

**DRAFT**

**TEXAS HEALTH INFORMATION EXCHANGE NETWORK  
TRUST AGREEMENT**

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# **Texas Health Information Exchange Network**

## **Trust Agreement**

This Texas Health Information Exchange Network (“THIEN”) Trust Agreement (the “Agreement”) is entered into as of the Effective Date (defined below), by and between the undersigned participants (hereinafter referred to individually as “Participant” and collectively as “Participants”).

The THSA is also made a party to this Agreement for purposes of enforcement of the terms of the Agreement to the fullest extent permitted by law. Because THSA will not receive any PHI (defined below) or Proprietary Information (defined below) pursuant to this Agreement, the terms “Party” or “Parties” as used herein will apply only to Participants and not to the THSA itself unless otherwise explicitly stated.

### **RECITALS**

WHEREAS, in 2007, the Texas State Legislature created the Texas Health Services Authority (“THSA”) pursuant to Chapter 182 of the Texas Health and Safety Code in order to “promote, implement, and facilitate the voluntary and secure exchange of health information,” by establishing statewide health information exchange capabilities and “promoting definitions and standards for electronic interactions statewide;” and

WHEREAS, in March 2010, the Office of National Coordinator for Health Information Technology (“ONC”) awarded the Texas Health and Human Services Commission (“HHSC”) with funding through the American Recovery and Reinvestment Act’s (“ARRA”) State HIE Cooperative Agreement Program to fund state planning and implementation of electronic health information networks. The HHSC serves as the fiscal agent for this funding, and THSA, under contract with HHSC, has developed HIE strategic and operational plans for Texas that were approved by the ONC in November 2010; and

WHEREAS, the THIEN is a network of connections between health care providers and other participants in Texas that operates for the purpose of facilitating the private and secure sharing of health data in accordance with Applicable law. The THIEN may in the future participate in national electronic health information exchanges, such as the Nationwide Health Information Network (“NWHIN”), as it may subsequently be renamed pursuant to the current draft Data Use and Reciprocal Support Agreement Restatement 1, issued May 3, 2011;

WHEREAS, all undersigned Participants facilitate and govern the exchange of Health Data (as defined below) among groups of persons or organizations that wish to request and/or receive Health Data from other Participants in the THIEN;

WHEREAS, as a condition of participation in the THIEN, all Participants must enter into this Agreement for purposes of electronic data exchange; and

WHEREAS, the purpose of this Agreement is to provide a legal framework for enabling Participants to exchange Health Data through the THIEN.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Participants mutually agree as follows:

## 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. **Applicable Law** means all applicable statutes and regulations of the State(s) or jurisdiction(s) in which the Participant operates, as well as all applicable Federal statutes, regulations, standards and policy requirements.
- b. **Authorization** shall have the meaning and include the requirements set forth at 45 CFR § 164.508 of the HIPAA Regulations and include any similar but additional requirements under Applicable Law.
- c. **Breach** shall mean the unauthorized acquisition, access, disclosure, or use of Message Content while Transacting such Message Content pursuant to this Agreement. The term "Breach" does not include the following:
  1. any unintentional acquisition, access, disclosure, or use of Message Content by an employee or individual acting under the authority of a Participant or Participant User if:
    - .01. such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the Participant or Participant User; and
    - .02. such Message Content is not further acquired, accessed, disclosed or used by such employee or individual; or
  2. any acquisition, access, disclosure or use of information contained in or available through the Participant's System where such acquisition, access, disclosure or use was not directly related to Transacting Message Content.
- d. **Business Associate** shall have the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.
- e. **Common Participant Resources** shall mean software, utilities and automated tools made available for use in connection with the Transaction of Message Content pursuant to this Agreement and that have been officially designated as "Common Participant Resources" by the THSA.
- f. **Confidential Participant 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 upon disclosure. Confidential Participant Information includes, but is not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, 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, Confidential Participant Information does not include Message Content; 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 Confidential Participant Information. Message Content is excluded from the definition of Confidential Participant Information because other provisions of this Agreement address the appropriate protections for Message Content.

g. **Covered Entity** shall have the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.

h. **Digital Credentials** shall mean a mechanism that enables Participants to electronically prove their identity and their right to Transact Message Content with other Participants as further defined in the THIEN Operating Policies and Procedures.

i. **Discloser** shall mean a Participant that discloses Confidential Participant Information to a Receiving Party.

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

k. **Effective Date** shall mean the date specified in Section 23.12 of this Agreement.

l. **Governmental Participants** shall mean collectively those Participants that are local, state or Federal agencies.

m. **Health Care Operations** shall have the meaning set forth at 45 C.F.R. §164.501 of the HIPAA Regulations.

n. **Health Care Provider** shall have the meaning set forth at 45 C.F.R. §160.103 of the HIPAA Regulations.

o. **Health Information Service Provider or HISP** shall mean a company or other organization that will support one or more Participants by providing them with operational, technical, or health information exchange services.

p. **Health Plan** shall have the meaning set forth at 45 C.F.R. §160.103 of the HIPAA Regulations.

q. **HIPAA Regulations** means the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and

Accountability Act (HIPAA) of 1996, as in effect on the Effective Date of this Agreement and as may be amended, modified, or renumbered.

r. **Joinder Agreement** shall mean, with respect to Participants, the agreement that each New Participant signs to be bound by this Agreement. The Joinder Agreements for New Participants is located at Attachment 6 of this Agreement.

s. **Message** shall mean an electronic transmission of Message Content Transacted between Participants using the Specifications. Messages are intended to include all types of electronic transactions as specified in the Performance and Service Specifications, including the data or records transmitted with those transactions.

t. **Message Content** shall mean that information contained within a Message or accompanying a Message using the Specifications. This information includes, but is not limited to, Protected Health Information (PHI), de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. §164.514), individually identifiable information, pseudonymized data, metadata, Digital Credentials, and schema.

u. **New Participant** shall mean an organization or agency that is approved as a Participant by the THSA pursuant to the Operating Policies and Procedures and Section 23.03 of this Agreement

v. **Notice or Notification** shall mean a written communication, unless otherwise specified in this Agreement, sent to the appropriate Participant's representative at the address listed on the THSA website. It is the Participant's responsibility to ensure that its contact information on the THSA website is up to date and correct.

w. **Operating Policies and Procedures** shall mean the policies and procedures adopted by the THSA that describe (i) management, operation and maintenance of the Performance and Service Specifications; (ii) qualifications, requirements and activities of Participants when Transacting Message Content with other Participants; and (iii) support of the Participants who wish to Transact Message Content with other Participants. The Operating Policies and Procedures are attached hereto as Attachment 2, as amended from time to time in accordance with Section 11.03.

x. **Participant** means any organization that (i) meets the requirements for participation as contained in the Operating Policies and Procedures; and (ii) is a signatory to this Agreement or a Joinder Agreement. Participants may act as a Submitter, Recipient or both when Transacting Message Content.

y. **Participant Access Policies** means those policies and procedures of a Participant that govern the Participant Users' ability to transact information using the Participant's system including, but not limited to, the Transaction of Message Content.

z. **Participant User** means any person who has been authorized to Transact Message Content through the respective Participant's System in a manner defined by the respective Participant. "Participant Users" may include, but are not limited to, Health Care Providers; Health Plans; individuals whose health information is contained within, or available through, a Participant's System; and employees, contractors, or agents of a Participant. A Participant User may act as a Submitter, a Recipient or both when

Transacting Message Content.

aa. **Payment** shall have the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.

bb. **Performance and Service Specifications** shall mean the Specifications, as well as any implementation guidance, migration plans and other technical materials and resources approved by the THSA in accordance with Section 10.03 of this Agreement.

cc. **Permitted Purpose** means one of the following reasons for which Participants or Participant Users may legitimately Transact Message Content, subject to any additional restrictions contained in Applicable Law:

1. Treatment of the individual who is the subject of the Message;
2. Payment activities of the Health Care Provider for the individual who is the subject of the Message which includes, but is not limited to, Transacting Message Content in response to or to support a claim for reimbursement submitted by a Health Care Provider to a Health Plan.
3. Health Care Operations of either:
  - .01. the Submitter if the Submitter is a Covered Entity;
  - .02. a Covered Entity if the Submitter is Transacting Message Content on behalf of such Covered Entity; or
  - .03. the Recipient if (i) the Recipient is a Health Care Provider who has an established Treatment relationship with the individual who is the subject of the Message or the Recipient is Transacting Message Content on behalf of such Health Care Provider; and (ii) the purpose of the Transaction is for those Health Care Operations listed in paragraphs (1) or (2) of the definition of Health Care Operations in 45 C.F.R. § 164.501 or health care fraud and abuse detection or compliance of such Health Care Provider;
4. Public health activities and reporting as permitted by Applicable Law, including the HIPAA Regulations at 45 C.F.R. § 164.512(b) or 164.514(e);
5. Any purpose to demonstrate meaningful use of certified electronic health record technology by the (i) Submitter, (ii) Recipient or (iii) Covered Entity on whose behalf the Submitter or the Recipient may properly Transact Message Content under this Agreement, provided that the purpose is not otherwise described in subsections 1-4 of this definition 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 under the American Recovery and Reinvestment Act, Sections 4101 and 4102; and
6. Uses and disclosures pursuant to an Authorization provided by the individual who is the subject of the Message or such individual's personal

representative as described in 45 C.F.R. § 164.502(g) of the HIPAA Regulations.

