

Georgia Health Information Network, Inc. GeorgiaDirect Policies and Procedures



Version History

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GeorgiaDirect Services – Policy Number: GaHIN-1000

Policy Title: Introduction

Purpose

This Policy provides an introduction describing the scope of these Policies and Procedures.

Scope

This policy applies to GaHIN's Direct Secure Messaging Service

Policy

The following GeorgiaDirect Policies and Procedures (these "Policies and Procedures") apply to access to the Network and the use of the Services offered by Georgia Health Information Network, Inc. ("GaHIN"), and are incorporated by reference into the Member Agreements entered into between Participants and GaHIN (the "Member Agreements"). These Policies and Procedures, together with the Participant Agreements (the "Agreement"), set forth the provisions governing the access to Health Data through the Network and the use of the Services. Each of the Participants will enter into agreements with its respective Participant Users causing each of such Participant Users to comply with these Policies and Procedures and the Participant Agreement. All references in the Agreement to a Participant shall include its Participant Users. Capitalized Terms not otherwise defined herein shall have the meanings ascribed to such terms in Policy 1017.

GeorgiaDirect Services – Policy Number: GaHIN-1001
Policy Title: Administration of the Network

PURPOSE

This Policy defines the roles of Vendor and GaHIN in the administration of the Network and the Services.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

Roles of Vendor and GaHIN. GaHIN engages a third party vendor ("Vendor") to administer the Network and provide the Services. Neither Vendor nor GaHIN has control over the content of the Health Data available through the Network, or the activities of the Participants and/or its Participant Users. The accuracy of any Health Data, as well as the authority of any Participant Users to access or disclose Health Data are solely the responsibility of the Participants and not Vendor or GaHIN. Vendor's obligations are limited to implementing and maintaining the technical infrastructure of the Network, in addition to other activities specified in the Member Agreement and these Policies and Procedures.

GaHIN will review, evaluate and act upon requests submitted by organizations that want to become a Participant with respect to the Services, determine whether such organizations meet the technical and operational requirements established by GaHIN and Vendor to become new Participants, and execute Participant Agreements with any such new Participants, when appropriate. No further action or approval is required by other Participants for the addition of new Participants pursuant to this Policy; provided, however, that all Participants will be notified of new Participants being added prior to the new Participant accessing or using the Network.

GaHIN is a Business Associate of each Participant who is considered a "covered entity" under HIPAA Regulations. The provisions governing this Business Associate relationship are included in Policy 1009 of these Policies and Procedures.

Vendor may delegate responsibilities related to the Network administration to one or more subcontractors approved by GaHIN, as long as subcontractor and all of its employees or agents reside in the United States. Vendor shall ensure that each subcontractor executes an agreement allowing only specifically authorized representatives to be granted access to the Network solely in connection with subcontractor's responsibilities and that the subcontractor will comply with the Business Associate provisions of Policies and Procedures and the confidentiality provisions of these Policies and Procedures and Applicable Law. Vendor and its subcontractors shall employ security mechanisms that are consistent with the Security Standards of the HIPAA Regulations to provide for the security of the information. Further, Vendor will not, and will not permit any subcontractors to, store, transmit or access any Health Data outside of the continental United States of America.

Vendor will provide to each Participant the computer software necessary to access Health Data on the Network; however, Participants must also have the software and other infrastructure that meets the applicable Network Operating Policies and Technical Requirements for the Services in order to interface with Vendor's system. Participants shall arrange for their own carrier lines, computer terminals or personal computers, printers, or other equipment for accessing the Network, and shall ensure that they are properly configured to access the Network, including but not limited to, the base workstation operating system, web browser and internet connectivity. Any equipment, software, or intellectual property provided by Vendor to Participant shall remain the property of Vendor unless provided otherwise in the Vendor

Contract. Any equipment or communication lines supplied by an individual Participant shall remain the sole property of the supplying Participant.

Individuals shall have the right to request and obtain from Participants an accounting of disclosures of their PHI as provided by 45 CFR § 164.528. Each Participant and Participant User shall be solely responsible to account for its own disclosures, as required by HIPAA Regulations, HITECH and other Applicable Law. All requests for an Accounting of Disclosures sent to GaHIN or Vendor will be forwarded back to the applicable Participant to address for its respective Individuals. Notwithstanding the foregoing, to the extent required under HIPAA Regulations, HITECH and other Applicable Law, Vendor will provide Participants with any information, in its possession, necessary to enable Participants and Participant Users to respond to Individuals' requests for an Accounting of Disclosures.

GeorgiaDirect Services – Policy Number: GaHIN-1002
Policy Title: Use of Health Data

PURPOSE

The purpose of this Policy is to ensure that reasonable efforts are made to limit the Health Data transmitted via the Network to the minimum amount necessary to accomplish the intended purpose for which the Health Data is accessed. This Policy also sets forth the Permitted Purposes for which Health Data may be disclosed through the Network from one Participant to another.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

The Network shall be used only for Permitted Purposes listed below and those specified in the Member Agreement, if any. Each Participant's Health Data will only be used for those Permitted Purposes listed below and those specified in the Member Agreement. All disclosures of PHI through the Network and a Participant's use of PHI obtained through the Network shall be consistent with Applicable Law. Each Participant shall require and ensure that its Participant Users only use the Network for the Permitted Purposes. Participants shall ensure that they have obtained any authorization and consents from Individuals that may be required under Applicable Law prior to requesting or accessing Health Data via the Network for particular Individuals. Access to PHI transmitted, sent, or received through the Network shall be limited to Participants with secure direct email accounts and their respective identified and authorized Participant Users. Each Participant shall, and shall cause its Participant Users to, abide by the Minimum Necessary requirement under HIPAA Regulations and other Applicable Law. Each Participant shall, and shall cause its Participant Users to, disclose or request through the Network, if applicable, only the minimum amount of PHI as required by HIPAA Regulations and other Applicable Law. GaHIN, Vendor and their subcontractors shall not decrypt messages sent through the Network or in any way access PHI transmitted, sent or received through the Network.

Each Participant's requests, use, disclosures and transmittals of Health Data to and through the Network are subject to the following limitations:

1. Health Care Provider. If Participant or Participant User is a Health Care Provider, then Participant or Participant User shall only request, receive, use and disclose Health Care Provider Health Data for an Individual, and solely for the purposes of Treatment of an Individual and Participant's or Participant User's Payment and Health Care Operations related to an Individual or as otherwise legally authorized by an Individual.
2. Health Plan. If Participant or Participant User is a Health Plan, then Participant or Participant User shall only request, receive, use and disclose Health Plan Health Data for admission, discharge, and transfer purposes and such other purposes as approved in writing by a majority of the Participants.
3. HIO. If Participant is a HIO, then Participant shall only request, receive, use and disclose HIO Health Data, and solely for the purposes of Treatment, Payment, and Health Care Operations of Participant's Participant Users, or as otherwise legally authorized by an Individual, subject to and in accordance with Participant's contractual obligations with its Participant Users.

4. State Agency. If Participant is a State Agency, then Participant shall only request, receive, use and disclose Health Data solely as authorized by Applicable Law or as legally authorized by an Individual
5. Meaningful Use. Health Data may be used for any purpose to demonstrate meaningful use of certified electronic health record technology if 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.

