



**TEXAS HEALTH SERVICES
AUTHORITY**

**THIEN AGEEMENT
- *CATALOG OF PUBLIC COMMENT* -**

VERSION: DECEMBER 2, 2011

Organizations Submitting Comments

Organization Name	Commenter	Page Reference(s)
Integrated Care Collaboration	Kem McClelland	5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 25
Surescripts	Kelly L. Broder	3, 4, 9, 10, 12, 14, 15
Texas Medical Association	Shannon Moore	6, 9, 12, 14, 17, 18, 21
Matt Murray, M.D.	Matt Murray, M.D.	18
Brown McCarroll L.L.P. (representing Healthcare Access San Antonio and Greater Houston HIE)	Deborah Hiser	10, 12, 13, 16

THIEN Comments

COMMENT DETAILS	
Submitter:	Kelly Broder
Organization:	Surescripts
Page #:	3
Section #:	1(f)
Comment:	With respect to Section 1(f), we do not mark all Confidential Information as confidential but which may, in fact, constitute confidential information of Surescripts.
Suggested Change:	General Comment
Change Rationale:	General Comment
THSA STAFF RECOMMENDATIONS	
<input type="checkbox"/>	Accept change as indicated by submitter
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below
<input type="checkbox"/>	No change suggested by submitter
<input checked="" type="checkbox"/>	No change recommended by THSA staff
Comment:	Because only one entity commented that they did not mark all of their confidential information as being 'confidential', the provision should be retained, and the submitter should be responsible to ensure that it appropriately marks its documents that it considers to be "Confidential Participant Information" in accordance with the Agreement.
THSA BOARD DIRECTIVES	
<input type="checkbox"/>	Change/recommendation approved by Board
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below
Comment:	
Date Change Made:	_____ / _____ / _____