- dd. **Protected Health Information or PHI** shall have the meaning set forth at 45 C.F.R. § 160.103 of the HIPAA Regulations.
- ee. **Receiving Party** shall mean a Participant that receives Confidential Participant Information in any capacity from a Discloser.
- ff. **Recipient** shall mean the Participant(s) or Participant User(s) that receives Message Content through a Message from a Submitter for a Permitted Purpose. For purposes of illustration only, Recipients include, but are not limited to, Participants or Participant Users who receive queries, responses, subscriptions, publications or unsolicited Messages.
- gg. **Specifications** means the specifications adopted by the THSA pursuant to this Agreement to prescribe the data content, technical, and security requirements to enable the Participants to Transact Message Content. Specifications may include, but are not limited to, specific THIEEN standards, services and policies. The Specifications are attached hereto as Attachment 1, and may be amended from time to time in accordance with Sections 10.02 and 10.03.
- hh. **Submitter** shall mean the Participant(s) or Participant User(s) who submits Message Content through a Message to a Recipient for a Permitted Purpose. For purposes of illustration only, Submitters include, but are not limited to, Participants or Participant Users who push Messages with Message Content, send Messages seeking Message Content, send Messages in response to a request, send subscription Messages, or publish Messages with Message Content in response to subscription Messages.
- ii. **System** shall mean software, portal, platform, or other electronic medium controlled by a Participant through which the Participant conducts its health information exchange related activities. For purposes of this definition, it shall not matter whether the Participant controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.
- jj. **Transact** means to send, request, receive, assert, respond to, submit, route, subscribe to, or publish Message Content using the Performance and Service Specifications.
- kk. **Transaction Pattern** shall mean a type of information exchange service(s) enabled by the Specifications. The Operating Policies and Procedures will identify the Transaction Pattern(s) and the Specifications required to implement each Transaction Pattern. The Transaction Patterns may be amended from time to time through amendment of the Specifications and the Operating Policies and Procedures.
- ll. **Treatment** shall have the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.

## 2. **Intentionally Deleted.**

3. **Intentionally Deleted.**

4. **Administration of the THIEN.**

- 4.0 **Grant of Authority.** The Participants hereby grant to the THSA the right to provide oversight, facilitation and support for the Participants who Transact Message Content with other Participants by conducting activities including, but not limited to, the following:
- a. Determining whether to admit a New Participant;
  - b. Maintaining a definitive list of all Transaction Patterns and volumes per Transaction Pattern supported by each of the Participants;
  - c. Developing and amending Operating Policies and Procedures in accordance with Section 11 of this Agreement;
  - d. Receiving reports of Breaches and acting upon such reports in accordance with Section 14.03 of this Agreement (Breach Notification);
  - e. Suspending or terminating Participants in accordance with Section 19 of this Agreement (Suspension and Termination);
  - f. Resolving Disputes between Participants in accordance with Section 21 of this Agreement (Dispute Resolution);
  - g. Managing the amendment of this Agreement in accordance with Section 23.02 of this Agreement;
  - h. Evaluating, prioritizing and adopting new Performance and Service changes to Specifications, existing Performance and Service Specifications in accordance with Section 10 of this Agreement;
  - i. Maintaining a process for managing versions of the Performance and Service Specifications, including migration planning;
  - j. Coordinating with ONC to help ensure the interoperability of the Performance and Service Specifications with other health information exchange initiatives including, but not limited to, providing input into the broader ONC specifications activities and ONC Standards and Interoperability Framework initiatives;
  - k. Conducting studies from time to time related to various issues surrounding the THIEN including, but not limited to, any project evaluation required under grants or contracts and/or the efficacy and usefulness of the THIEN; and
  - l. Fulfilling all other responsibilities delegated by the Participants to the THSA as set forth in this Agreement.
- 4.04. In no case shall a Participant disclose PHI or Confidential Participant Information to the THSA pursuant to this Agreement. In the event that the THSA should require access to PHI or Confidential Participant Information in connection with its authority under this Agreement, Participant and THSA must enter into a separate agreement

with respect to such PHI or Confidential Participant Information.

## **5. Use of Message Content.**

- 5.01. **Permitted Purpose.** Participants shall only Transact Message Content for a Permitted Purpose as defined in this Agreement. Each Participant shall require that its Participant Users comply with this Section 5.01.
- 5.02. **Permitted Future Uses.** Subject to this Section 5.02 and Section 19.07, Recipients may retain, use and re-disclose Message Content in accordance with Applicable Law and the Recipient's record retention policies and procedures. If the Recipient is a Participant that is a Business Associate of its Participant Users, such Participant may retain, use and re-disclose Message Content in accordance with Applicable Law and the agreements between the Participant and its Participant Users.
- 5.03. **Management Uses.** The THSA may request information from Participants, and Participants shall provide requested information, for the purposes listed in Section 4.03 of this Agreement. Notwithstanding the preceding sentence, in no case shall a Participant provide PHI or Confidential Participant Information pursuant to this Agreement.

## **6. System Access Policies.**

- 6.01. **Autonomy Principle.** Each Participant shall have Participant Access Policies. Each Participant acknowledges that Participant Access Policies will differ among them as a result of differing Applicable Law and business practices. Each Participant shall be responsible for determining whether and how to Transact Message Content based on the application of its Participant Access Policies to the information contained in the Message. The Participants agree that each Participant shall comply with the Applicable Law, this Agreement, and all applicable Performance and Service Specifications in Transacting Message Content.
- 6.02. **Identification.** Each Participant shall employ a process 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.
- 6.03. **Authentication.** Each Participant shall employ a process by which the Participant, or its designee, uses the credentials issued pursuant to Section 6.02 to verify the identity of each Participant User prior to enabling such Participant User to Transact Message Content.

## **7. Enterprise Security.**

- 7.01. **General.** Each Participant shall be responsible for maintaining a secure environment that supports the operation and continued development of the Performance and Service Specifications. Participants shall use appropriate safeguards to prevent use or disclosure of Message Content other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of that Message Content. Appropriate safeguards for Participants shall be those identified in the

HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and C, as safeguards, standards, “required” implementation specifications, and “addressable” implementation specifications to the extent that the “addressable” implementation specifications are reasonable and appropriate in the Participant’s environment. If an “addressable” implementation specification is not reasonable and appropriate in the Participant’s environment, then the Participant must document why it would not be reasonable and appropriate to implement the implementation specification and implement an equivalent alternative measure if reasonable and appropriate. Appropriate safeguards for Federal Participants shall be those required by Applicable Law related to information security. Each Participant shall, as appropriate under either the HIPAA Regulations, or under Applicable Law, have written privacy and security policies in place by the Participant’s respective Effective Date. Participants shall also be required to comply with any Performance and Service Specifications or Operating Policies and Procedures adopted by the THSA, respectively, that define expectations for Participants with respect to enterprise security, which may or not be in excess of those requirements under the HIPAA Security Rule.

- 7.02. **Malicious Software.** Each Participant shall ensure that it employs security controls that meet applicable industry or Federal standards so that the information and Message Content being Transacted and any method of Transacting such information and Message Content 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 or any part thereof or any hardware or software used by a Participant 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 any part thereof or any hardware, software or data used by a Participant in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable. In the absence of applicable industry standards, each Participant shall use all commercially reasonable efforts to comply with the requirements of this Section.
8. **Equipment and Software.** Each Participant shall be responsible for procuring, and assuring that its Participant Users have or have access to, all equipment and software necessary for it to Transact Message Content. Each Participant shall ensure that all computers and electronic devices owned or leased by the Participant and its Participant Users to be used to Transact Message Content are properly configured, including, but not limited to, the base workstation operating system, web browser, and Internet connectivity.
9. **Auditing.** Each Participant represents that, through its agents, employees, and independent contractors, 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 shall perform those auditing activities required by the Performance and Service Specifications.
10. **Performance and Service Specifications.**
  - 10.01. **General Compliance.**

- a. **Transaction Patterns.** Each Participant shall implement and maintain at least one Transaction Pattern as a Submitter, a Recipient or both. Each Participant shall implement and maintain a Transaction Pattern only after appropriate approval and validation by the THSA in accordance with the Operating Policies and Procedures.
  - b. **Performance and Service Specifications.** Each Participant shall comply with (i) all of the Performance and Service Specifications applicable to the Transaction Pattern(s) that the Participant implements and maintains; and (ii) those Performance and Service Specifications identified by the THSA as applicable to all Participants.
- 10.02. **Adoption of Performance and Service Specifications.** The Participants hereby grant the THSA or its designee the right to adopt new Performance and Service Specifications, and to adopt amendments to, or repeal and replacement of, the Performance and Service Specifications at any time through the Performance and Service Specification Change Process described in Section 10.03.
- 10.03. **Performance and Service Specification Change Process.**
- a. **Collaborative Review Process.** Unless required due to changes in Applicable Law or necessitated to maintain the stability of the THIEN, prior to approving any new, amended, repealed or replaced Performance and Service Specification, the THSA shall solicit and consider comments from the applicable THSA Task Forces and the THSA Collaboration Council, in consultation with the THSA Board and HHSC as appropriate as further detailed in the Statewide Collaborative Policy Development Process located in Attachment 3, which is attached hereto and incorporated herein by this reference.
  - b. **Participant Duty to Terminate Participation.** If, as a result of a change made by the THSA in accordance with this Section 10.03, a Participant will not be able to comply with the Performance and Service Specifications or does not otherwise desire to continue to Transact Message Content with other Participants after such change becomes effective, then such Participant shall terminate this Agreement accordance with Section 19.02.