GaHIN shall have no rights to, and shall not permit Vendor to, access or use any Health Data and shall not permit Vendor to store any Health Data, except to the extent necessary for temporary cache or similar purposes, as otherwise necessary to provide the Services, and except in circumstances where the Vendor will be hosting certain data at the request of GaHIN and any applicable Participant whose data is involved. GaHIN does not claim any ownership in any of the content, including any text, data, information, images, sound, video or other material, that Participant may send, store or receive via the Network.

If GaHIN is required to arrange for certain reports and evaluations of the Network under a federal grant or contract, all Participants agree to permit Vendor to generate such reports and provide such information as may be necessary for such required evaluation as detailed in a written notice to Participants. To the extent any such reports contain any Health Data, such Health Data shall have undergone prior de-identification by the Participant consistent with 45 CFR §164.514 and further identifiers removed by the Participant according to Applicable Law. Participants will agree to cooperate in studies conducted from time to time by GaHIN or its agent related to various issues surrounding the Network, including, but not limited to, a project evaluation required by a federal grant or contract, and the efficacy and usefulness of the Network. Such cooperation by the Participants may include, but not be limited to, participation in interviews, the completion of surveys, and the submission of other written or oral evaluations.

Each of GaHIN and Vendor may request information from Participants related to a potential Breach or other security or technical issues, and Participants shall not unreasonably refuse to provide information to GaHIN or Vendor for such purposes. Notwithstanding the preceding sentence, in no case shall a Participant be required to disclose Health Data that is PHI in violation of Applicable Law. Any information, other than Health Data, provided by a Participant to Vendor or GaHIN shall be treated as Proprietary Information in accordance with Policy 1008 unless agreed otherwise.

Absent a Permitted Purpose, no exchange of Health Data will be authorized. Under no circumstances may Health Data be used or disclosed for any other purpose, including marketing or for discriminatory purposes. Neither GaHIN nor any Participant shall use the Network for any purpose in violation of HIPAA Regulations, HITECH or other Applicable Law.

Neither GaHIN nor any Participant shall use the Network or permit any Participant User to use the Network to conduct any business or activity, or solicit the performance of any activity, which is prohibited by or would violate any Applicable Law or legal obligation, or for purposes that may create civil or criminal liability; including but not limited to: (i) uses which are defamatory, deceptive, obscene, or otherwise inappropriate; (ii) uses that violate or infringe upon the rights of any other person, such as unauthorized distribution of copyrighted material; (iii) “spamming,” sending unsolicited bulk e-mail or other messages on the Network or sending unsolicited advertising or similar conduct; (iv) threats to or harassment of another; (v) knowingly sending any virus, worm, or other harmful component; and (vi) impersonating another person or other misrepresentation of source. Neither GaHIN nor any Participant may access or use the Health Data or any Proprietary Information of another Party to compare patient volumes, practice patterns, or make any other comparison without all Participants’ written approval. GaHIN shall not have access to any Participant’s Health Data on the Network, unless expressly approved in writing by a Participant and with any required Individual authorizations or consents that have been previously obtained by Participant. Other uses of the Health Data (including, but not limited to, Vendor reselling de-

identified data) are expressly prohibited hereunder without prior written approval from GaHIN and any Participant whose data would be involved. Any Participant who uses the Network for purposes other than as described herein and in the Agreement will be subject to termination or suspension as provided in these Policies and Procedures, and any security and/or data breach associated with such misuse shall be addressed in a manner consistent with the Agreement and these Policies and Procedures.

GeorgiaDirect Services – Policy Number: GaHIN-1003

Policy Title: Technical Requirements for Direct Secure Messaging Service

PURPOSE

This Policy sets forth the technical requirements for Direct Secure Messaging Service.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

Each Participant shall comply with the technical requirements applicable to the Services. GaHIN will provide, or shall cause Vendor to provide, notice to Participants of any material change to the technical requirements. Participant agrees and is required to meet and comply with the following: (i) Participant must provide a web browser; (ii) a separate account is required for each Participant User with a username and password to login; and (iii) Participant must authorize its System to encrypt email on behalf of Participant and Participant Users using a common DSM organizational certificate as necessary to protect data when it is transmitted over the Internet. If, as a result of a change made in accordance with the Agreement or this Policy, a Participant will not be able to comply with the technical requirements or does not otherwise desire to continue its use of the Services, then such Participant shall terminate the Agreement as provided herein or therein.

Participants grant GaHIN the power to adopt technical requirements, and amendments thereto, or repeal and/or replace the same at any time with prior written notice to Participants. Unless otherwise Required By Law, required by a federal grant or contract with GaHIN, or necessary to maintain the stability of the Network, these Network Operating Policies and Technical Requirements shall not alter the relative rights and obligations of the Parties under these Policies and Procedures and shall not be inconsistent with these Policies and Procedures.

GeorgiaDirect Services – Policy Number: GaHIN-1004
Policy Title: Requirements for Participants

PURPOSE

This Policy establishes the requirements for Participants and Participant Users in their use of the Network.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

- a. **Compliance.** All use of, and interactions with, the Network by Participant (and Participant's Users) shall comply with all applicable technical requirements, these Policies and Procedures, Member Agreements, any agreements between Participant and its Participant Users, and Applicable Law. Participant shall be solely responsible for maintaining Individual medical records, as applicable, in accordance with Applicable Laws, and shall not rely upon Health Data transmitted to, and temporarily stored on, the Network for meeting Participant's obligations under any such laws.
- b. **Notice of Privacy Practices and Acknowledgement.** Each Participant shall, and shall cause its Participant Users to, meet their obligations with respect to Notice of Privacy Practices and Acknowledgment under HIPAA, HITECH, and other Applicable Law.
- c. **Participant's Users and System Access Policies.** Each Participant shall have written policies and procedures in place that govern its Participant Users' ability to access information on or through the Participant's System and through the Network ("Participant Access Policies"). Each Participant acknowledges that Participant Access Policies will differ among them as a result of differing Applicable Law and business practices. At a minimum, each Participant shall ensure that it has a valid and enforceable written agreement with each of its Participant Users, and/or policies and procedures that Participant Users are required to comply with, that ensure that any Health Data accessed by its Participant Users is: (i) for a Permitted Purpose; (ii) supported by appropriate legal authority for obtaining the Health Data; (iii) requested and viewed by a Participant User with the legal authority to have such access, and (iv) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Participant. If Health Data is accessed through the Network from Participant's System, then Participant is solely responsible for authenticating Participant's own Participant Users for that access. 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 the Agreement, for system administration, security, and other legitimate purposes. Each Participant agrees to enforce the provisions of the Agreement including but not limited to any provisions regarding limitations on Permitted Purposes for access to the Health Data and any confidentiality provisions of the Agreement by appropriately training all Participant Users, and disciplining individuals within each Participant's organization who violate such provisions pursuant to each Participant's respective Participant Access Policies. Participant shall also require that its Participant Users keep on file any signed Individual authorization or consent forms that may be required for documentation regarding access to Health Data from the Network, as well as any documentation of emergency accesses of Health Data from the Network (pursuant to any applicable technical requirements of the Network).
- d. **Cooperation.** To the extent not legally prohibited, each Participant shall: (i) cooperate fully with GaHIN, Vendor, and each other Participant with respect to such activities as they relate to the

Agreement; (ii) provide such information to Vendor and/or each other Participant as they may reasonably request for purposes of performing activities related to the Agreement, (iii) devote such time as may reasonably be requested by Vendor to review information, meet with, respond to, and advise Vendor or other Participants with respect to activities as they relate to the Agreement; (iv) provide such reasonable assistance as may be requested by Vendor when performing activities as they relate to the Agreement; and (v) subject to a Participant's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting a Participant's Proprietary Information, provide information and assistance to Vendor or other Participants in the investigation of Breaches and Disputes. In no case shall a Participant be required to disclose PHI in violation of Applicable Law. A Participant shall promptly report, in writing to Vendor, any problems or issues that arise in working with the other Participants' employees, agents, or subcontractors that threaten to delay or otherwise adversely impact such Participant's ability to fulfill its responsibilities under the Agreement.

