

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

This Florida Health Information Subscription Agreement for Patient Look-Up and Delivery Services ("Subscription Agreement"), effective on the Effective Date written below, is a multi-party agreement by and between the undersigned vendor, Harris Corporation, under contract with the Agency for Health Care Administration ("AHCA") for statewide health information exchange services ("Vendor"), and the other undersigned party (hereinafter referred to individually as "Participant"), and all other Participants who have executed the same Subscription Agreement. The undersigned Participant may be a Participant that will subscribe to Patient Look-Up and Delivery Services or the Florida Department of Health ("Public Health Participant"). Public Health Participant's access to the Patient Look-Up and Delivery Services shall be solely for purposes of facilitating Public Health Participant's access to medical information that Participants are required by law to provide to Public Health Participant for purposes of public health activities as authorized by law related to preventing and eliminating outbreaks of disease and making epidemiological investigations of reported cases of diseases of public health significance. The Florida Health Information Exchange General Participation Terms and Conditions attached hereto are hereby incorporated by reference (hereinafter "General Terms and Conditions"). This Subscription Agreement, any exhibits, attachments, or amendments thereto, and the incorporated General Terms and Conditions, are hereinafter referred to as either "Subscription Agreement" or "Agreement."

WITNESSETH:

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

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

WHEREAS, Participant desires to subscribe to and utilize the Patient Look-Up and Delivery Services offered by Vendor, and Vendor agrees to provide such service; and

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

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

1. **Definitions:** All definitions in the General Terms and Conditions apply to this Subscription Agreement for Patient Look-Up and Delivery Services, and the following additional definitions also apply to this Subscription Agreement for Patient Look-Up and Delivery Services:
 - a. **Patient Look-Up Service** shall mean the service provided by Vendor on the Network wherein the Participant's System may, on behalf of one of its authorized Participant Users, send or

receive a request for Health Data on an Individual under its care (and with which it has a Treatment relationship) to or from other Participants through the Network, and send or receive a response to or from other Participants that includes any Health Data found for that Individual. Patient Look-Up Services shall include services provided by the Vendor on the Network wherein for purposes of Public Health activities described in Section 381.0031(5), F.S. authorized personnel of the Florida Department of Health send a request for Health Data to Participants through the Network, and receive a response from Participants that include any Health Data found for that individual.

- b. **Delivery Service** means the service provided by Vendor on the Network wherein the Participant's System sends Health Data on an Individual under Participant's care (and with which it has a Treatment relationship) to other Participants and for Public Health reporting purposes authorized by law.
 - c. **Continuity of Care Document** means an electronic file that summarizes an Individual's medical status in a standard format for the purpose of information exchange. It contains a core data set of the most relevant administrative, demographic, and clinical information about an Individual's health care, covering one or more health care encounters.
 - d. **Florida Form** means the "Universal Patient Authorization Form for Full Disclosure of Health Information for Treatment and Quality of Care" adopted in Rule 59B-16.002, Florida Administrative Code.
 - e. **Authorization Form** means the Florida Form or its equivalent.
2. **Permitted Purposes for this Patient Look-Up and Delivery Services:** Participant agrees to allow its Health Data to be used or accessed by other Participants, and agrees that Participant shall use or access Health Data from other Participants, only for the following purposes (and the other Permitted Purposes in the General Terms and Conditions):
- a. Treatment. Treatment of the Individual who is the subject of the PHI requested or received by the Participant User ~~or Recipient~~ but only to the extent that these purposes are expressly permitted by the Individual ~~individual~~ in an Authorization -Form or for a medical emergency as permitted in Applicable Law. The requesting Participant User must be a health care provider in a Treatment relationship with the Individual who is the subject of the PHI requested and must be requesting PHI solely for the Participant User's use in providing Treatment to the Individual.
 - b. Health Care Operations. Health Care Operations but only to the extent that these purposes relate to quality or other purposes expressly permitted by the Individual in an Authorization Form and provided that the requesting Participant User ~~of a Participant~~ has an established Treatment relationship with the Individual who is the subject of the PHI. ~~The requesting Participant User of the Participant must be requesting/accessing PHI for Participant's own use.~~ The Participant User shall only use the Minimum Necessary PHI for such Health Care Operations purposes.
 - c. Public Health. Public Health activities and reporting, but only to the extent permitted by Applicable Law as specified in 64D-3, Florida Administrative Code.