## **11. Operating Policies and Procedures.**

- 11.01. **General Compliance.** Each Participant shall comply with the Operating Policies and Procedures adopted by the THSA in accordance with this Agreement.
- 11.02. **Development of the Operating Policies and Procedures.** The Participants hereby grant the THSA the power to develop new Operating Policies and Procedures, and to amend, or repeal and replace, the Operating Policies and Procedures at any time through the Operating Policies and Procedures Change Process described in Section 11.03.
- 11.03. **Operating Policies and Procedures Change Process.** Unless required due to changes in Applicable Law or necessitated to maintain the stability of the THIEN, prior to approving any new, amended, repealed or replaced Operating Policies and Procedures Change Process, the THSA shall solicit and consider comments from the

applicable THSA Task Forces and the THSA Collaboration Council, in consultation with the THSA Board and HHSC as appropriate as further detailed in the Statewide Collaborative Policy Development Process located in Attachment 3, which is attached hereto and incorporated herein by this reference.

## **12. Expectations of Participants.**

### **12.01. Minimum Requirement for Participants that request Message Content for Treatment.**

- a. All Participants that request, or allow their respective Participant Users to request, Message Content for Treatment shall have a corresponding reciprocal duty to respond to Messages that request Message Content for Treatment. A Participant shall fulfill its duty to respond by either (i) responding to the Message with the requested Message Content or, (ii) responding with a standardized response that indicates the Message Content is not available or cannot be exchanged. All responses to Messages shall comply with Performance and Service Specifications, this Agreement, any agreements between Participants and their Participant Users, and Applicable Law. Participants may, but are not required to, Transact Message Content for a Permitted Purpose other than Treatment. Nothing in this Section 12.01(a) shall require a disclosure that is contrary to a restriction placed on the Message Content by a patient pursuant to Applicable Law.
- b. Each Participant that requests, or allows its respective Participant Users to request, Message Content for Treatment shall Transact Message Content with all other Participants for Treatment, in accordance with Sections 6, 12.01(a) and 14 of this Agreement. If a Participant desires to stop Transacting Message Content with another Participant based on the other Participant's acts or omissions in connection with this Agreement, the Participant may temporarily stop Transacting Message Content with such Participant either through modification of its Participant Access Policies or through some other mechanism, to the extent necessary to address the Participant's concerns. If any such cessation occurs, the Participant shall provide a Notification to the THSA of such cessation and the reasons supporting the cessation. The Participants shall submit the Dispute leading to the cessation to the Dispute Resolution Process in Section 21. If the cessation is a result of a Breach that was reported to, and deemed resolved by, the THSA pursuant to Section 14.03, the Participants involved in the Breach and the cessation shall engage in the Dispute Resolution Process in Section 21 in an effort to attempt to reestablish trust and resolve any security concerns arising from the Breach.

- 12.02. **Participant Users and HISPs.** Each Participant shall require that all of its Participant Users and HISPs Transact Message Content only in accordance with the terms and conditions of this Agreement, including without limitation those governing the use, confidentiality, privacy, and security of Message Content. Each Participant shall discipline appropriately any of its employee Participant Users, or

take appropriate contractual action with respect to contractor Participant Users or HISPs, who fail to act in accordance with the terms and conditions of this Agreement relating to the privacy and security of Message Content, in accordance with Participant's employee disciplinary policies and procedures and its contractor and vendor policies and contracts, respectively.

12.03. **License to Common Participant Resources.** Participant is hereby granted a nonexclusive, nontransferable, revocable and limited license to any Common Participant Resources solely for use as a Participant in performance of this Agreement. Participant shall not (a) sell, sublicense, transfer, exploit or, other than pursuant to this Agreement, use any Common Participant 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 Participant Resources. THE COMMON PARTICIPANT RESOURCES ARE 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.

13. **Specific Duties of a Participant When Submitting a Message.** Whenever a Participant or Participant User acts as a Submitter by submitting a Message to another Participant or Participant User, the Submitter shall be responsible for:

13.01. Submitting each Message in compliance with Applicable Law, this Agreement, the applicable Performance and Service Specifications, and Operating Policies and Procedures including, but not limited to, representing that the Message is:

- (i) for a Permitted Purpose;
- (ii) submitted by a Submitter who has the requisite authority to make such a submission;
- (iii) supported by appropriate legal authority for Transacting the Message Content including, but not limited to, any consent or Authorization, if required by Applicable Law; and
- (iv) submitted to the intended Recipient.

13.02. Representing that assertions or statements related to the submitted Message are true and accurate, if such assertions or statements are required by the Performance and Service Specifications or Operating Policies and Procedures;

13.03. Submitting a copy of the Authorization, if the Submitter is requesting Message Content from another Participant or Participant User based on the Permitted Purpose described in Section 1(cc)(6). Nothing in this Section shall be interpreted as requiring a Submitter who is requesting Message Content to obtain or transmit an Authorization for a request based on a Permitted Purpose other than the one described in Section 1(cc)(6), even though certain other Participants or Participant Users require such Authorization to comply with Applicable Law.

13.04. For Federal agency Participants only, in addition to complying with Sections 13.01

through 13.03, ensuring that Messages submitted by such Federal Participant adhere to interoperability standards adopted by the Secretary of Health and Human Services, and the National Institute of Standards and Technology (“NIST”) and the Federal Information Processing Standards (“FIPS”), as applicable.

#### **14. Privacy and Security.**

14.01. **Applicability of HIPAA Regulations.** Message Content may contain PHI. Furthermore, some, but not all, Participants are either a Covered Entity or a Business Associate. Because the Participants are limited to Transacting Message Content for only a Permitted Purpose, the Participants do not intend to become each other’s Business Associate by virtue of signing this Agreement or Transacting Message Content. As a result, this Agreement is not intended to serve as a Business Associate Agreement among the Participants. To support the privacy, confidentiality, and security of the Message Content, each Participant agrees as follows:

- a. If the Participant is a Covered Entity, the Participant does, and at all times shall, comply with the HIPAA Regulations to the extent applicable.
- b. If the Participant is a Business Associate of a Covered Entity, the Participant does, and shall at all times, comply with the provisions of its Business Associate Agreements (or for governmental entities relying upon 45 C.F.R. §164.504(e)(3)(i)(A), its Memoranda of Understanding) and Applicable Law.
- c. If the Participant is a Governmental Participant, the Participant does, and at all times shall, comply with the applicable privacy and security laws and regulations.
- d. If the Participant is neither a Covered Entity, a Business Associate or a Governmental Participant, the Participant shall, as a contractual standard, at all times, at a minimum, comply with the provisions of the HIPAA Regulations set forth in Attachment 4 as if it were acting in the capacity of a Covered Entity or such other standards as decided by the THSA.

14.02. **Safeguards.** In accordance with Sections 7, 8 and 9, Participant agrees to use reasonable and appropriate administrative, physical, and technical safeguards and any Performance and Service Specifications and Operating Policies and Procedures to protect Message Content and to prevent use or disclosure of Message Content other than as permitted by Section 5 of this Agreement.

14.03. **Breach Notification.**

- a. Each Participant agrees that within one (1) hour of discovering information that leads the Participant to reasonably believe that a Breach may have occurred, it shall alert other Participants whose Message Content may have been Breached and the THSA to such information. As soon as reasonably practicable, but no later than twenty-four (24) hours after determining that a Breach has occurred, the Participant shall provide a Notification to all Participants likely impacted by the Breach and the THSA of such Breach. The Notification should include sufficient information for the THSA 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:

- One or two sentence description of the Breach
- Description of the roles of the people involved in the Breach (e.g. employees, Participant Users, service providers, unauthorized persons, etc.)
- The type of Message Content Breached
- Participants likely impacted by the Breach
- Number of individuals or records impacted/estimated to be impacted by the Breach
- Actions taken by the Participant to mitigate the Breach
- Current Status of the Breach (under investigation or resolved)
- Corrective action taken and steps planned to be taken to prevent a similar Breach.

The Participant shall supplement the information contained in the Notification as it becomes available and cooperate with other Participants and the THSA in accordance with Section 20(e) of this Agreement. The Notification required by this Section 14.03 shall not include any PHI. If, on the basis of the Notification, a Participant desires to stop Transacting Message Content with the Participant that reported a Breach, it shall stop Transacting Message Content in accordance with Section 12.01(b) of this Agreement. If, on the basis of the notification, the THSA determines that (i) the other Participants that have not been notified of the Breach would benefit from a summary of the Notification or (ii) a summary of the Notification to the other Participants would enhance the security of the Performance and Service Specifications, it may provide, in a timely manner, a summary to such Participants that does not identify any of the Participants or individuals involved in the Breach.

- b. Information provided by a Participant in accordance with this Section 14.03, except Message Content, may be Confidential Participant Information. Such Confidential Participant Information shall be treated in accordance with Section 16.
- c. This Section 14.03 shall not be deemed to supersede a Participant's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law.
- d. Compliance with this Section 14.03 shall not relieve Participants of any other security incident or breach reporting requirements under Applicable Law including, but not limited to, those related to consumers.

15. **Representations and Warranties.** Each Participant hereby represents and warrants the following:

- 15.01. **Accurate Participant Information.** Except to the extent prohibited by Applicable Law, each Participant has provided, and shall continue to provide, the THSA with all information reasonably requested by the THSA and needed by the THSA to discharge its duties under this Agreement or Applicable Law, including during the

Dispute Resolution Process. Any information provided by a Participant to the THSA shall be responsive and accurate. Each Participant shall provide Notice to the THSA if any information provided by the Participant to the THSA materially changes. Each Participant acknowledges that the THSA reserves the right to confirm or otherwise verify or check, in its sole discretion, the completeness and accuracy of any information provided by a Participant at any time and each Participant shall reasonably cooperate with the THSA in such actions, given reasonable prior notice.