- e. **Backup.** Each Participant is responsible for developing and maintaining backup procedures to be used in the event of a failure or unavailability of the Network, and is responsible for implementing any such backup procedures, as and when determined necessary by such Participant.
- f. **License.** Each Participant may be required by Vendor to enter into a license agreement with Vendor with respect to the Network, the Common Network Resources and the Services (the "License"), and will be subject to the Policies and Procedures in addition to the Agreement. In the event of any conflict or inconsistency between a provision in these Policies and Procedures and the License, the Policies and Procedures contained in the License shall prevail.

GeorgiaDirect Services – Policy Number: GaHIN-1005
Policy Title: Enterprise Security

PURPOSE

This Policy establishes the requirements for Participants and Participant Users in their use of the Network.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

GaHIN, through Vendor, and each Participant shall be responsible for maintaining a secure environment that supports access to, use of, and the continued development of the Network. Each Participant and Participant User, GaHIN and Vendor shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by the Agreement, including appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI through the Network. Appropriate safeguards for Participants and Vendor shall be those identified in the HIPAA Security Rule, 45 CFR Part 160 and 164, Subparts A and C, regardless of whether Participant or Vendor is subject to HIPAA Regulations. Participants shall also be required to comply with Network Operating Policies and Technical Requirements with respect to enterprise security.

Subject to the License, in participating in the Network, each Participant and Vendor shall ensure that it employs security controls that meet applicable industry or Federal standards so that the information and Health Data being transmitted and any method of transmitting such information and Health Data will not introduce any viruses, worms, unauthorized cookies, Trojans, malicious software, "malware," or other program, routine, subroutine, or data designed to disrupt the proper operation of a System, the Network or any part thereof, or any hardware or software used by a Participant or Vendor in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause a System or the Network or any part thereof or any hardware, software or data used by a Participant or Vendor in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable. In the absence of applicable industry standards, each Participant and Vendor shall use all commercially reasonable efforts to comply with the requirements of this Policy.

Participants will not knowingly use the Network, and will not permit any of their respective Participant Users to use the Network, (i) in a manner that adversely affects the performance or availability to other Participants, (ii) in a manner that interferes with Vendor's computers or Network security, or (iii) to attempt to gain unauthorized access to Vendor's or any other Participant's computer system.

GeorgiaDirect Services – Policy Number: GaHIN-1006
Policy Title: Breach Notification

PURPOSE

This Policy sets forth minimum standards that GaHIN, Vendor, Participants and Participant Users shall follow in the event of Breach of Unsecured PHI.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

- a. **Procedure for Notification of Vendor and Impacted Participants.** Each Participant and Vendor agrees that without unreasonable delay but not later than fifteen (15) business days after determining that a Breach occurred, the Participant responsible for the Breach will notify DCH, Vendor and all other Participants reasonably likely to be impacted by such Breach. The notification should include sufficient information for the other notified parties to understand the nature of the Breach. For instance, such notification should include, to the extent available at the time of the notification, the following information:
- i. One or two sentence description of the Breach;
 - ii. Description of the roles of the people involved in the Breach (e.g., employees, Participant Users, service providers, unauthorized persons, etc.);
 - iii. The type of PHI subject to the Breach;
 - iv. Participants likely impacted by the Breach;
 - v. Number of Individuals or records impacted/estimated to be impacted by the Breach;
 - vi. Actions taken by the Participant to mitigate the Breach;
 - vii. Current status of the Breach (such as under investigation or resolved); and
 - viii. Corrective action taken and steps planned to be taken to prevent a similar Breach.

The notifying party shall have a duty to supplement the information contained in the notification as new information becomes available and cooperate with other Participants and Vendor, subject to the limitation contained at Policy 1004, Section (e)(v). The notification required by this Policy shall not include any PHI.

Vendor will disable any user IDs and passwords if necessary and, as soon as possible and without unreasonable delay, investigate (or require the notifying party to investigate) the scope and magnitude of such actual or suspected Breach, and identify the root cause of the Breach.

In any instance where it has been determined that a Breach has occurred, Vendor will notify DCH and any Participants that may be affected, in accordance with HIPAA Regulations, HITECH and other Applicable Law. In the event of any Breach, Participants must comply with all breach notification and security incident response requirements in accordance with HIPAA Regulations, HITECH and other Applicable Law.

- b. **Legal Obligations.** This Policy shall not be deemed to supersede or relieve a Participant or Vendor of its obligations (if any) under relevant security incident, breach notification or

confidentiality provisions of Applicable Law, including, but not limited to, those related to Individuals. The Vendor and Participants shall work together to coordinate any notification to Individuals, the federal government, and any public announcement regarding the Breach that may be required by Applicable Law or the policies of a Participant or Vendor.

GeorgiaDirect Services – Policy Number: GaHIN-1007
Policy Title: Representations, Warranties and Disclaimers

PURPOSE

This Policy sets forth the representations, warranties and Disclaimers of the Parties.

SCOPE

This Policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

Each Participant hereby represents and warrants to the other Parties as follows:

- a. **Accurate Participant Information.** Except to the extent prohibited by Applicable Law, each Participant has provided, and will continue to provide GaHIN and Vendor with all information reasonably requested by it to discharge its duties under the Agreement or Applicable Law, including during the Dispute Resolution Process. Any information provided by a Participant to GaHIN or Vendor shall be responsive and accurate, including any information provided by Participant during any registration process. Each Participant shall provide notice to GaHIN and Vendor if any information previously provided (other than Health Data) materially changes. Each Participant acknowledges that each of GaHIN and Vendor reserves the right to confirm or otherwise verify or check, in its sole discretion, the completeness and accuracy of any registration or other information provided by Participant at any time and each Participant will reasonably cooperate with GaHIN and Vendor in such actions, given reasonable prior notice. Notwithstanding the foregoing, each of GaHIN and Vendor is entitled to rely on the accuracy of information provided by each Participant, and neither has a duty to confirm, verify, or check the completeness and accuracy of any information.
- b. **Execution of the Agreement.** Prior to participating in the Network, each Participant shall have executed a Participant Agreement and returned an executed copy to GaHIN. In doing so, the Participant affirms that it has full power and authority to enter into and perform the Agreement and has taken whatever measures necessary to obtain all required approvals and consents in order for it to execute the Agreement. The representative signing the Agreement on behalf of the Participant affirms that he/she has been properly authorized and empowered to enter into the Agreement on behalf of the Participant. Similarly, GaHIN affirms that its representatives signing the Agreement are duly authorized and that GaHIN has full power and authority to enter into and perform the Agreement.
- c. **Agreements with Subcontractors.** To the extent that a Participant uses subcontractors in connection with the Network or its use of Health Data obtained from the Network, such Participant will notify Vendor and GaHIN of the identity of such subcontractors and require that such subcontractors execute a joinder to the Agreement, agreeing to be bound by the applicable provisions thereof.
- d. **Accuracy of Health Data and Authority to Transmit, Receive and/or Disclose (as applicable).** Each Participant hereby represents that, at the time of transmission, (i) any Health Data it provides pursuant to its Participant Agreement is an accurate representation of the data contained in or available through its System subject to the limitations set forth in the disclaimers contained in this Policy below., (ii) the Health Data it provides is sent from a System that employs security controls that meet industry standards to be free from malicious