THIEN Comments

COMMENT DETAILS			
Submitter:	Kelly Broder	Organization:	Surescripts
Page #:	4	Section #:	1(o)
Comment:	With respect to Section 1(o), definition of a HISP, the definition could be clarified to indicate that a HISP is also a Participant.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	Add sentence to end of Section 1(o), definition of a HISP that says “A HISP may also be a Participant if it is a signatory to this Agreement.”		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Shannon Moore	Organization:	Texas Medical Association
Page #:	6	Section #:	1(cc)
Comment:	<p>Clinical research and personal health records were omitted from the list.</p> <p>Clinical research conducted in hospitals and ambulatory settings requires the transfer of patient information similar to regular patient care. In fact, patient care and research are often co-mingled in visits.</p> <p>Personal Health Records are an important component of Health Information Exchange. We anticipate that a growing number of patients will elect to maintain their own records outside of formal HIEs and they will need a mechanism to hook these into the HIE systems.</p>		
Suggested Change:	THSA should add these to the list.		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	<p>Research is not covered in the DURSA as it's a complex issue dealing with topics such as the use of IRBs, informed consent authorizations, and more. At the federal level they are tackling this issue now via the S&I Framework's "Query Health" initiative. We're monitoring those activities and once they have been resolved at the federal level, and incorporated into the DURSA, then we'll consider them at the state level. To the extent that the Board feels comfortable permitting additional uses, we can do so in the Network Operating Policies, which will be an attachment to this document, and will be signed in connection with it. The Agreement does not prohibit HIEs from engaging in research activities in accordance with its own data sharing agreements.</p> <p>The support of PHRs is, we feel, a local-HIE function and not a cross-HIE or state shared services function.</p>		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	6	Section #:	1(cc)(7)
Comment:	Add new section cc.7 – “7. Aggregate data reports, as applicable to the type of HIE, ie. CDR vs. HUB.”		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	The THSA will work with the submitter to understand what type of aggregate data reports are being described.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	9	Section #:	5.01
Comment:	The ICC, and likely a number of the other signatories to the THIEN Agreement, have existing and contemplated business relationships with other signatories. Such relationships are governed by different terms and conditions and are not appropriate to fall within the terms of the THIEN Agreement.		
Suggested Change:	In order to address this situation, please add the following sentence to the end of this provision: "Nothing in this Agreement prohibits a Participant from entering into a separate agreement with another Participant to transact message content for a lawful purpose that is not a Permitted Purpose under this Agreement, or otherwise share or exchange data or conduct other business outside the scope of this Agreement."		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	The THSA is concerned that allowing Participants to Transact Message Content for a purpose outside the scope of this Agreement or simply outside of the requirements of this Agreement might have unintended consequences. As such, the THSA will work with the submitter to understand the specific use cases and to add them as exceptions to either the THIEN agreement or within the Network Operational Policies that will be an attachment to and signed concurrent with the THIEN.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	9	Section #:	5.03
Comment:	We are concerned with the absolute prohibition in this provision regarding sharing PHI with THSA. If a breach were to occur, we might be required to provide THSA with PHI in order to properly comply with our breach notification policy.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	As indicated in the Agreement, at such time as the THSA should require access to PHI, it will enter into a BAA with the discloser of the PHI.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Shannon Moore	Organization:	Texas Medical Association
Page #:	9	Section #:	5.03
Comment:	We do not understand how THSA will monitor and regulate HIE operations without ability to view PHI except at a very superficial level.		
Suggested Change:	THSA should make this correction and resend the document for evaluation. THSA should have the ability to receive PHI as necessary for the monitoring and regulation of HIE operations.		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	As indicated in the Agreement, at such time as the THSA should require access to PHI, it will enter into a BAA with the discloser of the PHI.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	9-10	Section #:	7.01
Comment:	In the event a signatory complies with the initial privacy and security specifications and are in compliance with the HIPAA Security Rule, and then THSA changes the Specifications or Operating Policies and Procedures such that the enterprise security requirements under the Agreement are now in excess of the HIPAA Security Rule, and such changes are not feasible from either a technical or financial perspective, the signatory should be allowed to terminate the Agreement without any adverse effects.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	Pursuant to Section 19.02.6, the Participant has the right to terminate without penalty on five (5) days notice.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	10	Section #:	8
Comment:	ICC cannot agree to this provision as written. The ICC is responsible for all equipment and software related to providing its standard HIE services and its Direct HIE services, but is not responsible for providing computers (laptops or desktops) or software (including web browsers, EHR systems, Adobe, etc.) that a Participant User may use to access the ICC's ICare Provider Portal or Texas Direct services.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	Change first sentence of Section 8 to read, "Each Participant shall be responsible for procuring all equipment and software that are necessary for it and its authorized agents, employees and independent contractors to Transact Message Content."		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Deborah Hiser	Organization:	Brown McCarroll, LLP
