about Part 2 program clients, receiving and reviewing requests for disclosures to third parties for Permitted Purposes under this Agreement, and/or facilitating the electronic exchange of Part 2 clients' information through the Network, as applicable for the particular service to which Participant is subscribed.~~

~~Limits on Use and Disclosure.~~

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~~The QSO shall only access Health Data or other data about clients of Participant's Part 2 program to the extent needed by the QSO to provide services to the Part 2 program described in this Agreement.~~

~~The QSO agrees not to use or further disclose any Health Data or other Part 2 program client information other than as specified in this Agreement.~~

~~The QSO acknowledges that in receiving, storing, processing, or otherwise using any information from the Part 2 program about the clients in the program, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.~~

~~The QSO undertakes to resist in judicial proceedings any effort to obtain access to information pertaining to Part 2 program clients otherwise than as expressly provided for in 42 CFR Part 2, and the QSO shall notify the appropriate Participant.~~

~~Any subcontractors or agents of the QSO may only access information from a Part 2 program if the subcontractor or agent has entered into an agreement with the QSO and has agreed to the same obligations stated in this Section 13, including but not limited to being bound by 42 CFR Part 2.~~

17.14. Liability.

- a. **Party Liability.** As between parties to this Agreement: Each party shall be responsible for its own acts and omissions and not for the acts or omissions of any other party. In circumstances involving harm to other parties caused by the acts or omissions of individuals who access Health Data or Proprietary Information through the Network or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from Vendor, AHCA, the Participant or any of the Participant Users, each party shall be responsible for such harm to the extent that the individual's access was caused by the party's breach of the Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. Notwithstanding any provision in this Agreement to the contrary, the party shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This section shall not be construed as a hold harmless or indemnification provision. To the extent that a Participant is prohibited, by Applicable Law, from being subject to the liability outlined in this Section 14(a) (Party Liability), it shall be exempt from this Section 14(a)(Party Liability). If the Participant is an agency of the State of Florida or otherwise enjoys sovereign immunity (a "State Participant"), the limitations on tort claims as set forth in Section 768.28, Florida Statutes, shall apply to all tort-related claims, including without limitations, all claims that the State Participant may be required to defend under the indemnification provisions of this Agreement. The Parties to this Agreement expressly agree that any State Participant's execution of the Agreement, including any indemnification obligations that may be contained in this Agreement, shall not constitute a waiver of sovereign immunity, and that the entire extent of the State Participant's liability shall not exceed the limitations on tort claims set forth in Section 768.28, Florida Statutes.

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- b. **Effect of Agreement.** Except as provided in Section 8(d) (Representations and Warranties, Accuracy of Health Data and Authority to Transmit) and Section 19 (Dispute Resolution), nothing in this Agreement shall be construed to restrict AHCA's, Vendor's or a Participant's right to pursue all remedies available under Applicable Law for damages or other relief arising from acts or omissions of other parties hereto related to the Network or this Agreement, or to limit any rights, immunities or defenses to which a party may be entitled under Applicable Law.
- c. **Limited Release of Vendor Liability.** Participants hereby release Vendor from any claim arising out of any inaccuracy or incompleteness of Health Data or any delay in the delivery of Health Data or failure to deliver Health Data to the Network when requested except for those arising out of Vendor's gross negligence.

18-15. Term, Suspension and Termination.

- a. **Term.** Unless otherwise specified in the Subscription Agreement, the initial term of this Agreement shall be for a period of two years commencing on the Effective Date. Upon the expiration of the initial term, this Agreement shall automatically renew, unless prohibited by law, for successive one-year terms unless terminated pursuant to this Section 15 (Term, Suspension and Termination).
- b. **Suspension or Termination by Participant.**
 - i. **Suspension.** A Participant may voluntarily suspend its own participation in the particular service to which it is subscribed for a valid purpose, as determined by the Vendor, by giving Vendor at least twenty-four (24) hours prior notice. Once proper notice is given, Vendor shall be empowered to suspend the Participant's access as of the date of suspension specified in the notice. Once Vendor suspends the Participant's access, Vendor shall provide notice of such voluntary suspension to all Subscribing Participants. During the suspension, neither the Participant, nor Participant Users, shall access the Network or be responsible for complying with the terms of this Agreement except those terms that survive termination of this Agreement in accordance with Section 21(g) (Survival). Any voluntary suspension shall be for no longer than five consecutive calendar days or for more than twenty calendar days during any twelve-month period, unless a longer period is agreed to by the Vendor.
 - ii. **Termination.** A Participant may terminate its participation in a particular service by terminating this Agreement, with or without cause, by giving Vendor at least five (5) business days prior notice. Once proper notice is given, Vendor shall be empowered to revoke the Participant's access as of the date of termination specified in the notice. Once the Vendor revokes the Participant's access, the Vendor shall provide notice of such revocation to the remaining Subscribing Participants.
- c. **Suspension by the Vendor.** Upon the Vendor completing a preliminary investigation and determining that there is a substantial likelihood that a Participant's acts or omissions