software in accordance with Policy 1005, (iii) the Health Data is provided in a timely manner and in accordance with applicable Network Operating Policies and Technical Requirements, (iv) Participant is authorized to provide or make such Health Data available through the Network under the terms of the Agreement without violating any rights, including copyrights, of third parties, and (v) that Participant has met any requirements under Applicable Law, including but not limited to, obtaining any consent or authorization(s) from the Individual subject to the Health Data, if required, before making a request for such Individual's Health Data through the Network. OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF EACH PARTICIPANT IN THIS POLICY, NONE OF VENDOR, GAHIN NOR PARTICIPANTS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE HEALTH DATA. MORE SPECIFICALLY, THE HEALTH DATA MADE AVAILABLE THROUGH THE NETWORK IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE PARTICIPANT, GAHIN OR VENDOR BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF PARTICIPANT, GaHIN AND/OR VENDOR HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTICIPANT, VENDOR AND GaHIN DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICES RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS, OR OTHER THIRD PARTIES OR DUE TO HARDWARE OR SOFTWARE FAILURES (EXCEPT AS PROVIDED IN THE VENDOR CONTRACT).

- e. **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 such Participant's ability to fulfill its obligations under the Agreement. Each Participant shall inform Vendor if at any point during its participation it becomes subject to such an order. Vendor will inform GaHIN and all Participants if a Participant informs Vendor that the Participant is subject to such an order.

The Parties acknowledge the following disclaimers:

- a. **Accuracy of Health Data.** Nothing in the Agreement shall be deemed to impose responsibility or liability on Vendor or GaHIN related to the clinical accuracy, content or completeness of any Health Data.
- b. **Incomplete Medical Record.** Each Participant, GaHIN acknowledges that Health Data may not include an Individual's full and complete medical record or history.
- c. **Use of Network in an Emergency.** Each Participant is responsible for determining the appropriate use of the Network for communications concerning or supporting Treatment in an emergency or other urgent situation. In addition, to the extent a Participant requires Individual information in an emergency situation or on an urgent basis, Participant has the sole responsibility for communicating directly to any provider, including other Participants, according to Participant's applicable policies and procedures, and Participant agrees that it will not rely upon the Network or Vendor or GaHIN for delivery of such messages or to obtain Individual information.

- d. **Patient Care.** Participants acknowledge that Health Data obtained through the Network is not a substitute for any Participant, if that person/entity is a health care provider, obtaining whatever information he/she/it deems necessary, in his/her/its professional judgment, for the proper Treatment of an Individual. Participant or Participant User, if a health care provider, shall be responsible for all decisions and actions taken or not taken involving Individual care, utilization management, and quality management for their respective Individuals and clients resulting from, or in any way related to, the use of the Network or Health Data made available thereunder. None of the Participants (by virtue of being a party to the Participant Agreement or these Policies and Procedures), Vendor or GaHIN, assumes any role in the care of any Individual.
- e. **Carrier Lines.** All Participants acknowledge that the exchange of Health Data between Participants through the Network is to be provided over various facilities and communications lines, and information shall be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, “carrier lines”) owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which may be beyond the Participants’ or Vendor’s control. Provided a Participant and Vendor use reasonable security measures, Participants and Vendor assume no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted over those carrier lines, which are beyond the Participants’ and Vendor’s reasonable control, or any delay, failure, interruption, interception, loss, transmission, or corruption of any Health Data or other information attributable to transmission over those carrier lines which are beyond the Participants’ and Vendor’s reasonable control. Use of the carrier lines is solely at the Participants’ and Vendor’s risk, by virtue of the Participant Agreement or these Policies and Procedures and is subject to all Applicable Laws.

GeorgiaDirect Services – Policy Number: GaHIN-1008
Policy Title: Proprietary Information

PURPOSE

This Policy explains how confidential and proprietary information of Participants, Vendor, and GaHIN is to be treated.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

Each Receiving Party shall hold Proprietary Information in confidence and agrees that it shall not, during the term or after the termination of the Agreement, disclose to any person or entity, or use for its own business or benefit, any such Proprietary Information obtained by it in connection with the Agreement, unless such use or disclosure is permitted by the terms thereof. Notwithstanding the foregoing, Proprietary Information may be disclosed as Required By Law; provided that the Receiving Party, to the extent allowed by Applicable Law, immediately notifies the Discloser of the existence, terms and circumstances surrounding such requirement to allow the Discloser to exercise any rights it may have to object to such disclosure. If, after Discloser's objection, the Receiving Party is still Required By Law to disclose Discloser's Proprietary Information, it shall do so only to the minimum extent necessary to comply with such requirement and shall request that the Proprietary Information be treated as such.

GeorgiaDirect Services – Policy Number: GaHIN-1009

Policy Title: Business Associate Agreements

PURPOSE

This Policy sets forth GaHIN's obligations in the event that it is serving as a Business Associate of a Covered Entity Participant.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

This Policy applies if and to the extent that GaHIN meets the definition of Business Associate with respect to any Covered Entity Participant. To the extent that GaHIN is serving as a Business Associate of such Participant, GaHIN shall agree to abide by the following Business Associate provisions:

- a. **Use and Disclosure of PHI by Business Associate.** With respect to the use and disclosure of PHI, Business Associate hereby agrees that it shall use and/or disclose PHI only: (i) in conjunction with those functions, activities, or services that Business Associate performs for, or on behalf of, each Covered Entity as specified in the Agreement, including, but not limited to, the Services, including transmitting PHI on the Network and maintaining the Network; (ii) in a manner that is consistent with the permitted or required uses or disclosures by Participant pursuant to Applicable Law; (iii) to fulfill any present or future legal responsibilities; (iv) as otherwise permitted or required by the Agreement or Applicable Law; and/or (v) to fulfill any present or future legal responsibilities or as otherwise required by its legal and ethical responsibilities. Business Associate shall report to the Covered Entity Participant any use or disclosure of PHI not provided for by the Agreement of which Vendor becomes aware, including any Security Incident (as defined in HIPAA and HITECH) involving PHI. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to substantially the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- b. **Minimum Necessary.** As provided in Policy 1002, Business Associate is obligated to abide by the Minimum Necessary requirement under HIPAA Regulations and other Applicable Law.
- c. **Safeguards.** Business Associate shall employ commercially reasonable and appropriate administrative, technical, and physical safeguards to maintain the security of PHI and to prevent the use and disclosure of PHI in a manner that is contrary to the Agreement.
- d. **Reporting of Security Breaches.** As provided in Policy 1006, Business Associate has certain notification obligations with respect to any Breach. Business Associate shall mitigate, to the

extent commercially practicable, any harmful effect of a use or disclosure of unsecured PHI by Business Associate in violation of the Agreement. Nothing herein shall be construed to relieve the Covered Entity Participant or Business Associate from their respective duties or obligations under HIPAA Regulation, HITECH, or other Applicable Law.