Page #:	10	Section #:	8
Comment:	Each Participant User will have to meet the security based on that Participant's existing resources.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	Change second sentence of section 8 to read, "Each Participant shall ensure that all computers and electronic devices owned or leased by the Participant and its agents, employees, and independent contractors be used to Transact Message Content are properly configured, including, but not limited to, the base workstation operating system, web browser, and Internet connectivity.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kelly Broder	Organization:	Surescripts
Page #:	10	Section #:	8
Comment:	With respect to Section 8, what is intended by the statement that a participant is responsible “for assuring that its Participant Users have or have access to, all equipment and software necessary for it to Transact Message Content.” We offer a portal as a connectivity mechanism but cannot assure that a user has the appropriate equipment to access the portal.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	Change first sentence of Section 8 to read, “Each Participant shall be responsible for procuring all equipment and software that are necessary for it and its authorized agents, employees and independent contractors to Transact Message Content.”		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Shannon Moore	Organization:	Texas Medical Association
Page #:	12	Section #:	12.01
Comment:	TMA is very concerned that Participants could "stop" sending information without understanding the consequences to patient care. Patient safety and care will be depending on this information, particularly if it has been sent previously and is now blocked because of an administrative argument. Imagine if a physician sent a preliminary report that said a patient doesn't have cancer and then the final report that said the patient <u>does</u> have cancer is not sent because the Participant decided to stop sharing.		
Suggested Change:	Physicians and patients impacted should receive 90 day written notification of a Participant's desire to stop sending information, with the opportunity to withdraw without cost from the Participant's organization. THSA should consider whether penalties should be levied to offset switching costs that physicians and others will incur as a result of this.		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	<p>A hospital or physician is still required, as in the paper world, to check information with the their patient rather than relying solely on the patient's medical record as received from a third party, as would also be the case if the record were sent by mail or fax.</p> <p>THSA will work HIEs and TMA to see if there is an efficient way to handle notifying physicians and hospitals when a Participant elects to stop participating in the HIE, including possible technological solutions.</p> <p>The hospital or physician should review the agreement proposed by the HIE regarding the effects of HIE termination, and should either negotiate this issue with the HIE or should elect to connect with a different HIE or HISP whose terms it prefers.</p>		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kelly Broder	Organization:	Surescripts
Page #:	12	Section #:	12.01.b
Comment:	With respect to Section 12.01(b), I would like to understand this better. Because we are offering a portal for push transactions, we cannot control how other users connect. This provision seems to indicate a bi-direction functionality that may not be consistent with the portal's capabilities.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	The THSA staff will work with Surescripts to better understand this concern.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Deborah Hiser	Organization:	Brown McCarroll, LLP
Page #:	12	Section #:	12.01.b
Comment:	What about each HIE's own Dispute Resolution Process?		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	The HIEs Dispute Resolution Process should be separate from the Dispute Resolution Process pursuant to this Agreement.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Deborah Hiser	Organization:	Brown McCarroll, LLP
Page #:	12-13	Section #:	12.02
Comment:	HIE's have already drafted (and in many cases approved) their own policies and procedures as required by HIPAA/HITECH.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	HIEs will need to modify their policies to the extent they are incompatible with the requirements of this Agreement. That is the basis for the trust fabric being established pursuant to this Agreement.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Deborah Hiser	Organization:	Brown McCarroll, LLP
Page #:	13	Section #:	13(iv)
Comment:	With HIE's providing only HUB services and with patients authorizing any member of the HIE to access and disclose PHI to other members this isn't really an issue. The only issue is that the Recipient is a member of the HIE.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	THSA will work with the submitter to understand this concern. If not an issue, it is unclear what change is being requested.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kelly Broder	Organization:	Surescripts
Page #:	13	Section #:	13
Comment:	With respect to Section 13, by offering a portal, we cannot control the actions of the end users of the message data. We can contractually require such things as listed in Section 13.01 but we cannot represent that the message actually meets those requirements—e.g., we can contractually require messages only to be sent for permitted purposes but if an end user sends a message for a different purpose, we cannot control this outside of contractual requirements. We can only represent what has been represented to us and rely on such representations.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	Add new section 13.05, “for avoidance of doubt, if a Participant is Transacting Message Content on behalf of a Participant user, Participant shall require Participant User to agree that it will comply with the provisions of sections 13.01 (i-iii) and 13.03 with respect to its submission of the Message to Participant and, if Participant has obtained such assurance from Participant User as required pursuant to this section, Participant is entitled to rely on Participant User’s legally binding representation for purposes of complying with such requirements, unless the Participant has reason to believe that the Participant User is in breach of its agreement with Participant with respect to such representations.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboraction
Page #:	13	Section #:	13.01 (iv)
Comment:	When a Participant User is “submitting” in response to a request from another Participant User, the “Submitter” cannot make any representations regarding whether the “recipient” Participant User has made the request for a Permitted Purpose, and in instances where data is being submitted to a CDR, the Submitter won’t know who the intended recipient is and should not be put into a position of having to make representations that are not true.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	THSA will work to clarify, but the Submitter should send only for Permitted Purposes to the extent that the requestor has indicated that the Message Content is being requested for a Permitted purpose. To the extent addition clarification on this policy needs to be added, including in the case of the CDR, the THSA feels that this can most appropriately be handled in the Network Operating Policies, which will attached to this Agreement and signed concurrently with this Agreement. Because the Network Operating Policies can be amended without the necessity of having all participants re-sign the basic Agreement, it will be simpler to continue to update such policies in the Network Operating Policies as additional needed changes become apparent. This also would put us in the position to stay as closely in line with the DURSA, which will facilitate the THSA’s ability to sign the DURSA for national exchange.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Deborah Hiser	Organization:	Brown McCarroll, LLP
Page #:	13	Section #:	13.02
Comment:	I'm not sure what this means. The HIE has no way of knowing that the information put into the exchange by a Participant User is true, correct, current or whatever. That is up to the participating members of the HIE.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	Add new section 13.05, "for avoidance of doubt, if a Participant is Transacting Message Content on behalf of a Participant user, Participant shall require Participant User to agree that it will comply with the provisions of sections 13.01 (i-iii) and 13.03 with respect to its submission of the Message to Participant and, if Participant has obtained such assurance from Participant User as required pursuant to this section, Participant is entitled to rely on Participant User's legally binding representation for purposes of complying with such requirements, unless the Participant has reason to believe that the Participant User is in breach of its agreement with Participant with respect to such representations.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	13	Section #:	13.03
Comment:	The ICC does not maintain Authorizations within its system—the participating Covered Entity that has the relationship with the patient is responsible for collecting and maintaining the patient’s Authorization; therefore, the ICC would be unable to provide a copy of the actual document. This is the same for HASA and GHHIE (Note: additional comment from Deborah Hiser “This is the same for HASA and GHHIE”)		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	The THSA will work with the HIEs to determine if there is a technological fix to this issue.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kelly Broder	Organization:	Surescripts
Page #:	14-15	Section #:	14.03
Comment:	With respect to breach notification provisions, one hour may be too short a time period to provide requisite notification and is not required under applicable law, unless practicable. I realize that your language mirrors the DURSA but such a requirement along with the information described for notification may prove difficult.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	THSA believes that one hour should be sufficient to provide notice that a breach has occurred. The NHIN had the opportunity to review this section in drafting the Restated DURSA, on which this Agreement was based, and their participants were satisfied with one hour. Participants are provided with 24 hours to gather additional information regarding the breach.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	14	Section #:	14.03
Comment:	One hour is not sufficient time to determine which Participants may have been impacted.		
Suggested Change:	Recommend changing the language to say “as soon as practicable, but in any event not more than 4 hours after Participant discovers information that leads it to reasonably a Breach has occurred...”		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	THSA believes that one hour should be sufficient to provide notice that a breach has occurred. The NHIN had the opportunity to review this section in drafting the Restated DURSA, on which this Agreement was based, and their participants were satisfied with one hour. Participants are provided with 24 hours to gather additional information regarding the breach. The word Breach is defined in the definitions section to be coextensive with the HIPAA of breach.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Shannon Moore	Organization:	Texas Medical Association
Page #:	17	Section #:	14.03
Comment:	Participants only have one hour to notify THSA and other participants who may be impacted. This response time may not be possible. For example, how can a participant know which Participants are impacted? The likely response to this requirement will be that Participants will notify all other participants because it's too difficult to figure out those impacted in the timeframe specified.		
Suggested Change:	Participants should be required to notify THSA with 24 hours of becoming aware of a potential breach. Notification to other Participants should be done as soon as there is evidence that a Participant has been impacted by the breach, but without a specific time requirement.		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	THSA believes that one hour should be sufficient to provide notice that a breach has occurred. The NHIN had the opportunity to review this section in drafting the Restated DURSA, on which this Agreement was based, and their participants were satisfied with one hour. Participants are provided with 24 hours to gather additional information regarding the breach. The word Breach is defined in the definitions section to be coextensive with the HIPAA of breach.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	16	Section #:	15.02