create an immediate threat or will cause irreparable harm to another party, including, but not limited to, a Participant, a Participant User, the Network, Vendor, AHCA, or an Individual whose PHI is exchanged through the Network, the Participants hereby grant to the Vendor, with concurrence by AHCA, the power to summarily suspend, to the extent necessary to address the threat posed by the Participant, a Participant's access to a particular service, pending the submission and approval of a corrective action plan, as provided in this Section. The Vendor shall immediately suspend the Participant's access to a particular service and within twelve hours of suspending Participant's access (i) provide notice of such suspension to all Subscribing Participants; and (ii) provide to the suspended Participant a written summary of the reasons for the suspension. The Participant shall use reasonable efforts to respond to the suspension notice with a detailed plan of correction or an objection to the suspension within three business days or, if such submission is not reasonably feasible within three business days, then at the earliest practicable time. If the Participant submits a plan of correction, the Vendor will within five business days review and either accept or reject the plan of correction. If the plan of correction is accepted, the Vendor will, upon completion of the plan of correction, reinstate the Participant's access to the particular service and provide notice to all Subscribing Participants of such reinstatement. If the plan of correction is rejected, the Participant's suspension will continue, during which time the Vendor and the Participant shall work in good faith to develop a plan of correction that is acceptable to both the Participant and the Vendor. At any time after the Vendor rejects a Participant's plan of correction, either the Participant or the Vendor may submit a Dispute to the Dispute Resolution Process described in Section 19 (Dispute Resolution). If the Vendor and the Participant cannot reach agreement on a plan of correction through the Dispute Resolution Process, the Vendor may terminate the Participant in accordance with Section 15(d) (Termination by the Vendor). Nothing in this Agreement obligates the Vendor to investigate or audit any Participant's compliance with this Agreement or Applicable Law.

- d. **Termination by Vendor.** Vendor may terminate, with concurrence by AHCA, a Participant's access to a particular service and this Agreement with respect to a Participant as follows:
- i. After taking a suspension action in accordance with Section 15(c) (Suspension by the Vendor) when there is a substantial likelihood that the Participant's acts or omissions create an immediate threat or will cause irreparable harm to another party including, but not limited to, a Participant, a Participant User, the Network, Vendor, AHCA, or an Individual whose PHI is exchanged through the Network;
 - ii. In the event that the Participant has materially breached this Agreement and has not cured such material breach after ten business days' notice that includes a detailed description of the alleged material breach;
 - iii. Immediately in the event that the Participant violates this Agreement's provisions regarding protection of AHCA's or Vendor's Proprietary Information; or
 - iv. Without cause, AHCA may terminate all Participants, Vendor and this entire Agreement upon thirty (30) days' written notice to all parties.

A Participant whose access is revoked by virtue of termination may appeal such revocation through the Dispute Resolution Process. However, during the pendency of any such appeal, the Participant's access to the particular service may continue to be revoked at the discretion of the Vendor.