- e. **Accounting of Disclosures.** As provided in Policy 1001, Business Associate has certain obligations to provide information in its possession to a Covered Entity Participant to enable such Covered Entity Participant to respond to a request for an Accounting of Disclosures.
- f. **Disclosures to the Secretary of the Department of Health and Human Services.** Business Associate shall make its internal practices that pertain solely to the protection of the PHI related to a Covered Entity Participant available to the Secretary of the United States Department of Health and Human Services (the “Secretary”), or the authorized representative thereof, for purposes of determining such Covered Entity Participant’s and/or Business Associate’s compliance with HIPAA Regulations. Business Associate shall promptly notify a Covered Entity Participant if Business Associate receives any such request by or on behalf of the Secretary.
- g. **Subcontractors.** In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to substantially the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI.
- h. **Carry-out Obligations.** To the extent Business Associate is to carry out one or more of Covered Entity’s obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate will comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

GeorgiaDirect Services – Policy Number: GaHIN-1010
Policy Title: Liability

PURPOSE

This Policy discusses the potential liability of the Parties and GaHIN.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

- a. **Liability.** GaHIN and each Participant shall be responsible for its own acts and omissions and not for the acts or omissions of any other Party. In circumstances involving harm to other Parties caused by the acts or omissions of Individuals who access Health Data or Proprietary Information through the Network or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from Vendor or a Participant, each of GaHIN and such Participant shall be responsible for such harm to the extent that the Individual's access resulted from a breach of the Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. This Policy shall not be construed as a hold harmless or indemnification provision. If a Participant is an agency of the State of Georgia, the provisions of Section 768.28, Georgia Statutes, relating to sovereign immunity shall govern.
- b. **Effect of Agreement.** Except as provided in Policy 1007 (Breach Notification) and Policy 1014 (Dispute Resolution), nothing in the Agreement shall be construed to restrict GaHIN's, Vendor's or a Participant's right to pursue all remedies available under Applicable Law for damages or other relief arising from acts or omissions of other Parties hereto related to the Network, the Services or the Agreement, or to limit any rights, immunities or defenses under Applicable Law.
- c. **Release of Vendor and GaHIN From Liability.** Each of the Participants hereby releases Vendor and GaHIN from any and all claims arising out of any inaccuracy or incompleteness of Health Data or any delay in the delivery or failure to deliver Health Data to the Network when requested, except solely in the case of Vendor or GaHIN, due to Vendor's or GaHIN's gross negligence or willful misconduct with respect to any such delay or failure.

GeorgiaDirect Services – Policy Number: GaHIN-1011
Policy Title: Term, Suspension, and Termination

PURPOSE

This Policy sets forth the term, suspension, and termination provisions of the Member Agreement.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

- a. **Term.** Unless otherwise specified in the Member Agreement, the Agreement shall commence on the Effective Date and continue with respect to a Participant for as long as such Participant is using the Services, subject to termination and/or suspension as provided below or prohibited by Applicable Law.
- b. **Suspension or Termination by Participant.**
 - i. **Suspension.** A Participant may voluntarily suspend its participation under the Agreement, by giving Vendor at least three (3) business days prior written notice. Once proper notice is received, Vendor shall be empowered to suspend the Participant's access as of the date of suspension specified in the notice. After Vendor suspends a Participant's access, Vendor shall provide notice of such voluntary suspension to all Participants. During such suspension, the suspended Participant shall not access the Network. Any voluntary suspension shall be for no longer than five consecutive calendar days or for more than twenty calendar days during any twelve month period, unless GaHIN agrees to a longer period.
 - ii. **Termination.** A Participant may terminate its participation by terminating its Participant Agreement, with or without cause, by giving Vendor at least five business days prior notice. Once proper notice is given, GaHIN may terminate the Participants' Participant Agreement and terminate, or cause Vendor to terminate, the Participant's access to the Network and ability to utilize the Services as of the date of termination specified in the notice. Upon termination of a Participant's access to the Network, GaHIN shall, or shall cause Vendor to, provide notice of such revocation to the remaining Participants.
- c. **Immediate Suspension by the Vendor.** Upon Vendor, in cooperation with GaHIN, completing a preliminary investigation and determining the reasonable likelihood (i) Participant's (or its Participant Users) acts or omissions create an immediate threat or will cause irreparable harm to another Participant, any of their respective Participant Users, the Network, Vendor, GaHIN, or an Individual whose PHI is exchanged through the Network; or (ii) Participant or its Participant Users has breached the Permitted Purposes, such Participant hereby grants to Vendor, with concurrence by GaHIN, the power for Vendor to summarily suspend, to the extent necessary to address the threat posed, a Participant's access to Network and use of the Services, pending the submission and approval of a corrective action plan, as provided in this Policy. Vendor shall immediately suspend such Participant's access to the Network and use of the Services and within twelve (12) hours thereafter (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 suspended Participant shall use its 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 possible time. If such Participant submits a plan of correction, Vendor will within five (5) business days review and either accept or reject the plan of correction. If the plan of correction is accepted, Vendor will, upon completion of the plan of correction, reinstate the suspended Participant's access to the Network and use of the Services and provide notice to all Participants of such reinstatement. If the plan of correction is rejected, such Participant's suspension will continue, during which time Vendor and the suspended Participant shall work in good faith to develop a plan of correction that is acceptable to both the suspended Participant and Vendor. At any time after Vendor rejects a Participant's plan of correction, either the Participant or Vendor may submit a Dispute to the Dispute Resolution Process described in Policy 1014. If Vendor and the suspended Participant cannot reach agreement on a plan of correction through the Dispute Resolution Process, Vendor may terminate the suspended Participant in accordance with this Policy. Nothing in the Agreement obligates Vendor to investigate or audit any Participant's compliance with the Agreement or Applicable Law.

- d. **Termination by Vendor.** Vendor may terminate, with GaHIN's prior written approval, a Participant's access to the Network and use of the Services and its Participant Agreement as follows:
- i. After taking a suspension action in accordance with this Policy, if there is a substantial likelihood that the Participant's acts or omissions create an immediate threat or will cause irreparable harm to another Participant, or its Participant Users, the Network, Vendor, GaHIN, or an Individual whose PHI is exchanged through the Network;
 - ii. In the event the Participant has materially breached the Agreement (including, but not limited to, the occurrence of a Breach) and has not cured such material breach within ten (10) business days' after receipt of written notice that includes a detailed description of the alleged material breach; or
 - iii. Immediately in the event that Participant violates the provisions of Policy 1008 regarding protection of Proprietary Information, Policy 1002 regarding prohibited purposes, or Policy 1004 regarding policies and procedures.

A Participant whose access to the Network and use of the Services is revoked by virtue of termination may appeal such revocation through the Dispute Resolution Process. However, during the pendency of any such appeal, Vendor may, in its sole discretion, continue the revocation of Participant's access to the Network and use of the Services.