Comment:	Please confirm that this provision is not intended to prohibit Participants from doing business with each other outside the scope of this Agreement.		
Suggested Change:	General Comment		
Change Rationale:	Not Provided		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	The THSA will work with the HIEs to ensure that such confirmation would not produce any unintended effects that would negate any of the safeguards contained herein or otherwise impact the trusted environment that this Agreement is intended to foster.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	____ / ____ / ____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	16	Section #:	15.04
Comment:	ICC Users (e.g., providers, provider staff members, etc.) are not subject to this Agreement, and if we must require them to be, then most are likely to stop using the HIE. This is the same with HASA. [Note: Additional comment from Deborah Hiser – “This is the same with HASA.”]		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	<p>The section does not require that users of the HIE/HISP Services be subject to this Agreement but only that they attest in writing that they will comply with the provisions of i-vi of this Section. These provisions are necessary and appropriate and are additionally necessary to facilitate national exchange.</p> <p>To the extent feasible, the THSA will work with the HIEs/HISPs to mitigate any disruptive impact that could be caused by this section with respect to the HIEs/HISPs existing customer base.</p>		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Shannon Moore	Organization:	Texas Medical Association
Page #:	14-15	Section #:	15.07
Comment:	De-identification of PHI for testing purposes is a necessary for adequate testing. Without the richness of real data, testing will miss important issues.		
Suggested Change:	Allow for de-identified PHI to be used for testing and consider requiring Participants to track access and disclosure as if it were real patient data.		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	<p>It is the experience of the THSA that the industry can successfully use synthesized test data, and the THSA wishes to avoid potential inadvertent disclosure of actual PHI due to imperfect de-identification processes. The THSA has discussed this with the TMA and proposes the following clarified provision:</p> <p>Participants agree that when testing exchange capabilities with other Participants, Participants shall use only fictitious data to create any test data to be used for testing. Using de-identified PHI for this purpose is not allowed.</p>		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	17	Section #:	15.10
Comment:	Not provided.		
Suggested Change:	With respect to Section 15.10 “Each Participant hereby represents and warrants that it shall use the Message Content only in accordance with the provisions of this Agreement,” request to add “or in accordance with other written agreement(s) between the Participant Submitter and the Participant Recipient or the individual who is the subject of the Message Content.”		
Change Rationale:	Not provided.		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	To the extent this would frustrate the purposes of this Section, this change is not acceptable. THSA will clarify with HIE what the concern is and to address it appropriately.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Shannon Moore	Organization:	Texas Medical Association
Page #:	18	Section #:	16.02
Comment:	Section 16.02 needs clarification.		
Suggested Change:	TMA recommends rewording for clarity.		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	Section 16.02 will be replaced in its entirety for purposes of clarification to read “Confidential Participant Information may be re-disclosed as required by operation of law, such as pursuant to an order of a court or governmental body, 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.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Shannon Moore	Organization:	Texas Medical Association
Page #:	18	Section #:	17
Comment:	<p>This section provides protection to not just THIEN but, to a limited extent, to other participants submitting information into the system. It does shift responsibility for using the information shared through the system onto the participant treating the patient. Thus, no matter what the reason for receiving partial information or incorrect information through the system, the physician treating the patient is solely responsible.</p> <p>Specific duties for the participant submitting information are contained in section 13, beginning on page 13. Among the duties are the duty to have the authority to submit the data (authorization to release PHI) and the duty to assure that the assertions or statements provided are “true and accurate.” Each participant also makes “Representations and Warranties” in section 15, beginning on page 15, including the representations and warranties that the information provided will be “responsive and accurate.”</p> <p>Section 17.3 indicates notifying the participants of the limitations of the system and specifically states in 17.05 in capitalized type that there are “No Warranties” and that there is no liability for participants (doctors and hospitals) except as provided in paragraphs 13.02 and 15.08. Thus, participants do have a liability risk if their submissions are not accurate and their security controls do not meet ‘industry standards.’ There is no risk for any negligence on the part of THIEN, according to the draft Trust Agreement. TMA is concerned this is not a fair result and will discourage participation by treating physicians.</p>		
Suggested Change:	TMA’s recommendation is that the responsibility for data is shared equitably.		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	Section 15.08 provides a warranty that the HIE/HISP will send message content that is an accurate representation of data contained in or available through its system. “The HIE/HISP has no way of ensuring the accuracy of the Message Content that it obtains from providers, as the HIEs/HISPs are acting as a conduit to transit information received from providers.		