- e. **Termination of Vendor.** Vendor is engaged by AHCA for its role in this Agreement. AHCA may terminate Vendor under the terms of that engagement, and shall give written notice to all Participants of any such termination. If AHCA terminates Vendor, then Vendor's rights under this Agreement also terminate, except for rights that expressly survive termination. AHCA may engage another organization to fulfill the duties of Vendor under this Agreement, as long as such other organization: 1) agrees to comply with the duties of Vendor under this Agreement, 2) executes this Agreement as Vendor, and 3) is approved by the Participants, which approval shall not be unreasonably withheld or delayed.
- f. **Effect of Termination.** Upon any termination of this Agreement for any reason, the terminated party shall cease to be a Participant and thereupon and thereafter neither that party nor its Participant Users shall have any rights to use the Network (unless such Participant Users have an independent right to access the Network through another Participant). Vendor shall revoke a terminated Participant's access to particular service and provide notice of such Participant's access to the remaining Subscribing Participants. As an exception to the foregoing, termination of a Participant for one subscribed service would not necessarily terminate Participant from another subscribed service, if Participant had subscribed to more than one service on the Network. In the event that any Participant(s) are terminated, this Agreement will remain in full force and effect with respect to all other Subscribing Participants. Certain provisions of this Agreement survive termination, as more fully described in Section 21(g) (Survival).
- g. **Disposition of Health Data Upon Termination.** At the time of termination, Recipient (other than Vendor) may, at its election, retain Health Data on Recipient's System (if applicable) in accordance with the Recipient's document and data retention policies and procedures, Applicable Law, and this Agreement, including Section 3(c) (Permitted Future Uses (Re-Disclosure)). Vendor shall terminate access to or from a terminated Participant's system on the termination date for that Participant; however, Vendor may retain audit trail data for a terminated Participant for a period of time for legal defense purposes in accordance with the document and data retention policies stated in the applicable Network Operating Policies and Technical Requirements. If the Vendor is terminated pursuant to this Agreement, or terminated by AHCA, or this Agreement is terminated in its entirety, then Vendor (including any of its subcontractors or agents) shall no longer access or transmit any data to or receive data from Participants' respective systems, and further Vendor will no longer access, use or store any Health Data and shall comply with a transition plan approved by AHCA, or if none is agreed upon, Vendor will delete or destroy (and certify such destruction to AHCA and Participants) of any data, including but not limited to any Health Data; however, if Vendor determines that returning or destroying PHI is not feasible, then Vendor must maintain the privacy protections under the Business Associate, Qualified Services Organization and other provisions of this Agreement relating to protection of Health Data and according to Applicable Law for as long as Vendor retains the PHI, and Vendor may only use or disclose the PHI for the specific uses or disclosures that make it necessary for Vendor to retain the PHI. If Vendor determines that it is infeasible for Vendor

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to obtain PHI in its subcontractor or agent's possession, Vendor must provide a written explanation to all parties of such reasons and require its subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to its subcontractors or agents' use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses or disclosures for the purposes that make the return or destruction of the PHI infeasible.

19-16. Insurance.

- a. **Insurance by Vendor.** The Vendor shall maintain Workers Compensation insurance and Commercial General Liability insurance including bodily injury, property damage, personal and advertising injury and products and completed operations. This insurance will provide coverage for all claims that may rise from the services and/or operations completed under this Agreement, whether such services and/or operations are by the Vendor or anyone directly employed or engaged by it (including, but not limited to, its subcontractors). Such insurance shall name AHCA and all Participants as additional insureds on the Commercial General Liability policy. Vendor will provide that AHCA receive written notice prior to any cancellation, modification or termination of such insurance, and AHCA will promptly notify all Participants of any such notices. The Vendor will maintain professional liability insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) and network risks (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in the performance of its services. Vendor reserves the right to self-insure any of the required coverages in this section, provided that such self-insurance meets all regulatory requirements.
- b. **Insurance by Participants.** Each Participant shall carry insurance in an amount sufficient to cover its obligations hereunder; however, each Participant reserves the right to self-insure to meet the obligation of coverage in this section, provided that such self-insurance meets all regulatory requirements.

20-17. Indemnification.