- e. **Termination of Vendor.** GaHIN may terminate Vendor as provided in the Vendor Contract and shall give written notice to all Participants of any such termination. If GaHIN terminates Vendor, Vendor's rights and obligations under the Agreement will also terminate, except as expressly stated to survive such termination. GaHIN may engage another organization to fulfill the duties of Vendor, as long as such other organization agrees to comply with the duties of Vendor under the Agreement.
- f. **Effect of Termination.** Upon any termination of a Participant Agreement for any reason, the terminated Participant shall cease to be a Participant and thereupon and thereafter shall not have any rights to use the Network or the Services. Vendor shall revoke a terminated Participant's access to the Services and provide notice of the termination of such Participant's access to the remaining Participants. In the event that any Participant is terminated, the Agreement will remain in full force and effect with respect to all other Participants. Certain provisions of the Agreement survive termination, as more fully described in Policy 1016.
- g. **Disposition of Health Data Upon Termination.** At the time of termination, a terminated Participant may, at its election, retain Health Data on its System (if applicable) in accordance with such Participant's document and data retention policies and procedures, Applicable Law, and the

Agreement, including these Policies and Procedures. Vendor shall terminate access to or from a terminated Participant's System on the termination date for that Participant; however, Vendor may retain audit trail data for a terminated Participant for a period of time for legal defense purposes in accordance with the document and data retention policies stated in the applicable Network Operating Policies and Technical Requirements and the Vendor Contract. If Vendor is terminated pursuant to the Agreement, or terminated by GaHIN, or the Agreement is terminated in its entirety, Vendor (including any of its subcontractors or agents) shall no longer access or transmit any data to or receive data from Participants' respective systems, and shall comply with a transition plan approved by GaHIN, or if none is agreed upon, Vendor will delete or destroy (and certify such destruction to GaHIN and Participants) any data, including but not limited to any Health Data; however, if Vendor determines that returning or destroying PHI is not feasible, then Vendor must maintain the privacy protections under the Business Associate provisions and other provisions of these Policies and Procedures relating to protection of Health Data and according to Applicable Law for as long as Vendor retains the PHI, and Vendor may only use or disclose the PHI for the specific uses or disclosures that make it necessary for Vendor to retain the PHI. If Vendor determines that it is not feasible for Vendor to obtain PHI in its subcontractor or agent's possession, Vendor must provide a written explanation to all Participants of such reasons and require its subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in the Agreement to its subcontractors or agents' use or disclosure of any PHI retained after the termination of the Agreement, and to limit any further uses or disclosures for the purposes that make the return or destruction of the PHI not feasible.

GeorgiaDirect Services – Policy Number: GaHIN-1012
Policy Title: Insurance

PURPOSE

This Policy sets forth insurance requirements for the Parties.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

- a. Insurance by Vendor.** GaHIN shall cause Vendor and/or its subcontractors agree to procure and maintain insurance at its Vendor's cost in an amount necessary to protect itself, its employees, directors and officers from liability. Coverage shall be provided by carrier(s) licensed to do business in Georgia with a BEST rating of A-VII or higher and/or under Vendor's self-insurance program, if such self-insurance meets all regulatory requirements. Coverage will include, but not be limited to, technology errors and omissions liability, general liability and directors & officers liability. Specifically, GaHIN shall cause Vendor to maintain technology errors and omissions liability coverage, including network security and privacy coverage, in minimum amounts of ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) in the annual aggregate. Coverage under this policy will extend to the Participant's information in the care, custody and control of Vendor. GaHIN shall cause Vendor to maintain general liability coverage in minimum amounts of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the annual aggregate. Such insurance shall include coverage for contractual liability, products completed operations, personal injury, advertising injury, property damage and bodily injury (including death). GaHIN shall cause Vendor to also maintain excess umbrella coverage in minimum amounts of ten million dollars (\$10,000,000). GaHIN shall cause Vendor to notify Participant within ten (10) days of any substantial reduction, cancellation or termination of any insurance coverage. GaHIN shall cause Vendor to show proof of insurance coverage upon request.
- b. Insurance by Participants.** Each Participant shall carry insurance in an amount sufficient to cover its obligations hereunder; provided, however, that each Participant reserves the right to self-insure to meet the obligation of coverage in this Policy, if such self-insurance meets all regulatory requirements.

GeorgiaDirect Services – Policy Number: GaHIN-1013
Policy Title: Indemnification

PURPOSE

This Policy explains the indemnification requirements for Participants and GaHIN.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

- a. **Indemnification by Participants.** Each Participant will indemnify and hold harmless Vendor, GaHIN and the other Participants, and their respective affiliates, employees and agents for any damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising from Participant's or its Participant's Users' breach of the Agreement, including the unauthorized or improper use of the Network or use or disclosure of Health Data for any purpose other than a Permitted Purpose. Notwithstanding the foregoing, a Participant will not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). This indemnification obligation shall apply notwithstanding the fact that one or more third parties, including, but not limited to, Vendor, GaHIN or other Participants, may have contributed to the activities or situation giving rise to the claim; provided, however, the Participant's indemnification obligation shall be limited to the extent of such Participant's contribution.
- b. **Indemnification by GaHIN.**
 - i. **For Breach.** GaHIN will indemnify and hold harmless Participants and their respective affiliates, employees and agents for any damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising from GaHIN's material breach of the Agreement, including the unauthorized or improper use of the Network or GaHIN's use or disclosure of Health Data for any purpose other than a Permitted Purpose or as otherwise allowed under the Agreement. Notwithstanding the foregoing, GaHIN shall not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). This indemnification obligation shall apply notwithstanding the fact that one or more third parties, including, but not limited to, Vendor or one or more Participants, may have contributed to the activities or situation giving rise to the claim; provided, however, GaHIN's indemnification obligation shall be limited to the extent of GaHIN's contribution. For purposes of this section, third parties shall not include GaHIN's subcontractors or any party acting for or on behalf of GaHIN.
- c. **Indemnification in General.** In the event a suit is brought against a Party to the Agreement under circumstances where section (a) or (b) of this Policy applies (the "sued party"), the Party indemnifying the sued party ("indemnifying party"), at its sole cost and expense, shall defend the sued party in such suit if written notice thereof is promptly given to the indemnifying party, unless the failure to provide such notices does not prejudice the indemnifying party. If indemnifying party is required to indemnify and defend, it will have control of such litigation, provided, however, that the indemnifying party may not enter into any settlement or other agreement with respect to any claim, except as requires solely the payment of monetary damages, does not impose any duty or obligation on the sued party, or provide for an admission of fault on the part of the sued party, without the prior written consent of the

sued party. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the sued party; and the indemnifying party, in defending any action on behalf of the sued party, shall be entitled to assert in any action every defense or immunity that the sued party could assert in its own behalf. This indemnification applies to civil suits filed against the sued party and to administrative actions and civil penalties on the sued party imposed by state or federal government agencies that may result from breach of the Agreement by the indemnifying party.

- d. **Exception for Certain Participants.** The obligation to indemnify in this section (a) of this Policy shall not apply to any Participant who is barred by statute or other Applicable Law from indemnifying another Participant or GaHIN. If the Participant is an agency or other political subdivision of the State of Georgia, the provisions of Section 768.28, Georgia Statutes, relating to sovereign immunity shall govern. The Agreement is neither waiver of sovereign immunity nor consent by a state agency or political subdivision to suit by third parties.