COMMENT DETAILS	
	Section 17.05 provides that the THSA will not be liable for special damages or for direct damages to the extent they are caused by reliance on the implementation specifications, which are based upon nationally recognized standards for which the THSA should not be liable. Under Section 18.03, the THSA may be liable for gross negligence or willful misconduct related to this Agreement or its performance under the Agreement.
THSA BOARD DIRECTIVES	
<input type="checkbox"/>	Change/recommendation approved by Board
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below
Comment:	
Date Change Made:	_____ / _____ / _____

THIEN Comments

COMMENT DETAILS			
Submitter:	Matt Murray, M.D.	Organization:	Matt Murray, M.D.
Page #:	18	Section #:	17.03
Comment:	<p>This disclaimer is not in my best interests as a patient. I want HIEs to understand that they are an important tool that my doctor will use to make decisions about my care. My doctor uses lots of tools like stethoscopes, otoscopes, CT scans, fax machines, iPhone apps and an EHR to evaluate and treat me. If I am harmed by one of those tools because my doctor used it incorrectly, then I have the right to hold my doctor accountable. But if I am harmed when my doctor uses a tool correctly, but the tool failed through the gross negligence of a vendor or manufacturer, then I have a right to hold that party accountable. If my doctor makes a patient care decision based upon a faulty message delivered (or not delivered) by an HIE, and this situation was caused by a known problem that the HIE was grossly negligent in failing to fix (or at least to notify my doctor about the known problem) then I would hold the HIE accountable. The THIEN should protect me and other patients by promoting a collaborative environment of shared accountability for patient safety when my doctor uses an HIE to make decisions on my care.</p> <p>As a patient I do not agree that a group of third party entities (such as the coalition of HIEs across the state) who provides a tool that my doctor will use in the course of making patient care decisions should create an agreement that includes a disclaimer that says, "None of the [HIE] Participants, by virtue of executing this Agreement, assume any role in the care of any patient." It is obvious to me that an HIE has an integral role in some of the decisions my doctor will make while caring for me.</p> <p>The attached Institute of Medicine's <i>Health IT Safety</i> report publically released in November advocates for the collaborative protection of patients like myself. On page 103:</p> <p><i>"Collaboration between user organizations and vendors to improve patient safety is critical and requires a specific and immediate information loop between the parties, allowing detailed information to be exchanged to quickly address safety issues or potential safety issues. Attention to collateral impact in a multivendor environment is also necessary to identify any other corrective actions."</i></p> <p>The report sheds light on the multiple components of health IT that impact patient safety and discusses ways to mitigate those risks. On page 47 the report explicitly warns against patient care disclaimers that are often used in health IT contracts that attempt to displace accountability for patient safety risks away from the vendors and onto providers:</p> <p><i>"Because the nature of these legal issues limits publicly available information, very little evidence establishes their frequency of use or impact on users (Koppel and Kreda, 2009). However, the committee believes that these types of contractual restrictions limit transparency, which significantly contributes to the gaps in knowledge of health IT-related patient safety risks. Regardless of whether these barriers have actually been used to prevent reporting, the fear of legal action itself may prevent health professionals from sharing crucial health IT-related information with researchers, consumer groups, other users, and the government. As stated by the American Medical Informatics Association, such clauses should</i></p>		