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

3. **Responsibilities of Participants:**

- a. **Compliance with General Terms and Conditions.** Participant agrees to comply with the General Participation Terms and Conditions which are incorporated by reference. Failure to comply with the General Terms and Conditions shall be grounds for suspension or termination of this Subscription Agreement.
- b. **Minimum Data Set for Patient Look-Up and Delivery Services.** All Participants that allow their respective Participant Users to access Health Data through the Network for Patient Look-Up and Delivery Services shall have a corresponding reciprocal duty to provide Health Data to the Network for sharing with other Participants for the Permitted Purposes listed herein. The Participants agree that they each shall make good faith efforts to make available, at a minimum, the following information to be transmitted in a Continuity of Care Document, including required and optional sections, in accordance with Applicable Law specific to the Participant:
 - i. For Participants with emergency department visits, encounter information for each emergency department visit, and for Participants with primary care or hospital visits, encounter information for such visits. Encounter information shall include: patient demographic information, reason for visit, treating health care provider(s), date of visit, place of visit, diagnoses, and procedures.
 - ii. Vital signs, pathology reports, radiology studies and reports, discharge summaries, medications, alerts (i.e., allergies), immunizations, patient functional status, laboratory test results, and other diagnostic test results to the extent that Participants have such data and have the capability to submit such information electronically.
 - iii. Participants shall not filter their data, but rather make the health information for all its patients available in accordance with Network Operating Policies and Technical Requirements for this Patient Look-Up and Delivery Services Agreement, ~~subject to Applicable Law,~~ except that Participant may filter data where 42 CFR Part 2 is applicable or does not have to make Health Data available for Individuals who have requested, and Participant has granted, a restriction of the Individuals' data as permitted by the HIPAA Regulations 45 CFR § 164.522(a), HITECH, and other Applicable Law.
 - iv. Participants may, and are encouraged to, make available, in addition to the minimum set of data required by this Section, to the Network any and all data that may be relevant to the clinical care of a patient and necessary for the Permitted Purposes. Notwithstanding any of the foregoing, Participants shall not submit or

make available Psychotherapy Notes as that term is defined in 45 CFR § 164.501 of the HIPAA Regulations.

- c. **Patient Look-Up and Delivery Services Access.** Participants may allow a health care provider authorized to write prescriptions in Florida to access Health Data through the Network as a Participant User of the Participant regardless of whether the provider shares data through the Network. ~~The Participant must notify the Florida HIE of the access of providers not sharing data by monthly reporting number of transactions in which documents were retrieved by such providers. The access report shall be submitted to the Vendor 10 days following the prior month. and subject to a Participant fee paid to the Florida HIE if a fee is charged by the Participant to such Participant User; provided, however that any such Participant User must share data through the Network within twenty four months of obtaining access to Health Data or access by such Participant User must be terminated by Participant.~~
- d. **Network Operating Policies and Technical Requirements for Patient Look-Up and Delivery Services.** All Participants agree and are required to meet and comply with the Network Operating Policies and Technical Requirements for this Patient Look-Up and Delivery Services Agreement listed in **Attachment A** hereto, except for Public Health Reporting Participants that receive delivery services only as authorized by law. Public Health Reporting Participants are responsible for meeting the technical requirements for installation, maintenance and hosting of the Vendor's integration package only.

4. **Vendor Responsibilities:**

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

continue to use after the Subscription Agreement is terminated (however, Participant would not be permitted to utilize the Patient Look-Up and Delivery Services on the Network after the Subscription Agreement is terminated).