- a. **Indemnification by Participants.** Participant will indemnify and hold harmless the Vendor and other Participants, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising directly from Participant's or Participant's Users' breach of this Agreement, including the unauthorized or improper use of the Network or Participant's or Participant's Users' use or disclosure of Health Data for any purpose other than a Permitted Purpose. The Participant will not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). The foregoing indemnity shall apply only to the extent of the willful misconduct or gross negligence of the Participant or Participant User.
- b. **Indemnification by Vendor.**

- i. **For Breach.** Vendor will indemnify and hold harmless Participants, Participant Users, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising directly from Vendor's breach of this Agreement, including the unauthorized or improper use of the Network or Vendor's use or disclosure of Health Data for any purpose other than a Permitted Purpose or as otherwise allowed under this Agreement. The Vendor shall not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). The foregoing indemnity shall apply only to the extent of the willful misconduct or gross negligence of the Vendor.
 - ii. **For Infringement.** Vendor will indemnify and hold harmless Participants, Participant Users, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties that the use of the Network or any Common Network Resource or software provided by Vendor infringes any patents, copyrights or trademarks or is a misappropriation of trade secrets, provided that Participant notifies Vendor in writing promptly upon discovery of any such claims and gives Vendor complete authority and control of, and full cooperation with, the defense and settlement of such claim. The Vendor shall not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits).
- c. **Indemnification in General.** In the event a suit is brought against a party to this Agreement under circumstances where Section 17(a) (Indemnification by Participants) or 17(b) (Indemnification by Vendor) applies (the "sued party"), the indemnifying party, at its sole cost and expense, shall defend the sued party in such suit if written notice thereof is promptly given to the indemnifying party within a period wherein the indemnifying party is not prejudiced by lack of such notice. If indemnifying party is required to indemnify and defend, it will thereafter have control of such litigation, but the indemnifying party may not enter into any settlement or other agreement with respect to any claim that imposes any duty or obligation on the sued party, or provides for an admission of fault on the part of the sued party, without the prior written consent of the sued party, which consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the sued party; and the indemnifying party, in defending any action on behalf of the sued party, shall be entitled to assert in any action every defense or immunity that the sued party could assert in its own behalf. This indemnification not only applies to civil suits filed against the sued party, but also to administrative actions and civil penalties on the sued party imposed by state or federal government agencies that may result from breach of this Agreement by the indemnifying party. Any action or claim against the indemnifying party must be brought in writing within one (1) year from the date of filing of the claim by the third party against the sued party, otherwise the indemnity is invalid.
- d. **Exception for Certain Participants.** The obligation to indemnify in this Section 17 (Indemnification) shall not apply to any Participant who is barred by statute or other Applicable Law from indemnifying another party. In the case of a State Participant, the provisions of Section 768.28, Florida Statutes, relating to sovereign immunity shall govern. In addition, a State Participant's indemnification obligations shall be no greater than the limitations on tort claims as set forth in Section 768.28, Florida Statutes, and treated as if the tort claims prompting the Vendor or other Participants to invoke the indemnification

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obligation had been asserted against the State Participant directly. In the event that any third parties asserts claims against the State Participant and the Vendor and/or other Participants, the State Participant's aggregate obligations shall not exceed the limitations on tort claims as set forth in Section 768.28, Florida Statutes. Nothing in this Agreement shall be construed as a waiver of sovereign immunity or consent by a state agency or political subdivision to suit by third parties.

24-18. General Fee Terms for Services. Any fees payable for each service offered are provided in the applicable Subscription Agreement, as amended from time to time by Vendor. Unless expressly modified in the Subscription Agreement for a specific service, the following terms apply to payment of fees.

- a. **Taxes.** All fees and other charges for subscribing to a particular service shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and the Participant shall pay any tax (excluding taxes on Vendor's net income) that Vendor may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items or services provided pursuant to this Agreement.
- b. **Third Party Fees and Charges.** The Participant will be solely responsible for any other charges or expenses the Participant may incur to access or use the service, including without limitation, Carrier Line and equipment charges, and fees charged by vendors of third party products that may be included and specified in a Subscription Agreement to which Participant has executed.
- c. **Failure to Pay Fees.**
 - i. **Interest on Late Payments.** Fees not paid for the service by the due date in service invoice set in the Subscription Agreement(s) executed by Participant ~~shall may, at the vendor's discretion,~~ bear interest at the rate of one and a half percent (1.5%) per month or the highest legal rate of interest, whichever is lower. The accrual of such interest shall not affect the rights and remedies of Vendor under this Agreement.
 - ii. **Suspension of Service.** In the event fees are not paid by thirty (30) days following the due date (or, in the event the Participant disputes any portion of the fees due), Vendor may suspend the Participant's access to a service on thirty (30) days' prior notice. Vendor may charge a reasonable renewal fee to cover its costs and overhead associated with restoring a suspended service after suspension due to non-payment.
 - iii. **Collection.** In the event that payment due to Vendor is collected at law or through an attorney-at-law, or under advice therefrom, or through a collection agency, Participant agrees to pay all costs of collection, including without limitation all court costs and reasonable attorneys' fees.