- 15.02. **Execution of this Agreement.** Prior to Transacting Message Content with other Participants, each Participant shall have executed this Agreement and returned an executed copy of this Agreement to the THSA. In doing so, the Participant affirms that it has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals or consents in order for it to execute this Agreement. The representatives signing this Agreement on behalf of the Participants affirm that they have been properly authorized and empowered to enter into this Agreement on behalf of the Participant.
- 15.03. **Compliance with this Agreement.** Except to the extent prohibited by Applicable Law, each Participant shall comply fully with all provisions of this Agreement. To the extent that a Participant delegates its duties under this Agreement to a third party (by contract or otherwise) and such third party will have access to Message Content, that delegation shall be in writing and require the third party, prior to Transacting Message Content with any Participants, to agree to the same restrictions and conditions that apply through this Agreement to a Participant.
- 15.04. **Agreements with Participant Users.** Each Participant has valid and enforceable agreements with each of its Participant Users that require the Participant User to, at a minimum: (i) comply with all Applicable Law; (ii) reasonably cooperate with the Participant on issues related to this Agreement; (iii) Transact Message Content only for a Permitted Purpose; (iv) use Message Content received from another Participant or Participant User in accordance with the terms and conditions of this Agreement; (v) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Participant; and (vi) refrain from disclosing to any other person any passwords or other security measures issued to the Participant User by the Participant. Notwithstanding the foregoing, for Participant Users who are employed by a Participant or who have agreements with the Participant which became effective prior to the Effective Date, compliance with this Section 15.04 may be satisfied through written policies and procedures that address items (i) through (vi) of this Section 15.04 so long as the Participant can document that there is a written requirement that the Participant User must comply with the policies and procedures.
- 15.05. **Agreements with Technology Partners.** To the extent that a Participant uses technology partners in connection with the Participant's Transaction of Message Content, each Participant affirms that it has valid and enforceable agreements with each of its technology partners, including HISPs, that require the technology partner to, at a minimum: (i) comply with Applicable Law; (ii) protect the

privacy and security of any Message Content 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 the other Participants to this Agreement on issues related to this Agreement, under the direction of the Participant.

- 15.06. **Compliance with Specifications, Policies and Procedures.** Each Participant affirms that it fully complies with the Performance and Service Specifications and the Operating Policies and Procedures as more fully discussed in Sections 10.01 and 11.01 of this Agreement.
- 15.07. **Creation of Test Data.** Participants agree to use only fictitious and completely manufactured data to create any test data to be used by other Participants for testing. De-identification of PHI for testing purposes is not allowed.
- 15.08. **Accuracy of Message Content.** When acting as a Submitter, each Participant, in accordance with Section 17.02, hereby represents that at the time of transmission, the Message Content it provides is (a) an accurate representation of the data contained in, or available through, its System, (b) sent from a System that employs security controls that meet industry standards so that the information and Message Content being transmitted are intended to be free from malicious software in accordance with Section 7.02, and (c) provided in a timely manner and in accordance with the Performance and Service Specifications and Operating Policies and Procedures. Other than those representations in Sections 16.07, 16.08 and 16.09, the Submitter makes no other representation, express or implied, about the Message Content.
- 15.09. **Express Warranty of Authority to Transact Message Content.** To the extent each Participant is a Submitter and is providing Message Content to a Recipient, each Participant represents and warrants that it has sufficient authority to Transact such Message Content.
- 15.10. **Use of Message Content.** Each Participant hereby represents and warrants that it shall use the Message Content only in accordance with the provisions of this Agreement.
- 15.11. **Compliance with Laws.** Each Participant shall, at all times, fully comply with all Applicable Law relating to this Agreement, the Transaction of Message Content for a Permitted Purpose and the use of Message Content.
- 15.12. **Absence of Final Orders.** Each Participant 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 Participant's ability to fulfill its obligations under this Agreement. Each Participant shall inform the THSA if at any point during the term of this Agreement it becomes subject to such an order.
- 15.13. **Federal Program Participation.** Each non-Federal Participant hereby represents and warrants that it is not excluded, debarred, or otherwise ineligible from participating in Federal contracts, subcontracts, grants, and non-procurement

transactions ("Federal Programs"). Each non-Federal Participant shall immediately provide written Notice to the THSA if it is suspended, proposed for debarment or other exclusion, or otherwise disqualified or declared ineligible from participating in a Federal Program for any reason, or is a party to a legal proceeding that may result in any such action.

**16. Confidential Participant Information.**

- 16.01. Each Receiving Party shall hold all Confidential Participant Information in confidence and agrees that it shall not, during the term or after the termination of this Agreement, re-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 re-disclosure is permitted by the terms of this Agreement.
- 16.02. Confidential Participant Information may be re-disclosed as required by 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 operation of law to re-disclose Discloser's Confidential Participant Information, it shall do so only to the minimum extent necessary to comply with the operation of the law and shall request that the Confidential Participant Information be treated as such.

**17. Disclaimers.**

- 17.01. **Reliance on a System.** Each Participant acknowledges and agrees that: (i) the Message Content provided by, or through, its System is drawn from numerous sources, and (ii) it can only confirm that, at the time Message Content is Transacted, the information and Message Content Transacted are an accurate representation of data contained in, or available through, its System. Nothing in this Agreement shall be deemed to impose responsibility or liability on a Participant related to the clinical accuracy, content or completeness of any Message Content provided pursuant to this Agreement. The Participants acknowledge that other Participants' Digital Credentials may be activated, suspended or be required to be revoked at any time or the Participant may suspend its participation; therefore, Participants may not rely upon the availability of a particular Participant's Message Content.
- 17.02. **Incomplete Medical Record.** Each Participant acknowledges that Message Content Transacted by Participants may not include the individual's full and complete medical record or history. Such Message Content will only include that data which is the subject of the Message and available for exchange among Participants.
- 17.03. **Patient Care.** Message Content obtained through a Message 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 his/her/its respective patients and clients resulting from, or in any way related to, the use of the THIEN standards, services and policies agreed to by the Participants pursuant to this Agreement or the Message Content made available thereby. None of the Participants, by virtue of executing this Agreement, assume any role in the care of any patient.

17.04. **Carrier lines.** All Participants acknowledge that the Transaction of Message Content between Participants 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' control. Provided a Participant uses reasonable security measures, no less stringent than those directives, instructions, and specifications contained in this Agreement, the Performance and Service Specifications, and the Operating Policies and Procedures, the Participants 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' control, or any delay, failure, interruption, interception, loss, transmission, or corruption of any Message Content or other information attributable to transmission over those carrier lines which are beyond the Participants' control. Use of the carrier lines is solely at the Participants' risk and is subject to all Applicable Law.

17.05. **No Warranties.**

EXCEPT AS REPRESENTED IN SECTIONS 13.02 AND 15.08, MESSAGE CONTENT 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 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 HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE PARTICIPANT DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR OTHER THIRD PARTIES.

THE SPECIFICATIONS, INCLUDING ANY PERFORMANCE AND SERVICE SPECIFICATIONS, AS WELL AS THE OPERATING POLICIES AND PROCEDURES PROVIDED AS ATTACHMENTS TO THIS AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME PURSUANT TO THE

PROVISIONS OF THIS AGREEMENT (THE “DOCUMENTS”) ARE INTENDED AS A GUIDE TO HELP FACILITATE HEALTH INFORMATION EXCHANGE RATHER THAN AN EXHAUSTIVE LIST OF TECHNOLOGICAL COMPONENTS REQUIRED TO PARTICIPATE IN AN EXCHANGE. AS SUCH, THESE DOCUMENTS ARE 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 THSA, ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS 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 THSA HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE THSA DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS, INCOMPLETE OR FAILED TRANSMISSIONS RELATED TO THE DOCUMENTS OR ANY PARTICANT’S IMPLEMENTATION OF SUCH DOCUMENTS.

- 17.06. **Performance of the THIEN Standards, Services and Policies.** The Participant makes no representation, express or implied, as to the performance of the THIEN standards, services and policies agreed to by the Participants pursuant to this Agreement. This disclaimer is not intended to diminish or limit in any way the other representations and warranties that the Participant is making in this Agreement. It is intended to recognize that the overall performance of the THIEN standards, services and policies agreed to by the Participants is beyond the power of any individual Participant to control.

18. **Liability.**

- 18.01. **Participant Liability.** As between Participants to this Agreement: Each Participant shall be responsible for its acts and omissions and not for the acts or omissions of any other Participant. In circumstances involving harm to other Participants caused by the acts or omissions of individuals who Transact Message Content or Confidential Participant Information through the Participant or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from the Participant or any of the Participant Users, each Participant shall be responsible for such harm to the extent that the individual's access was caused by the Participant'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, Participant 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.

18.02. **Effect of Agreement.** Except as provided in Section 17.05 (No Warranties), Section 18.03 (THSA Liability) and Article 22 (Dispute Resolution), nothing in this Agreement shall be construed to restrict a Participant's right to pursue all remedies available under law for damages or other relief arising from acts or omissions of other Participants related to this Agreement, or to limit any rights, immunities or defenses to which a Participant or Participant User may be entitled under Applicable Law.

18.03. **THSA Liability.** Chapter 182 of the Texas Health and Safety Code established the THSA and made the THSA responsible for developing voluntary interoperability and other standards for the exchange of health information in the State of Texas. A new Section 182.108 of the Texas Health and Safety Code, effective on September 1, 2012 pursuant to HB 300 (82<sup>nd</sup> legislature), requires the THSA to develop and submit to HHSC for ratification privacy and security standards for the electronic exchange of PHI. As Participants are voluntarily participating in electronic exchange of PHI in the State of Texas, and as each Participant has agreed to comply with this Agreement, the Participants shall not hold the THSA, or any of its employees, directors, agents or officers liable for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on a Participant's System resulting from any Participant's actions or failures to act. Additionally Participants agree that, other than with respect to gross negligence or willful misconduct, Participants will not hold the THSA, or any of its employees, directors, agents or officers liable for damages in connection with this Agreement or the subject matter hereof.