GeorgiaDirect Services – Policy Number: GaHIN-1014
Policy Title: Dispute Resolution

PURPOSE

This Policy describes the process by which GaHIN, Vendor, and Participants shall handle and resolve disputes.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

- a. **General.** GaHIN and Participants acknowledge that it may be in their best interest to resolve Disputes through an alternative dispute resolution process rather than through civil litigation. Therefore, GaHIN and each of the Participants shall submit Disputes to the resolution process described below. Except as otherwise provided in this Policy, if any of GaHIN or the Participants refuses to participate in the Dispute Resolution Process, such refusal shall constitute a material breach of the Agreement and shall be grounds for termination.
- b. **Dispute Resolution Process:**
 - i. **Notice of Dispute.** When a Dispute arises, GaHIN or the applicable Participant will send notice, in accordance with the notice provision of these Policies and Procedures, to the other Parties involved in the Dispute. The notice must contain a summary of the issue as well as a recommendation for resolution and a copy must be sent to GaHIN for informational purposes.
 - ii. **Informal Conference.** Within thirty (30) calendar days of receiving the notice, the Parties involved in the Dispute are obligated to meet and confer with each other, at least once in good faith and at a mutually agreeable location (or by telephone), to try to reach resolution (the "Informal Conference"). If the parties to the Dispute reach a resolution at the Informal Conference, they will provide notification to that effect to GaHIN. The Parties agree that if any Party refuses to participate in such Informal Conference, or if the Informal Conference fails to produce a mutually acceptable resolution of the Dispute within fifteen (15) calendar days after the Parties' receipt of notice of the Dispute, the other Party or Parties may submit the matter to mediation or arbitration as described herein.
 - iii. **Mediation.** In the event a Dispute arises between or among the Parties that cannot be settled by Informal Conference as set forth above, the Parties may, upon mutual agreement, submit the matter to mediation to be conducted in a mutually agreeable location in Georgia. The process for selecting the mediator shall be determined by the mutual written consent of the Parties. If the Parties fail to agree to a process within ten (10) calendar days from a request, the requesting Party may proceed to invoke the arbitration process provided for below. The consent of any Party to such mediation may be withdrawn at any time, without cause. If the parties to the Dispute reach a resolution at the mediation, they will provide notification to that effect to Vendor and GaHIN.
 - iv. **Binding Arbitration.** The Parties agree that any Dispute which cannot be resolved between or among them after following the Dispute Resolution Process set forth above

in this Policy shall be subject to mandatory and binding arbitration before a single arbitrator. The arbitration shall be conducted by and according to the American Health Lawyers' Association's Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and judgment on the award by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in such location as mutually agreed upon by the parties to the Dispute; provided, however, that if such parties fail to agree within ten (10) calendar days of the request for arbitration, the location shall be determined by the arbitrator. Each Party involved shall be responsible for the costs and fees of its attorneys, accountants, consultants and other costs incurred in the preparation and presentation of its position at arbitration. The parties to the Dispute shall bear equally the cost of the arbitrator and those costs common to multiple parties. In the event the prevailing Party is required to seek enforcement of any arbitrator's decision in a court of competent jurisdiction, the Party ultimately prevailing in any appeal thereof shall have the costs and fees of its attorneys, accountants, and other consultants incurred in prosecuting such appeal and post judgment collection costs paid by the non-prevailing Party or Parties. If the arbitrator requires the assistance of a financial or accounting expert to carry out its duties under this section, the parties to the Dispute shall have the equal obligation to pay for such experts.

- c. **Immediate Injunctive Relief.** Notwithstanding the prior subsection, a Party may be relieved of its obligation to participate in the Dispute Resolution Process if such Party (i) believes that another Party's acts or omissions create an immediate threat to the confidentiality, privacy or security of Health Data exchanged through the Network or will cause irreparable harm to the Network or another Participant or Vendor, GaHIN or an Individual and (ii) pursues immediate injunctive relief against such other Party in a court of competent jurisdiction. The Party pursuing immediate injunctive relief must notify GaHIN and Vendor of such action within twenty-four (24) hours of filing for the injunctive relief and of the result of the action within twenty-four (24) hours of learning of the same. If the injunctive relief sought is not granted and the Party seeking such relief chooses to pursue the Dispute, the Parties must then submit to the Dispute Resolution Process.
- d. **Activities During the Dispute Resolution Process.** Pending resolution of any Dispute under the Agreement, the parties to the Dispute agree to fulfill their responsibilities in accordance with the Agreement, unless a party is a Participant that voluntarily suspends access to the Network and use of the Services or is suspended in accordance with Policy 1011.
- e. **Implementation of Agreed Upon Resolution.** If, at any point during the Dispute Resolution Process, all of the parties to the Dispute accept a proposed resolution of the Dispute, such parties agree to implement the terms of the resolution in the agreed upon timeframe.
- f. **Exceptions for Certain Participants.** The obligation to engage in binding arbitration in this Policy shall not apply to any Participant who is barred by statute or other Applicable Law from engaging in binding arbitration with another Party. Binding arbitration pursuant to this Policy shall not apply to the rights of action involving the state or its agencies or subdivisions or the officers, employees, or agents thereof pursuant to Section 768.28. If the Participant is an agency of the State of Georgia, the provisions of Section 768.28, Georgia Statutes, relating to sovereign immunity shall govern.

GeorgiaDirect Services – Policy Number: GaHIN-1015

Policy Title: Notices

PURPOSE

This Policy explains how notices are to be given.

SCOPE

This policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

All notices to be made under the Participant Agreements or these Policies and Procedures shall be given in writing to the appropriate Party's representative at the address set forth in the Participant Agreement with a copy to GaHIN in each case, and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by U.S. Postal Service Certified Mail, return receipt requested; or (iii) if by transmission nationally recognized overnight courier service that has the capability to track the notice, upon receipt.

GeorgiaDirect Services – Policy Number: GaHIN-1016
Policy Title: Miscellaneous/General

PURPOSE

This Policy sets forth miscellaneous terms that apply to the Agreement between the Parties.

SCOPE

This Policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

- a. **Governing Law.** The Participant Agreement and these Policies and Procedures shall be governed by and construed and enforced in accordance with the laws of the State of Georgia, without regards to its principles of conflicts of law.
- b. **Compliance With and Changes to Applicable Law.** The Parties agree to comply with Applicable Law with respect to the Agreement. Any new legislation or amendments to government regulations or administrative rules that become effective after the Effective Date shall be incorporated into the Agreement to the extent applicable to the Agreement, to be effective thereafter.
- c. **Entire Agreement.** The Agreement sets forth the entire and only agreement among Vendor and the Participants relative to the subject matter hereof, except for the License, and supersedes all previous negotiations and agreements, whether oral or written. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon GaHIN or any Participant.
- d. **Amendment.** Except for changes to Network Operating Policies and Technical Requirements made in accordance with Policy 1003, the Agreement may be amended only by an instrument in writing signed by the Party against whom the change, waiver, modification, extension, or discharge is sought, unless otherwise indicated in the Agreement and/or the Vendor Contract and subject to GaHIN's approval.
- e. **Assignment.** None of the Participants shall assign or transfer the Agreement, or any part thereof, without the express written consent of GaHIN. Any assignment that does not comply with the requirements of this subsection shall be void and have no binding effect.
- f. **Additional Participants.** Upon GaHIN's acceptance of a new Participant to have access to the Network and use the Services, GaHIN will coordinate with the new Participant for it to execute and be bound by the Agreement. To accomplish this, the new Participant will enter into a Participant Agreement, pursuant to which the new Participant agrees to be bound by the Agreement. The new Participant shall not be granted the right to access the Network or use the Services until both it and GaHIN execute the Participant Agreement.
- g. **Survival.** The provisions of Policy 1001 relating to accounting of disclosures, and Policies 1007, 1008-1011, and 1013-1017 and any other provisions of these Policies and Procedures that by their nature or by express statement shall survive, shall survive the termination of the Agreement for any reason.