22-19. Dispute Resolution.

- a. **General.** The parties acknowledge that it may be in their best interest to resolve Disputes through an alternative dispute resolution process rather than through civil litigation. The parties have reached this conclusion based upon the fact that the legal and factual issues involved in this Agreement are unique, novel, and complex, and limited case law exists which addresses the legal issues that could arise from this Agreement. Therefore, the parties shall submit Disputes related to this Agreement to the Dispute Resolution Process in the next Section 19(b). Except in accordance with Section 19(c) (Immediate Injunctive Relief), if a party refuses to participate in the Dispute Resolution Process, such refusal shall constitute a material breach of this Agreement and shall be grounds for termination.
- b. **Dispute Resolution Process:**
- i. **Notice of Dispute.** When a Dispute arises, a party will send notice, in accordance with the notice provision of the Agreement, to the other parties to this Agreement involved in the Dispute. The notice must contain a summary of the issue as well as a recommendation for resolution. The party must send a copy of the notice to the Vendor and AHCA for informational purposes.
 - ii. **Informal Conference.** Within thirty calendar days of receiving the notice, the parties involved in the Dispute are obligated to meet and confer with each other, at least once in good faith and at a mutually agreeable location (or by telephone), to try to reach resolution (the "Informal Conference"). If the parties to the Dispute reach a resolution at the Informal Conference, they will provide notification to that effect to the Vendor and AHCA. The parties agree that if any party refuses to participate in such Informal Conference, or if the Informal Conference fails to produce a mutually acceptable resolution of the Dispute within thirty (30) calendar days after the parties' receipt of notice of the Dispute, the other party or parties may submit the matter to mediation or arbitration pursuant to this Section 19(b).
 - iii. **Mediation.** In the event a Dispute arises between or among the parties that cannot be settled by Informal Conference as set forth above, the parties may, on mutual agreement, submit the matter to mediation to be conducted in a mutually agreeable location in Florida. The process for selecting the mediator shall be determined by the mutual written consent of the parties. If the parties fail to agree to a process within ten (10) calendar days from a request, the requesting party may proceed to invoke the arbitration process provided for herein. The consent of any party to such mediation may be withdrawn at any time, without cause. If the parties to the Dispute reach a resolution at the mediation, they will provide notification to that effect to the Vendor and AHCA.
 - iv. **Binding Arbitration.** The parties agree that any Dispute which cannot be resolved between or among them after following the Dispute Resolution Process set forth in this Section shall be subject to mandatory and binding arbitration before a single arbitrator. The arbitration shall be conducted by and according to the American Health Lawyers' Association's Alternative Dispute Resolution Service ("AHLA – ADR") Rules of Procedure for Arbitration, and judgment on the award by the arbitrator

may be entered in any court having jurisdiction thereof. The arbitration shall be held in such location as mutually agreed upon by the parties; provided, if the parties fail to agree within ten days of the request for arbitration, the location shall be determined by the arbitrator. Each party involved shall be responsible for the costs and fees of its attorneys, accountants, consultants and other costs incurred in the preparation and presentation of its position at arbitration. The parties to the Dispute shall bear equally the cost of the arbitrator and those costs common to multiple parties. In the event the prevailing party is required to seek enforcement of any arbitrator's decision in a court of competent jurisdiction, the party ultimately prevailing in any appeal thereof shall have the costs and fees of its attorneys, accountants, and other consultants incurred in prosecuting such appeal and post judgment collection costs paid by the non-prevailing party or parties. If the arbitrator requires the assistance of a financial or accounting expert to carry out his duties under this Section, then the parties to the Dispute shall have the equal obligation to pay for such experts.