**19. Term, Suspension and Termination.**

19.01. **Term.** The initial term of this Agreement shall be for a period of one year commencing on the Effective Date. Upon the expiration of the initial term, this Agreement shall automatically renew for successive one-year terms unless terminated pursuant to this Section 19.

**19.02. Suspension or Termination by Participant.**

- a. A Participant may voluntarily suspend its own right to Transact Message Content for a valid purpose, as determined by the THSA, by informing the THSA and other Participants of its voluntary suspension in accordance with the Operating Policies and Procedures. Once a Participant has properly informed the THSA and other Participants of its voluntary suspension, neither the Participant, nor its Participant Users, shall Transact Message Content until the voluntary suspension has ended and the Participant has informed the THSA and other Participants that the suspension has ended in accordance with the Operating Policies and Procedures. During the period of the voluntary suspension, the Participant's inability to Transact Message Content and comply with those terms this Agreement that require Transaction of Message Content shall not be deemed a breach of this Agreement. Any voluntary suspension shall be for no longer than ten (10) consecutive calendar days or for more

than forty (40) calendar days during any twelve (12) month period, unless a longer period is agreed to by the THSA

- b. A Participant may terminate its own right to Transact Message Content by terminating this Agreement, with or without cause, by giving the THSA at least five (5) business days prior written Notice. Once proper Notice is given, Participant must cease to Transact Message Content and verify that it has done so, and the THSA shall provide Notice of such reported termination to the remaining Participants.

19.03. **Suspension by THSA.** Upon the THSA 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 integrity or operation of the Performance and Service Specifications; or an individual whose Message Content is Transacted using the Performance and Service Specifications; the Participants hereby grant to the THSA the power to require the Participant to summarily suspend, to the extent necessary to address the threat posed by the Participant, the Participant's use of the THIEN, pending the submission and approval of a corrective action plan, as provided in this Section. Upon suspension, Participant will immediately stop Transacting Message Content on the THIEN, and within twelve (12) hours of suspending a Participant's right to Transact Message Content, THSA shall (i) provide Notice of such suspension to all 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 (3) business days or, if such submission is not reasonably feasible within three (3) business days, then at the earliest practicable time. If the Participant submits a plan of correction, the THSA shall, within five (5) business days, review and either accept or reject the plan of correction. If the plan of correction is accepted, the THSA shall, upon completion of the plan of correction, provide Notice to all Participants of such reinstatement. If the plan of correction is rejected, the Participant's suspension will continue, during which time the THSA and the Participant shall work in good faith to develop a plan of correction that is acceptable to both the Participant and the THSA. At any time after the THSA rejects a Participant's plan of correction, either the Participant or the THSA may submit a Dispute to the Dispute Resolution Process described in Section 21. If the THSA and the Participant cannot reach agreement on a plan of correction through the Dispute Resolution Process, the THSA may terminate the Participant in accordance with Section 19.04.

19.04. **Termination by THSA.** The Participants hereby grant to the THSA the power to terminate a Participant's right to Transact Message Content as follows:

- a. After taking a suspension action in accordance with Section 19.03 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, integrity or operation of the Performance and Service Specifications, or an individual whose Message

Content is Transacted using the Performance and Service Specifications; or

- b. In the event a Participant is in material default of the performance of a duty or obligation imposed upon it by this Agreement and such default has not been substantially cured within thirty (30) calendar days following receipt by the defaulting Participant of written Notice thereof from the THSA.

A Participant who is terminated in accordance with this Section may appeal such revocation through the Dispute Resolution Process. However, during the pendency of any such appeal, Participant agrees that it shall cease or continue to cease, as applicable, the Transacting of Health Data at the discretion of the THSA.

- 19.05. **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 Transact Message Content with other Participants (unless such Participant Users have an independent right to Transact Message Content through another Participant). The THSA shall provide Notice of such revocation to the remaining Participants. In the event that any Participant(s) is terminated, this Agreement will remain in full force and effect with respect to all other Participants. Certain provisions of this Agreement survive termination, as more fully described in Section 23.05 (Survival Provisions).
- 19.06. **Confidential Participant Information.** Participant will not provide the THSA with any Confidential Participant Information pursuant to this Agreement. In the event that it is determined that the receipt of Confidential Participant Information is needed in order for the THSA to exercise its authority pursuant to this Section, then Participant and THSA will enter into a standard non-disclosure agreement for such purpose.
- 19.07. **Disposition of Message Content on Termination.** At the time of termination, Recipient may, at its election, retain Message Content on Recipient's System in accordance with the Recipient's document and data retention policies and procedures, Applicable Law, and the terms and conditions of this Agreement, including Section 5.02.
- 19.08. **Digital Credentials.** Notwithstanding anything to the foregoing, in the event that the THSA, or the NwHIN, as applicable, gains the ability to revoke a Participant's Digital Credentials, Participant acknowledges and agrees that THSA or the NwHIN shall have the un-revocable and absolute right to do so in the event of Suspension or Termination of the Participant in accordance with the THSA's policies or the NwHIN's policies as applicable.
- 19.09. **Injunctive Relief.** Notwithstanding anything to the foregoing, including the dispute resolution process, nothing in this Agreement, including this Section 19, shall be construed to restrict the THSA from approaching any appropriate court or authority in any relevant jurisdiction for the purposes of obtaining equitable and injunctive relief on behalf of itself or any providers and consumers that may be effected by Participant's continuing to Transact Message Content despite the THSA having notified Participant that it is required to either suspend or terminate its ability to do so. This Section shall survive termination of this Agreement.

20. **Cooperation.** Each Participant understands and acknowledges that numerous activities with respect to this Agreement shall likely involve another Participant's employees, agents, and third party contractors, vendors, or consultants. To the extent not legally prohibited, each Participant shall: (a) cooperate fully with the THSA, each other Participant, and any such third parties with respect to such activities as they relate to this Agreement; (b) provide such information to the THSA, each other Participant, or such third parties as they may reasonably request for purposes of performing activities related to this Agreement; (c) devote such time as may reasonably be requested by the THSA to review information, meet with, respond to, and advise the THSA or other Participants with respect to activities as they relate to this Agreement; (d) provide such reasonable assistance as may be requested by the THSA when performing activities as they relate to this Agreement; and (e) 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 Confidential Participant Information, provide information and assistance to the THSA 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 reasonable operational concerns. A Participant shall promptly report, in writing, to any other Participant and the THSA, 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. This writing shall set forth in detail and with clarity the problems that the Participant has identified.

21. **Dispute Resolution.**

21.01. **General.** The Participants acknowledge that it may be in their best interest to resolve Disputes through an alternative dispute resolution process rather than through civil litigation. The Participants 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 Participants shall submit Disputes related to this Agreement to the non-binding Dispute Resolution Process attached hereto as Attachment 5 and incorporated herein. Except in accordance with Section 21.02(a), if a Participant refuses to participate in the Dispute Resolution Process, such refusal shall constitute a material breach of this Agreement and may be grounds for termination in accordance with Section 19.04(b).

21.02. **Immediate Injunctive Relief.**

- a. Notwithstanding Section 21.01, a Participant may be relieved of its obligation to participate in the Dispute Resolution Process if such Participant (i) believes that another Participant's acts or omissions create an immediate threat to the confidentiality, privacy or security of Message Content or will cause irreparable harm to another party (Participant, Participant User, the integrity or operation of the Performance and Service Specifications, or consumer) and (ii) pursues immediate injunctive relief against such other Participant in a court of

competent jurisdiction. The Participant pursuing immediate injunctive relief must provide a Notification to the THSA of such action within 24 hours of filing for the injunctive relief and of the result of the action within 24 hours of learning of same.

- b. If the injunctive relief sought in Section 21.02(a) is not granted and the Participant seeking such relief chooses to pursue the Dispute, the Participants must then submit to the Dispute Resolution Process in accordance with Section 21.01.

- 21.03. **Activities during Dispute Resolution Process.** Pending resolution of any Dispute under this Agreement, the Participants agree to fulfill their responsibilities in accordance with this Agreement, unless the Participant voluntarily suspends its right to Transact Message Content in accordance with Section 19.02(a), is suspended in accordance with Section 19.03, or exercises its right to cease Transacting Message Content in accordance with Section 12.01(b).
- 21.04. **Implementation of Agreed Upon Resolution.** If, at any point during the Dispute Resolution Process, all of the Participants to the Dispute accept a proposed resolution of the Dispute, the Participants agree to implement the terms of the resolution in the agreed upon timeframe.
- 21.05. **Reservation of Rights.** If, following the Dispute Resolution Process, in the opinion of any involved Participant, the mandatory Dispute Resolution Process failed to adequately resolve the Dispute, the Participant(s) may pursue any remedies available to it in a court of competent jurisdiction.
- 22. **Notices.** All Notices to be made under this Agreement shall be given in writing to the appropriate Participant's representative at the address listed on the THSA's website, and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by the United States Postal Service Certified Mail, return receipt requested; and (iii) if by facsimile telecommunication or other form of electronic transmission, upon receipt when the Notice is directed to a facsimile telecommunication number or electronic mail address listed on the THSA website and the sending facsimile machine or electronic mail address receives confirmation of receipt by the receiving facsimile machine or electronic mail address. It is Participant's responsibility to ensure that the contact information on the THSA website for Participant is current.
- 23. **Miscellaneous/General.**
  - 23.01. **Governing Law.** In the event of a Dispute between or among the Participants arising out of this Agreement, the applicable Federal and State conflicts of law provisions that govern the operations of the Participants involved in the Dispute shall determine governing law.
  - 23.02. **Amendment.** This Agreement may be amended by agreement of at least two-thirds of the Non-Governmental Participants and at least two-thirds of the Governmental Participants. However, if the change is required for the THSA or Participants to comply with Applicable Law, the THSA may implement the change with approval of at least a majority of Non-Governmental Participants and at least a

majority of Governmental Participants and within a time period the THSA determines is appropriate under the circumstances. All Participants shall be required to sign an amendment adopted in accordance with the provisions of this Section or terminate participation in accordance with Section 19.02.