COMMENT DETAILS	
	<i>be considered unethical (Goodman et al., 2011)."</i>
Suggested Change:	Strike section 17.03.
Change Rationale:	General Comment
THSA STAFF RECOMMENDATIONS	
<input type="checkbox"/>	Accept change as indicated by submitter
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below
<input type="checkbox"/>	No change suggested by submitter
<input checked="" type="checkbox"/>	No change recommended by THSA staff
Comment:	Pursuant to the agreement the HIE is responsible for the accuracy of any message content it sends of that is "available through its system," which could be construed to include correcting or supplementing any information once it becomes available to the HIE. However, the HIE cannot be responsible for patient care, which is what section 17.03 is about. The HIE is more akin to a fax machine than to a CT scan. If the fax machine breaks, the doctor is not relieved from the duty of patient care, nor is the fax machine manufacturer likely to be responsible for any indirect damages related to patient care. Additionally, because this agreement is between the HIE/HISPs, it does not relieve HIEs/HISPs from lawsuits from patients, who are not signatories to this Agreement.
THSA BOARD DIRECTIVES	
<input type="checkbox"/>	Change/recommendation approved by Board
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below
Comment:	
Date Change Made:	_____ / _____ / _____

THIEN Comments

COMMENT DETAILS			
Submitter:	Shannon Moore	Organization:	Texas Medical Association
Page #:	21	Section #:	19
Comment:	A physicians' ability to defend themselves in litigation requires that they will need access to the information that was accessed through the system years after it was sent. Just writing a note that he/she saw something that can no longer be proven will not help in litigation. Hospitals, for example, are required to keep records of lab tests for statutory time periods. Section 19.07 attempts to address this by allowing the recipient to keep all messages previously received, but that means each Participant would have to have massive storage capacity. THSA should consider and make recommendations for how this should be handled.		
Suggested Change:	Participants should be required to retrieve messages for up to the legal requirements for medical records, even if they are no longer actively sending messages. Participants who go out of business should be required to turn over their records to a THSA-approved trustee.		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input checked="" type="checkbox"/>	No change recommended by THSA staff		
Comment:	The legislature in HB 300 (82 nd legislature) provided that the HHSC shall be responsible for making recommendations to the legislature with response to transfer and storage of PHI held by an unsustainable covered entity, including HIEs. Until then this is handled in the contracts between the HHSC and the HIEs. HISPs and federated HIEs do not store records, so this should not be a concern with respect to such entities. Also, it is advisable that a provider would retain its own copies of records, as they would do in a paper world.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		

THIEN Comments

COMMENT DETAILS			
Submitter:	Kem McClelland	Organization:	Integrated Care Collaboration
Page #:	25	Section #:	23.01
Comment:	Texas law should govern this particular agreement, without regard to conflicts of law.		
Suggested Change:	General Comment		
Change Rationale:	General Comment		
THSA STAFF RECOMMENDATIONS			
<input type="checkbox"/>	Accept change as indicated by submitter		
<input checked="" type="checkbox"/>	Accept change as indicated by submitter with modification/comment indicated below		
<input type="checkbox"/>	No change suggested by submitter		
<input type="checkbox"/>	No change recommended by THSA staff		
Comment:	The THSA will implement this change to the extent that it can do so without being in conflict with the DURSA.		
THSA BOARD DIRECTIVES			
<input type="checkbox"/>	Change/recommendation approved by Board		
<input type="checkbox"/>	Change/recommendation approved with the following modification/comment below		
Comment:			
Date Change Made:	_____ / _____ / _____		