- c. **Immediate Injunctive Relief.** Notwithstanding the prior Section, a party may be relieved of its obligation to participate in the Dispute Resolution Process if such party (i) believes that another party's acts or omissions create an immediate threat to the confidentiality, privacy or security of Health Data exchanged through the Network or will cause irreparable harm to the Network or another party (Participant, Participant User, Vendor, AHCA or Individual) and (ii) pursues immediate injunctive relief against such other party in a court of competent jurisdiction. The party pursuing immediate injunctive relief must notify AHCA and the Vendor of such action within twenty-four hours of filing for the injunctive relief and of the result of the action within twenty-four hours of learning of the same. If the injunctive relief sought is not granted and the party seeking such relief chooses to pursue the Dispute, the parties must then submit to the Dispute Resolution Process.
- d. **Activities During the Dispute Resolution Process.** Pending resolution of any Dispute under this Agreement, the parties agree to fulfill their responsibilities in accordance with this Agreement, unless the party is a Participant and voluntarily suspends its participation in the Network in accordance with Section 15(b) (Suspension or Termination by Participant), or is suspended in accordance with Section 15(c) (Suspension by Vendor).
- e. **Implementation of Agreed Upon Resolution.** If, at any point during the Dispute Resolution Process, all of the parties to the Dispute accept a proposed resolution of the Dispute, the parties agree to implement the terms of the resolution in the agreed upon timeframe.
- f. **Exceptions for Certain Participants.** The obligation to engage in binding arbitration in this Section 19 (Dispute Resolution) shall not apply to any Participant who is barred by statute or other Applicable Law from engaging in binding arbitration with another party. Binding arbitration pursuant to this section shall not apply to the rights of action involving the state or its agencies or subdivisions or the officers, employees, or agents thereof pursuant to Section 768.28. If the Participant is an agency of the State of Florida, the provisions of Section 768.28, Florida Statutes, relating to sovereign immunity shall govern.

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23-20. Notices. All notices to be made under this Agreement shall be given in writing to the appropriate party's representative at the address listed in the Subscription Agreement, and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by U.S. Postal Service Certified Mail, return receipt requested; or (iii) if by transmission nationally recognized overnight courier service that has the capability to track the notice, upon receipt. **ANY NOTICE GIVEN TO, OR BY, VENDOR MUST ALSO BE COPIED TO AHCA.**

24-21. Miscellaneous/General.

- a. **Governing Law.** In the event of a Dispute between or among the parties arising out of this Agreement, Florida law will govern the operation of the parties involved in the Dispute, excluding its conflicts of law rules.
- b. **Changes to Applicable Law.** Any new legislation or amendments to government regulations or administrative rules that become effective after the Effective Date of this Agreement shall be mutually agreed to by AHCA, the Vendor and Participants as to the applicability of the change to this Agreement. Upon mutual agreement of the parties, a written amendment will subsequently be made to this Agreement to incorporate the requisite change(s).
- c. **Entire Agreement.** This Agreement sets forth the entire and only agreement among Vendor and the Participants relative to the subject matter hereof and supersedes all previous negotiations and agreements, whether oral or written. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon Vendor or any Participant.
- d. **Amendment.** Except for changes to any fees charged by Vendor in the Subscription Agreement (if any), and changes to Network Operating Policies and Technical Requirements for the particular service, made in accordance with Section 4 (Network Operating Policies and Technical Requirements), this Agreement may be amended only by an instrument in writing signed by the party against whom the change, waiver, modification, extension, or discharge is sought, unless otherwise indicated in this Agreement.
- e. **Assignment.** No party shall assign or transfer this Agreement, or any part thereof, without the express written consent of Vendor. Any assignment that does not comply with the requirements of this Section shall be void and have no binding effect.
- f. **Additional Participants.** Upon AHCA and the Vendor's acceptance of a new participant in the Network, Vendor will coordinate for the new Participant to execute and become bound by this Agreement. To accomplish this, the new participant will enter into a Subscription Agreement, pursuant to which the new participant agrees to be bound by this Agreement. The Participants, Vendor and AHCA agree that upon execution of the Subscription Agreement by a duly authorized representative of Vendor, all then-current Participants shall be deemed to be signatories to such Subscription Agreement with the result being that current Participants and the new participant are all bound by the Agreement and obligated to each other in accordance with its terms. The new participant shall not be granted the right to participate in the particular service until both it and Vendor execute the Subscription Agreement.