- 23.03. **New Participants.** Upon the THSA's acceptance of a New Participant, the THSA shall have the New Participant execute a Joinder Agreement, the form of which is attached hereto as Attachment 6. The Participants agree that upon execution of the Joinder Agreement by a duly authorized representative of the THSA, all then-current Participants shall be deemed to be signatories to the Joinder Agreement with the result being that current Participants and the New Participant are all bound by this Agreement. The New Participant shall not be granted the right to Transact Message Content until both it and the THSA execute the Joinder Agreement.
- 23.04. **Assignment.** No Party shall assign or transfer this Agreement, or any part thereof, without the express written consent of the THSA. Any assignment that does not comply with the requirements of this Section 23.04 shall be void and have no binding effect.
- 23.05. **Survival.** The provisions of Sections 1, 5.02, 5.03, 14, 15.10, 16, 18, 19.06, 19.07, 20 and 21 shall survive the termination of this Agreement for any reason.
- 23.06. **Waiver.** No failure or delay by any Participant 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.
- 23.07. **Entire Agreement.** This Agreement, together with all Attachments, sets forth the entire and only Agreement among the Participants relative to the subject matter hereof. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon any Participant.
- 23.08. **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.
- 23.09. **Priority.** In the event of any conflict or inconsistency between a provision in the body of this Agreement and any attachment hereto, the terms contained in the body of this Agreement shall prevail.
- 23.10. **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.
- 23.11. **Relationship of the Participants.** The Participants are independent contracting

entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the Parties. Neither the THSA nor any Participant shall have any authority to bind or make commitments on behalf of another Participant for any purpose, nor shall any such Party hold itself out as having such authority. No Participant shall be held liable for the acts or omissions of another Participant.

- 23.12. **Counterparts.** With respect to the first two Participants to this Agreement, the Effective Date shall be the date on which the second Participant executes this Agreement. For all Participants thereafter, the Effective Date shall be the date that the Participant executes this Agreement or the Joinder Agreement, in accordance with Section 23.03. This Agreement or the Joinder 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.
- 23.13. **Third-Party Beneficiaries.** With the exception of the Participants to this Agreement, 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.
- 23.14. **Force Majeure.** A Participant 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: (a) severe weather and storms; (b) earthquakes or other disruptive natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) terrorist attacks; (g) acts of legislative, judicial, executive, or administrative authorities; or (h) any other circumstances that are not within its reasonable control. This Section 23.14 shall not apply to obligations imposed under Applicable Law.
- 23.15. **Time Periods.** Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of the THSA and the affected Participant(s).

This Agreement has been entered into and executed by officials duly authorized to bind their respective parties.

**Attachment 1 - Specifications**

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## Attachment 3 – State Collaborative Development Process

**Note: 2011 Version. May be updated by notice to Participants and publication of updated State Collaborative Development Process on THSA website.**

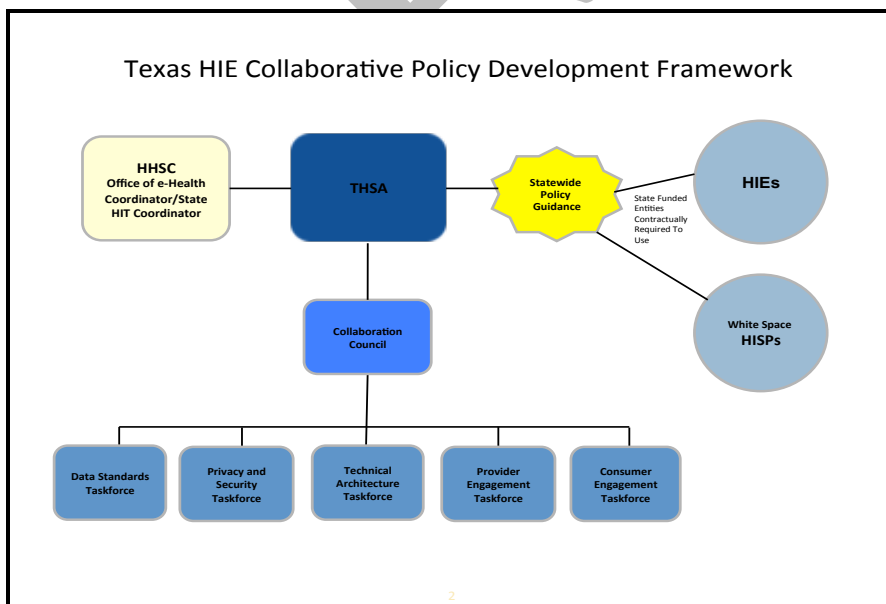
### Introduction

In order for Texas to achieve its statewide health information exchange (HIE) objectives and the objectives required by the Office of the National Coordinator for Health Information Technology (ONC), the Texas Health Services Authority (THSA) is managing an open and transparent collaborative process to support input from multiple stakeholder groups into the strategy and policy for HIE deployment within the state of Texas.

### Statewide Policy Guidance – Development and Approval Process

The THSA has formed several stakeholder task forces to monitor ongoing developments related to HIE capabilities including data standards, security, and technical architecture, and provide input to the THSA Collaboration Council on common policies and procedures, standards, technical approaches, and shared services. The Collaboration Council's role is to help provide oversight of the implementation of HIEs within the state and provide recommendations to the THSA Board of Directors. The Board of Directors will consider these common policies and other recommendations developed through this collaborative process and issue Statewide Policy Guidance to local HIE's and other contractors as necessary to support a common and consistent technical, privacy, security, and legal framework for HIE in Texas. Statewide Policy Guidance may be issued on an interim basis by HHSC for state funded local HIEs if necessary. Guidance developed through this process shall be reviewed on a regular basis

The diagram below illustrates the collaborative governance model:



The following Statewide Policy Guidance may be developed through this collaborative process in 2011:

- *Privacy and Security Policies and Procedures* – The establishment of privacy and security policies and standards will be driven by the collaborative process but may include the development of a consent policy (based on legislative direction), trust agreements, universal consent form, and security policies.
- *Interoperability Standards* – The establishment of interoperability standards will be driven by the collaborative process but will include the development of an enterprise architecture blueprint (EAB), technical implementation specification document, and an EAB lifecycle management plan.

Statewide shared services and other forms of Statewide Policy Guidance may also be considered through this collaborative process.

### **Collaboration Council and Task Forces**

As mentioned above, the Collaboration Council's role is to monitor the implementation of HIEs within the state and to make recommendations on common policies and procedures, standards, technical approaches, and services to support the necessary statewide HIE infrastructure in Texas.

### **Collaboration Council Membership**

The Collaboration Council members serve one-year terms. The Council is composed of sixteen (16) members, each of whom serves in one of the positions specified below:

- THSA CEO
- Four (4) HIE Representatives – One state funded local HIE representative per Regional Extension Center (REC) region to provide input from regional/local HIEs to ensure coordinated approach to HIE implementation and operations within Texas.
- State Health Information Technology Coordinator
- The Commissioner or a representative designated by the Commissioner of the Texas Department of State Health Services
- An individual designed by the Texas Association of Health Plans
- An individual designated by the Texas Hospital Association
- An individual designated by the Texas Medical Association
- Four (4) Regional Extension Center (REC) Representatives – One individual per approved REC
- Employer Representative – An individual representative of an employer
- Consumer – An individual who is a consumer of health care services and has expertise in privacy and security of health information

Ex-Officio Membership: The following organizations shall designate one member to serve as an ex-officio member of the Council:

- One representative from all other state funded HIEs that are not a member of the Council
- Texas Association of Community Health Centers
- Texas Council of Community Mental Health & Mental Retardation Clinics

- Texas e-Health Alliance
- Texas Pharmacy Association

The THSA or THSA CEO may designate other ex-officio members of the Council. The THSA CEO serves as chair of the Collaboration Council.

### **Task Forces**

The THSA Board formed the following five task forces for the purpose of bringing together key stakeholder subject matter experts to develop consensus-based strategies and recommendations:

- Data Standards;
- Technical Architecture;
- Privacy and Security;
- Provider Engagement; and
- Consumer Engagement.

Recommendations of the task forces will be forwarded to the Collaboration Council for its consideration in formulation of its recommendations to the THSA Board.

### **Task Force Membership**

Task force members represent a broad array of stakeholder interests in the development of the aspects of Texas HIE considered by each task force. The members and their active participation are key to ensuring an open and robust collaborative process to develop solution recommendations that will result in a functional HIE system that addresses the needs of all participants. Interested parties were invited in March 2011 to register an application for membership on one or more of the five THSA task forces, with selection in April 2011 made by THSA staff to ensure broad representation of affected stakeholders.

Members are expected to contribute to the task forces as follows:

- Commit to serve a twelve-month term from May 2011-April 2012;
- Attend and actively participate in all scheduled Task Force conference call and in-person meetings as scheduled;
- Communicate the perspective of the organizations they represent with other Task Force members while prioritizing the statewide interests for HIE in decisions and recommendations;
- Communicate Task Force activities, progress and recommendations back to the organizations and participants they represent;
- Stay up-to-date on current developments and events at the state and federal level regarding issues relating to the work of the Task Force, review any briefing materials provided prior to meetings, and be prepared to contribute;
- Work with other members and staff in a collaborative and consensus-oriented fashion to develop workable solutions to achieve the goals and purpose of the Task Force.

### **Task Force Timeline**

The THSA task forces were created with the expectation that they will address questions relating both to initial HIE approaches and policies and ongoing needs as they arise.