- e. Vendor's role is only to facilitate exchange of Health Data through the operation of the Network, in accordance with Vendor's agreement with AHCA and as provided in this Subscription Agreement. Vendor has no role in verifying whether a Participant is authorized to send, receive, use or disclose particular Health Data.
5. **Fees:** ~~Participants are charged~~ ~~Vendor reserves the right to begin charging~~ a quarterly fee ~~by the Vendor~~ after January 1, 2014 upon ninety (90) days written notice to Participants, subject to AHCA approval. Vendor shall inform Participants of whether an increase is solely due to operating costs or includes an increase in Vendor fees. The Vendor will provide additional explanations about the changes to Participants such as regulatory requirements or other factors that impact operating costs as applicable. The fee may be changed upon ninety (90) days written notice to Participants except for a fee reduction which can go into effect immediately upon AHCA approval.
6. **Miscellaneous:** If a provision of this Subscription Agreement conflicts with a provision in the General Terms and Conditions, the provision of this Subscription Agreement controls. Notices under this Agreement shall be given to the parties' respective address listed in **Attachment B** to this Subscription Agreement.
7. **Signatories:** If the Participant is an information technology vendor as determined by AHCA, a health care provider authorized to write prescriptions in Florida or a health care facility licensed by AHCA that will share Health Data through the Network must co-sign the agreement. Such information technology vendors further acknowledge that even though they are deemed to be a "Participant" under this Agreement, the limitations on the use of Health Data may preclude such information technology vendors from accessing or otherwise using Health Data. Such information technology vendors represent and warrant that they are not bound by any contract or commitment that seeks or otherwise purports to limit an information technology vendor's liability under this Agreement. Such information technology vendors also agree that they will not enter into any contract or commitment with any health care providers, health care facilities, or other third parties that seek or otherwise purport to limit an information technology vendor's liability to any other Participant or to Vendor, and further agree that any such contract or commitment entered into in contravention of this provision shall be deemed void and unenforceable.
8. **Effective Date of this Subscription Agreement:** This Subscription Agreement and the General Terms and Conditions become effective when fully executed.

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

"Vendor"
Harris Corporation

| 11.15.2013

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

“Participant” or “Public Health Participant”

Entity Name: _____

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

| “Health Care Provider ~~Co-signer~~Sponsor”

Entity Name: _____

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

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Attachment A

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

In addition to the other provisions in this Subscription Agreement (including the General Terms and Conditions), all Participants agree and are required to meet and comply at all times with the following Network Operating Policies and Technical Requirements for this Patient Look-Up and Delivery Services Agreement:

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

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

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

3. Universal Patient Authorization Form.

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

- Production of Documentation. Participants must send documentation of patient authorization to the PLU Privacy Manager of another Participant whose Health Data was accessed upon request. A PLU Privacy Manager may report failure to receive a response for documentation of patient authorization to AHCA detailing the date of request, subsequent follow-up requests and who was contacted in addition to the PLU Privacy Manager
4. Minimum Patient Data Set for Patient Look-Up Requests. Participant agrees to provide the patient's full name, gender and birth date in making requests for Patient Look-Up Services.
 5. Public Health Participant will be responsible for maintaining the technical requirements for the Public Health Participant's access to Patient Look-Up and Delivery Services.
 6. Web Access Controls. Participants that offer web portal or email access to Patient Look-Up and Delivery Services and their Participant Users shall establish procedures to ensure that former Participant Users cannot access the Patient Look-Up and Delivery Service. Participants will establish procedures such that Participant Users request termination of access of individuals that are no longer to have access to the Participant within 24 hours of occurrence, and there is a mechanism to assure the termination of Participant User access to the PLU service.
 - ~~6.7.~~ PLU Privacy Manager. Participant will designate an individual ("PLU Privacy Manager") that will have access to the PLU audit log using an account established by the Vendor. The PLU Privacy Manager will respond to requests for information and documentation from the PLU Privacy Manager of other Participants whose Health Data was accessed. The PLU Privacy Manager will perform other duties as determined by the Participant which may include review of audit logs, requesting information from other Participants about their patient look-up requests, development of audit log review best practices in coordination with other PLU Privacy Manager, development and performance of patient authorization audit plans, or other duties as determined by the Participant.

Attachment B

Addresses for Notice

For notices to Participant, use:
[insert info]

For notices to Vendor, use:

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

For notices to AHCA, use:

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