- g. **Survival.** The provisions of Sections 3(c) (Permitted Future Uses (Re-Disclosure)), 3(d) (Management Uses), 7 (Breach Notification), 11 (Proprietary Information), 14 (Liability), 15(g) (Disposition of Health Data Upon Termination), 17 (Indemnification), 19 (Dispute Resolution) and any other provisions of this Agreement that by their nature or by express statement shall survive, shall survive the termination of this Agreement for any reason. In addition, any Participant obligation to pay fees to Vendor shall survive termination of this Agreement and the terms of Section 18 (General Fee Terms for Service) shall survive and apply, as needed.
- h. **Waiver.** No failure or delay by any party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.
- i. **Validity of Provisions.** In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of this Agreement, invalid, void or otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect, as long as the original intent of the Agreement would not thereby be frustrated.
- j. **Priority.** In the event of any conflict or inconsistency between a provision in the General Terms and Conditions of this Agreement and the body of the Subscription Agreement, the terms contained in the body of the Subscription Agreement shall prevail.
- k. **Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify, or aid in the interpretation or construction of meaning of the provisions of this Agreement. All references in this instrument to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Agreement. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision.
- l. **Relationship of the Parties.** The parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the parties. No party hereto shall have any authority to bind or make commitments on behalf of one another, nor shall any such party hold itself out as having such authority. No party to this Agreement shall be held liable for the acts or omissions of another party hereto.
- m. **Third-Party Beneficiaries.** With the exception of the parties to this Agreement and AHCA, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.
- n. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the Participant whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.

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o. **Force Majeure.** A party shall not be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (i) severe weather or storms; (ii) earthquakes or other disruptive natural occurrences; (iii) strikes or other labor unrest; (iv) power failures; (v) nuclear or other civil or military emergencies; (vi) terrorist attacks; (vii) acts of legislative, judicial, executive, or administrative authorities; or (viii) any other circumstances that are not within its reasonable control. This Section shall not apply to obligations imposed under Applicable Law.

p. **Time Periods.** Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of the Vendor and the affected party(ies).

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ATTACHMENT A
Business Associate Provisions

This Section 12 Attachment A shall only apply in the event that a Participant is a Covered Entity. Vendor is hereby a Business Associate of any such Covered Entity Participant and this Section 12 Attachment A applies if and to the extent that Vendor meets the definition of Business Associate with respect to such Covered Entity Participant.

g. Limits on Use and Disclosure.

- i. Use Under This Agreement. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law. Business Associate may use and disclose PHI to perform those functions, activities, or services that Business Associate performs for, or on behalf of, each Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate HIPAA or HITECH if done by a Covered Entity, including but not limited to accessing and transmitting PHI on the Network and maintaining the Network, and making disclosures to Participants for Permitted Purposes. Any such use or disclosure allowed by this subsection shall be limited to those reasons and those individuals as necessary to meet the Business Associate's obligations under this Agreement.
- ii. Other Disclosures. Business Associate will not make the following disclosures that are otherwise allowed to be made by a Covered Entity under 45 CFR § 164.512 unless compelled to do so by law or unless such a disclosure is specifically authorized or required by this Agreement:
 1. About victims or abuse, neglect, or domestic violence;
 2. For health oversight activities;
 3. For judicial and administrative proceedings;
 4. For law enforcement purposes;
 5. About decedents;
 6. For cadaveric organ, eye, or tissue donation purposes;
 7. To avert a serious threat to health or safety;
 8. For specialized government functions;
 9. For workers' compensation purposes;
 10. For marketing purposes;
 11. For fundraising purposes.

If Business Associate is requested to make a disclosure for one of the foregoing reasons, it shall forward such request to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response. Business Associate shall make PHI available to the Covered Entity for the foregoing reasons if requested to do so in writing by the Covered Entity for the Covered Entity to coordinate and prepare a timely response.