Each of the Task Forces will receive initial direction from the Collaboration Council and will meet the second week of May 2011 and on a regularly scheduled monthly basis thereafter via conference call. Meeting schedules for each task force are listed separately below. Additional or in-person meetings may be called as necessary.

Members will be provided ability to access and share documents and other presentations via an Internet hosting site established and managed by THSA staff.

### **Task Force Staffing**

Steve Roddy, THSA Associate Director of Policy & Planning, is responsible for managing the task forces.

#### Task Force direction/facilitation staffing:

- Data Standards – Eric Heflin, THSA Chief Technology Officer
- Technical Architecture – Eric Heflin
- Privacy/Security – Steve Roddy/Jocelyn Dabeau, THSA General Counsel
- Provider Engagement – Steve Roddy
- Consumer Engagement – Steve Roddy

Additional staff support and assistance may be provided by Texas Health and Human Service Commission or member agency staff and/or by contract as needed.

#### Staff roles and responsibilities:

- Develop; manage and maintain Task Force work plans;
- Prepare meeting schedules and agendas;
- Convene and facilitate meetings;
- Foster development of and draft consensus-based recommendations to be communicated with the Collaboration Council;
- Establish and manage communications between staff and Task Force membership via selected Internet hosting site;
- Prepare and distribute meeting summaries;
- As appropriate, work with consultants and/or other subject matter experts to facilitate discussion and draft policies.
- Prepare and submit quarterly reports on Task Force progress and planned activities.

### **Task Force Charters and Work Plan**

#### **Data Standards Task Force**

## Charter

- This task force shall support the secure, interoperable exchange of health information among unaffiliated organizations by providing input on the development of technical standards, data exchange standards, and technical security standards, and the development of implementation specification requirements.

## Objectives

- Support the secure, interoperable exchange of health information among unaffiliated organizations by providing input on the development of technical standards, data exchange standards, and technical security standards, and the development of implementation specification requirements.

## Major Deliverables

- Convene in regularly scheduled monthly meetings; additional meetings as required.
- Continuously review State and Federal Government, and industry Healthcare Information Technology landscape and identify the relevant architecture, data, exchange, and security standards, models and profiles to support the secure, interoperable exchange of health information among unaffiliated and (technically) heterogeneous organizations.
- Evaluate and provide input on a technical implementation specification document that can be used by local and regional HIEs as a technical reference for HIE implementation.
- Initial draft issue recommendations; additional drafts as required.
- Submit finalized issue recommendations to the Collaboration Council for its review and consideration.
- Study additional related issues as needed and as identified by the Collaboration Council or the Task Force.
- Provide monthly progress reports to the Collaboration Council on Task Force activities and deliverables status.
- Provide quarterly progress reports to the THSA Board on Task Force activities and deliverables status.
- Develop 2012 work plan.

## Areas of Study

- Review data exchange standards, models & profiles, including Health Information Technology Standards Panel (HITSP) recommended standards, Integrating the Healthcare Enterprise (IHE) Profiles, and Direct messaging.
- Review ONC Office of Standards & Interoperability; S&I Framework.
- Consider security standards, including identity management, authentication and authorization.
- Identify and consider recommendations relating to additional issues identified by the THSA Collaboration Council, the Task Force, or staff.

## **Technical Architecture Task Force**

### Charter

- This task force shall provide input on the implementation of a hybrid architecture that supports a network of networks, linking local HIE networks together, linking local HIE networks to state agencies, and ultimately linking state networks among each other and to the Nationwide Health Information Network. The task force will support the development of a six-year enterprise architecture blueprint.

### Objectives

- Provide input on the implementation of a hybrid architecture that supports a network of networks, linking local HIE networks together, linking local HIE networks to state agencies, and ultimately linking state networks among each other and to the Nationwide Health Information Network.
- Evaluate and provide input on the development of a six-year enterprise architecture blueprint (EAB) and EAB lifecycle management plan.

### Major Deliverables

- Convene in regularly scheduled monthly meetings; additional meetings as required.
- Develop prioritized list of outstanding technical architecture issues based on initial direction from the THSA Collaboration Council.
- Develop initial draft issue recommendations; additional drafts as required.
- Submit finalized issue recommendations to the Collaboration Council for its review and consideration.
- Study additional related issues as needed and as identified by the Collaboration Council or the Task Force.
- Provide monthly progress reports to the Collaboration Council on Task Force activities and deliverables status.
- Provide quarterly progress reports to the THSA Board on Task Force activities and deliverables status.
- Develop 2012 work plan.

### Areas of Study

- Examine hybrid model architecture advantages, disadvantages and structural requirements, including minimum clinical data set requirements.
- Identify and develop recommendations state-level shared services, including a record locator service, provider directory services (to provide network addresses and communication protocols for connecting providers and other entities with authorization to share health information), and connectivity to state data sources and the Nationwide Health Information Network.
- Identify and consider recommendations relating to additional issues identified by the THSA Collaboration Council, the Task Force, or staff.

## **Privacy and Security Task Force**

### Charter

- This task force shall provide input on the development of privacy and security policies and standards that protect the privacy of patients involved in statewide HIE to the highest

legal standard while enabling the secure exchange of health information. The task force will support ongoing analysis of a legal framework for the State of Texas.

### Objectives

- Develop recommendations for consideration by the THSA Collaboration Council on the development of privacy and security policies and standards that protect the privacy of patients involved in statewide HIE, enable patient access to their health information, and enable the secure exchange of health information across the emerging statewide HIE framework.
- Review and support ongoing analysis and the development of policies and procedures relating to: authorization, authentication, consent, access, audit, breach, and patient engagement.
- Develop strategy recommendations to achieve patient privacy, health information access and information exchange goals within the framework of state and federal policies and legal requirements.

### Major Deliverables

- Convene in regularly scheduled monthly meetings; additional meetings as required.
- Develop prioritized list of outstanding privacy and security issues based on initial direction from the THSA Collaboration Council.
- Develop initial draft issue recommendations; additional drafts as required.
- Submit finalized issue recommendations to the Collaboration Council for its review and consideration.
- Study additional related issues as needed and as identified by the Collaboration Council or the Task Force.
- Provide monthly progress reports to the Collaboration Council on Task Force activities and deliverables status.
- Provide quarterly progress reports to the THSA Board on Task Force activities and deliverables status.
- Develop 2012 work plan.

### Areas of Study

- Review existing federal and state regulations to ensure harmonization of Texas' HIE approach with state and federal policy and legal requirements.
- Review the status of recent or pending legislative policy changes requiring the attention or action by the THSA resulting from the 82<sup>nd</sup> Legislature.
- Identify issues requiring additional clarification or structural development within the federal and state legal and policy framework.
- Identify and develop recommendations relating to outstanding privacy and security issues including, but not limited to, standards for electronic sharing of protected health information, consent policy and forms, authorization, HIE risk assessment, audits, and certification, contractual framework and legal agreements, patient access to and use of electronic health information, re-disclosure of sensitive information, and secondary uses of data.

- Monitor research on participation and impact of consent policies, including the impact of and response to Medicaid HIE pilot project consent policies.
- Identify and consider recommendations relating to additional issues identified by the THSA Collaboration Council, the Task Force, or staff.

## **Provider Engagement Task Force**

### Charter

- This task force shall provide input on the development of a communications and engagement plan to inform providers about HIE in Texas, including the development of education and outreach strategies.

### Objectives

- Develop recommendations for consideration by the THSA Collaboration Council on the development of a communications and engagement plan to inform and solicit input from providers on HIE in Texas.
- Develop education and outreach strategies as key components of the communications and engagement plan.
- Incorporate into plan methods of dissemination and evaluation.

### Major Deliverables

- Convene in regularly scheduled monthly meetings; additional meetings as required.
- Development of communications and engagement plan, including education and outreach strategies, based on initial direction from the THSA Collaboration Council.
- Develop initial draft issue recommendations; additional drafts as required.
- Submit finalized recommendations to the Collaboration Council for its review and consideration.
- Study additional related issues as needed and as identified by the Collaboration Council or the Task Force.
- Provide monthly progress reports to the Collaboration Council on Task Force activities and deliverables status.
- Provide quarterly progress reports to the THSA Board on Task Force activities and deliverables status.
- Develop 2012 work plan.

### Areas of Study

- Develop provider communications and engagement program to foster and facilitate adoption of electronic health information exchange.
- Develop strategies and tools for provider outreach program and for provider education regarding federal meaningful use requirements and information exchange policies, benefits and available tools for use in health information exchange.
- Identify outreach and education program media channels, strategies and timelines necessary to reach diverse audiences.
- Review and consider other states' provider outreach and education best practices.

- Develop methods and tools for review and evaluation of outreach and education initiatives.
- Identify and consider recommendations on ways to use Personal Health Records and NHIN Direct to increase engagement of patients and their families in their health care.
- Identify and consider recommendations relating to additional issues identified by the THSA Collaboration Council, the Task Force, or staff.

## **Consumer Engagement Task Force**

### Charter

- This task force shall provide input on the development of a communications and engagement plan to inform consumers about HIE in Texas, including the development of education and outreach strategies. This group shall also provide input on use of personal health records and consumer expectations on the exchange of personal health information.

### Objectives

- Develop recommendations for consideration by the THSA Collaboration Council on the development of a communications and engagement plan to inform consumers about HIE in Texas.
- Develop education and outreach strategies as key components of the communications and engagement plan.
- Incorporate into plan methods of dissemination and evaluation.
- Provide input on use of personal health records and consumer expectations on the exchange of personal health information.

### Major Deliverables

- Convene in regularly scheduled monthly meetings; additional meetings as required.
- Develop communications and engagement plan, including education and outreach strategies, and plan for evaluation of the use of personal health records and consumer expectations on the exchange of personal health information based on initial direction from the THSA Collaboration Council.
- Develop initial draft issue recommendations; additional drafts as required.
- Submit finalized recommendations to the Collaboration Council for its review and consideration.
- Study additional related issues as needed and as identified by the Collaboration Council or the Task Force.
- Provide monthly progress reports to the Collaboration Council on Task Force activities and deliverables status.
- Provide quarterly progress reports to the THSA Board on Task Force activities and deliverables status.
- Develop 2012 work plan.

### Areas of Study

- Develop a consumer communications and engagement program, including program strategies and tools, to promote and inform consumers about the opportunities and

benefits of patient engagement in health care decision making and regarding consumer protections and tools available for use in managing health information access, privacy and security.

- Identify outreach and education program media channels, strategies and timelines necessary to reach diverse audiences.
- Review and consider other states' consumer outreach and education best practices.
- Develop methods and tools for review and evaluation of outreach and education initiatives.
- Identify and consider recommendations on strategies to ensure consumers are active participants in the Texas HIE policy development process.
- Identify and consider recommendations on ways to use Personal Health Records and NHIN Direct to increase engagement of patients and their families in their health care.
- Identify and consider recommendations relating to additional issues identified by the THSA Collaboration Council, the Task Force, or staff.

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#### **Attachment 4 – Applicable HIPAA provisions for Participants that are neither Covered Entities, Business Associates nor Governmental Participants**

Pursuant to Section 14.01(d), the following HIPAA provisions are applicable to each Participant that is neither a Covered Entity, a Business Associate nor a Governmental Participant as if they were acting in the capacity of a Covered Entity. Definitions contained in the various provisions of 45 C.F.R. Parts 160 through 164 apply to the provisions listed in this Attachment 1 to the extent they are used in said sections.

- 45 C.F.R. § 164.306 (Security Rule – General rules)
- 45 C.F.R. § 164.308 (Security Rule – Administrative Safeguards)
- 45 C.F.R. § 164.310 (Security Rule – Physical Safeguards)
- 45 C.F.R. § 164.312 (Security Rule – Technical Safeguards)
- 45 C.F.R. § 164.314 (Security Rule – Organizational requirements)
- 45 C.F.R. § 164.316 (Security Rule – Policies and procedures and documentation requirements)
- 45 C.F.R. § 164.502, other than paragraphs (h), and (i) (Privacy Rule – Uses and disclosures of PHI: general rules) *[see notes below for descriptions of excluded subsections]*
- 45 C.F.R. § 164.504 (Privacy Rule – Uses and disclosures: Organizational requirements)
- 45 C.F.R. § 164.506 (Privacy Rule – Uses and disclosures to carry out treatment, payment, or health care operations)
- 45 C.F.R. § 164.508 (Privacy Rule – Uses and disclosures for which an authorization is required)
- 45 C.F.R. § 164.510 (Privacy Rule – Uses and disclosures requiring an opportunity to agree or to object)
- 45 C.F.R. § 164.512 (Privacy Rule – Uses and disclosures for which an authorization or opportunity to agree or object is not required)
- 45 C.F.R. § 164.514 (Privacy Rule – Other requirements relating to uses and disclosures of PHI)
- 45 C.F.R. § 164.520 (Privacy Rule – Notice of privacy practices for PHI)
- 45 C.F.R. § 164.522 (Privacy Rule – Rights to request privacy protection for PHI)
- 45 C.F.R. § 164.524 (Privacy Rule – Access of individuals to PHI)
- 45 C.F.R. § 164.528 (Privacy Rule – Accounting of disclosures of PHI)
- The following provisions of 45 C.F.R. § 160.530, but only to the extent that they relate to the above provisions. For example, with respect to 45 C.F.R. § 164.530(b), the Participant must provide training with respect to the above provisions, such as § 164.506, but not with respect to other provisions of the HIPAA Regulations, such as § 164.522.
  - 45 C.F.R. § 164.530(b) (Privacy Rule – Administrative Requirements, Training)
  - 45 C.F.R. § 164.530(c) (Privacy Rule – Administrative Requirements, Safeguards)

- 45 C.F.R. § 164.530(d) (Privacy Rule – Administrative Requirements, Complaints to the Covered Entity)
- 45 C.F.R. § 164.530(e) (Privacy Rule – Administrative Requirements, Sanctions)
- 45 C.F.R. § 164.530(f) (Privacy Rule – Administrative Requirements, Mitigation)
- 45 C.F.R. § 164.530(g) (Privacy Rule – Administrative Requirements, Refraining from intimidating or retaliatory acts)
- 45 C.F.R. § 164.530(h) (Privacy Rule – Administrative Requirements, Waiver of rights)
- 45 C.F.R. § 164.530(i) (Privacy Rule – Administrative Requirements, Policies and procedures)
- 45 C.F.R. § 164.530(j) (Privacy Rule – Administrative Requirements, Documentation)

Notes:

The following requirements have not been included:

- 45 C.F.R. § 164.302 (Security Rule – Applicability)
- 45 C.F.R. § 164.304 (Security Rule – Definitions)
- 45 C.F.R. § 164.500 (Privacy Rule – Applicability)
- 45 C.F.R. § 164.501 (Privacy Rule – Definitions)
- 45 C.F.R. § 164.502(h) (Confidential communications), and (i) (Uses and disclosures consistent with notice)
- 45 C.F.R. § 164.526 (Privacy Rule – Amendment of PHI)
- 45 C.F.R. § 164.530(a) (Privacy Rule – Administrative Requirements, Personnel designations)
- 45 C.F.R. § 164.530(k) (Privacy Rule – Administrative Requirements, Group health plans)
- 45 C.F.R. § 164.532 (Privacy Rule – Transition provisions)

## Attachment 5 - Dispute Resolution Process

When a Dispute arises, a Participant shall send written Notice, in accordance with the Notice provision in the Agreement, to the other Participant(s) involved in the Dispute. The notice must contain a summary of the issue as well as a recommendation for resolution. The Participant must send a copy of the notice to the THSA for informational purposes.

Within thirty (30) calendar days of receiving the notice, the Participants 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 Participants reach a resolution at the Informal Conference, they shall provide Notification to that effect to the THSA.

If the Participants are unable to participate in an Informal Conference during the thirty (30) calendar day period or to reach resolution at the Informal Conference, they have ten (10) business days following the end of the thirty (30) calendar day period or the Informal Conference, respectively, in which to escalate the Dispute to the THSA in writing.

Once a Participant escalates a Dispute to the THSA, the THSA will have thirty (30) calendar days in which to convene a meeting of the involved Participants. During this meeting, each Participant shall be able to present its version of the Dispute and any information that it believes is pertinent to the THSA's decision.

- a. The THSA shall have the ability to request additional information from the Participants to help it make its determination. The THSA, however, shall not have the authority to compel a response or the production of testimony or documents by the Participants.
- b. The THSA is encouraged to develop an appropriate and equitable resolution of each submitted Dispute, considering all available evidence, the goals of the Agreement and other relevant considerations. The THSA must also have the authority to recommend sanctions for the breaching Participant. These sanctions include developing corrective action plans, suspension of participation rights, and termination of participation rights. The type of sanction will depend on the nature and severity of the breach.
- c. Within fifteen (15) calendar days of the THSA Meeting, the THSA shall issue a written recommendation for resolution, including an explanation of the basis and rationale of its recommendation. If either Participant is dissatisfied with the THSA's recommendation for resolution, it shall have five (5) business days in which to appeal the Dispute to the THSA Board.
- d. Within twenty (20) calendar days of receiving notice of escalation from a Participant, the THSA Board shall review the THSA's recommendation along with the information on which such recommendation was based and issue a final resolution. The THSA Board may seek additional information from the Participants to aid its resolution of the Dispute.
- e. Within seven (7) calendar days of receiving the final resolution from the THSA Board, the Participants shall determine whether to accept or reject the resolution and so notify the THSA.
- f. The THSA shall send a written summary of the resolution of the Dispute to all Participants. The summary will not identify the Participants involved, but will contain sufficient detail about the resolution to serve as an instructive resource for other Participants.

- g. In no case shall a Participant be required to disclose PHI in violation of Applicable Law as part of its participation in the Dispute Resolution Process. The decision to not disclose PHI shall not be held against a Participant in the Dispute Resolution Process.

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**Attachment 6 – Joinder  
Agreement**

This **Joinder Agreement** made as of the last date set forth below, by and between the THSA and \_\_\_\_\_ (the “New Participant”) makes New Participant a party to that certain Texas Health Information Exchange Network Agreement dated\_\_\_\_\_. among the Participants, as amended through the date hereof (the “Agreement”).

**RECITALS:**

A. The New Participant desires to become a Participant and Transact Message Content with other Participants.

B. The THSA has accepted and approved the New Participant’s application to become a Participant and Transact Message Content with other Participants, with the condition precedent that the New Participant executes this Joinder Agreement.

**AGREEMENT:**

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **JOINDER.** The New Participant is hereby made a party to the Agreement, and agrees to be bound by, and shall comply with, the terms thereof. From the date hereof, the New Participant shall be a Participant as that term is defined in the Agreement and shall be subject to all of the duties and obligations and entitled to the rights and benefits of a “Participant” as provided therein.

2. **ACKNOWLEDGEMENT.** The New Participant hereby acknowledges that it has received and reviewed a copy of the Agreement.

4. **REAFFIRMATION.** The terms and provisions of the Agreement remain in full force and effect in all respects.

5. **COUNTERPARTS.** This Joinder Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the undersigned have caused this Joinder Agreement to be executed, all as of the day and year first written above.

**THSA**

**NEW PARTICIPANT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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