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- iii. **Use of PHI for Management and Administration or Legal Responsibilities of Business Associate.** Notwithstanding ~~Attachment A Section 12.a~~ of this Agreement, Business Associate may use and disclose PHI received by the Covered Entity pursuant to this Agreement for: (1) the proper management and administration of the Business Associate; or (2) to carry out the legal responsibilities of the Business Associate. However, the Business Associate will only be allowed to disclose PHI for the aforementioned uses if: (1) the disclosure is Required By Law; or (2) the Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required By Law and for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances in which the person is aware of a confidentiality breach of PHI.
- iv. **Data Aggregation Services.** With respect to PHI received by the Business Associate in its capacity as the Business Associate of the Covered Entity, Business Associate may combine such PHI it has received from the Covered Entity with the PHI received by the Business Associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the Health Care Operations of the respective Covered Entities, if data analyses is part of the services that Business Associate is to provide under this Agreement, as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- r. **Safeguards.** Business Associate agrees to use reasonable and appropriate administrative, physical and technological safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. In addition, Business Associate shall implement such safeguards and security measures as are necessary to comply with the HIPAA Security Rule as set forth in 45 CFR Parts 160 and Subparts A and C of Part 164. Business Associate shall provide periodic reports to AHCA related to the security measures implemented by Business Associate for the Network, including any material security incidents that have arisen since any prior report. Such report will also be made available to any Participant, upon request. A material security incident is one that results in unauthorized access, use, disclosure, modification, destruction of PHI, or interference with system operations. Security incidents that do not result in such an outcome include, but are not limited to, pings on a firewall, attempts to log on to a system with an invalid password or username, malware, and denial-of-service attacks that do not result in a server being taken off-line. This Agreement constitutes notice to the Covered Entity that such unsuccessful security incidents occur.
- s. **Report of Improper Use or Disclosure.** Business Associate agrees to promptly report to a Covered Entity any use or disclosure of the Covered Entity's PHI not provided for by this Agreement of which Business Associate becomes aware. Business Associate is also subject to the requirements in Section 7 (Breach Notification) of this Agreement.
- t. **Agents and Subcontractors.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by the Business Associate on behalf of, a Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to PHI.

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- u. **Access to Records To Fulfill Request by Individual.** Business Associate shall not respond directly to requests from Individuals for access to their PHI in a Designated Record Set. Business Associate will refer such Individuals to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response to the Individual.
- v. **Access to Records by HHS Secretary.** Business Associate shall make its records, books, agreements and policies, and procedures relating to the administrative, physical and technical safeguards and the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the HHS Secretary for purposes of determining Covered Entity's or Business Associate's compliance with HIPAA and HITECH.
- w. **Amendments to PHI.** Business Associate shall have no obligation to initiate or make PHI amendments to other Participants on the Network. Business Associate shall not respond directly to requests from Individuals for amendments to their PHI. Business Associate will refer such Individuals to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response to the Individual.
- x. **Accounting of Disclosures.** See Section 2(f) of this Agreement for Business Associate's obligations regarding accounting of disclosures under 45 CFR § 164.528 and as amended by HITECH (Subtitle D Section 13405) and its implementing regulations.
- y. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure by Business Associate in violation of the requirements of this Agreement.

ATTACHMENT B
Qualified Service Organization Provisions

This Section 13 Attachment B shall only apply in the event that a Participant is or has a program subject to 42 CFR Part 2 or transmits Health Data from or other data about clients in a program subject to 42 CFR Part 2.

z. **Vendor's Role.** Vendor is a Qualified Service Organization or QSO of Participant for the purpose of providing the services specified in this Agreement for Participant, which include but are not limited to data processing, holding and storing information about Part 2 program clients, receiving and reviewing requests for disclosures to third parties for Permitted Purposes under this Agreement, and/or facilitating the electronic exchange of Part 2 clients' information through the Network, as applicable for the particular service to which Participant is subscribed.

aa. **Limits on Use and Disclosure.**

- i. The QSO shall only access Health Data or other data about clients of Participant's Part 2 program to the extent needed by the QSO to provide services to the Part 2 program described in this Agreement.
- ii. The QSO agrees not to use or further disclose any Health Data or other Part 2 program client information other than as specified in this Agreement.
- iii. The QSO acknowledges that in receiving, storing, processing, or otherwise using any information from the Part 2 program about the clients in the program, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.
- iv. The QSO undertakes to resist in judicial proceedings any effort to obtain access to information pertaining to Part 2 program clients otherwise than as expressly provided for in 42 CFR Part 2, and the QSO shall notify the appropriate Participant.
- v. Any subcontractors or agents of the QSO may only access information from a Part 2 program if the subcontractor or agent has entered into an agreement with the QSO and has agreed to the same obligations stated in this Section 13, including but not limited to being bound by 42 CFR Part 2.