- h. **Waiver.** No failure or delay by any Party in exercising its rights under the Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.
- i. **Validity of Provisions.** In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of the Agreement, invalid, void or otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect, as long as the original intent of the Agreement would not thereby be frustrated.
- j. **Priority.** In the event of any conflict or inconsistency between a provision in these Policies and Procedures and the body of the Participant Agreement, the Policies and Procedures contained in the body of the Participant Agreement shall prevail.
- k. **Headings.** The headings throughout the 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 the Agreement. All references in this instrument to designated “Sections” and other subdivisions are to the designated Sections and other subdivisions of the Agreement. The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to the Agreement as a whole and not to any particular Section or other subdivision.
- l. **Relationship of the Parties.** Each of Vendor and Participants are independent contracting entities. Nothing in the Agreement shall be construed to create a partnership, agency relationship, or joint venture among the Parties. No Party hereto shall have any authority to bind or make commitments on behalf of one another, nor shall any such Party hold itself out as having such authority. Neither Vendor nor a Participant shall be held liable for the acts or omissions of the other.
- m. **Third-Party Beneficiaries.** With the exception of the Parties to the Agreement and GaHIN (which is intended to be a third-party beneficiary), there shall exist no right of any person to claim a beneficial interest in the Agreement or any rights occurring by virtue of the Agreement.
- n. **Counterparts.** The Agreement may be executed in any number of counterparts and by facsimile or electronic means, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- o. **Force Majeure.** A Party shall not be deemed in violation of any provision of the Agreement if it is prevented from performing any of its obligations by reason of: (i) severe weather or storms; (ii) earthquakes or other disruptive natural occurrences; (iii) strikes or other labor unrest; (iv) power failures; (v) nuclear or other civil or military emergencies; (vi) terrorist attacks; (vii) acts of legislative, judicial, executive, or administrative authorities; or (viii) any other circumstances that are not within its reasonable control. This Section shall not apply to obligations imposed under Applicable Law.
- p. **Time Periods.** Any of the time periods specified in the Agreement may be changed pursuant to the mutual written consent of the Vendor and the affected Participants, with GaHIN’s prior written approval.

GeorgiaDirect Services – Policy Number: GaHIN-1017
Policy Title: Definitions

PURPOSE

This Policy defines terms applicable to the Agreement between the Parties.

SCOPE

This Policy applies to GaHIN's Direct Secure Messaging Service.

POLICY

For the purposes of the Agreement, the following terms not otherwise defined in these Policies and Procedures shall have the meanings ascribed to them below; provided, however, that to the extent not defined below or elsewhere herein, any terms capitalized in this Agreement shall have the meanings ascribed to such terms under HIPAA Regulations, HITECH, and/or other Applicable Law.

- a. **Accounting of Disclosures** shall have the meaning set forth at 45 CFR § 164.528.
- b. **Acknowledgement** shall have the meaning set forth at 45 CFR § 164.520.
- c. **Agreement** shall mean a Participant Agreement together with these Policies and Procedures, which are incorporated into each Participant Agreement by reference, as set forth in Policy 1000.
- d. **Applicable Law** shall mean all applicable statutes, rules and regulations of Georgia, as well as all applicable federal statutes, rules, and regulations, including, but not limited to, HIPAA and HITECH.
- e. **Breach** shall mean the unauthorized acquisition, access, disclosure, or use of Health Data. The term "Breach" does not include the following:
 - i. any unintentional acquisition, access, disclosure, or use of Health Data through the Network by an employee or individual acting under the authority of Vendor, a Participant or Participant User if:
 - a. 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 Vendor, the Participant or Participant User; and
 - b. such Health Data is not further acquired, accessed, used, or disclosed by such employee or individual; or
 - ii. 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 transmission of Health Data through the Network.
- f. **Business Associate** shall mean Vendor when it, pursuant to the Agreement:

- i. on behalf of a Covered Entity Participant, but other than in the capacity of a member of the workforce of such Covered Entity, performs, or assists in the performance of:
 - a. a function or activity involving the use or disclosure of PHI, or
 - b. any other function or activity regulated by the HIPAA Privacy Rule, or
 - ii. provides, other than in the capacity of a member of the workforce of a Covered Entity Participant, consulting, data aggregation (as defined in 45 CFR § 164.501), management, administrative, or other services to or for a Covered Entity Participant, where the provision of the service involves the disclosure of PHI from such Covered Entity Participant, or from another business associate of the Covered Entity Participant to the Business Associate.
- g. **Common Network Resource** shall mean software, utilities and automated tools made available for use in connection with the Network and which have been designated as a “Common Network Resource” by Vendor.
- h. **Covered Entity** shall mean a Participant that is a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR Parts 160, 162, or 164; or a health plan as that term is defined at 45 CFR Part 160.103.
- i. **Direct Secure Messaging Service** shall mean the encrypted e-mail service provided by Vendor wherein the Participant’s System may, on behalf of one of its authorized Participant Users, be used to send or receive information and/or Health Data with respect to an Individual through the Network to or from other Participants or other users of a qualified secured direct exchange service, and send or receive a response to or from other Participants or other users of a qualified secured direct exchange service that may include Health Data regarding the Individual.
- j. **Discloser** shall mean Vendor or a Participant that discloses Proprietary Information to a Receiving Party.
- k. **Dispute** shall mean any controversy, dispute, or disagreement arising out of or relating to the Agreement.
- l. **Dispute Resolution Process** shall have the meaning set forth in Policy 1014.
- m. **GaHIN** shall have the meaning set forth in Policy 1000. References to GaHIN shall also include any entity to which GaHIN assigns its rights and obligations pursuant to the Vendor Contract.
- n. **Health Care Operations** shall have the meaning given such term under HIPAA Regulations at 45 C.F.R. § 164.501.
- o. **Health Data** shall mean that information which is requested, disclosed, stored on, made available on, or sent by a Participant, or requested or sent by Vendor (only for the purposes of providing the Services) through the Network. This includes, but is not limited to, Protected Health Information, Individually Identifiable Health Information, Health Information, de-identified data, or limited data sets (as defined in the HIPAA Regulations), pseudonymized data, metadata, and schema.
- p. **Health Information** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.

- q. **HIPAA Regulations** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160, 162 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) of the American Recovery and Reinvestment Act of 2009, as in effect on the date of the Agreement and as may be amended, modified, or renumbered.
- r. **HITECH** shall mean the Health Information Technology for Economic and Clinical Health Act of 2009 (which is part of the American Recovery and Reinvestment Act of 2009 (ARRA)), and any of its implementing regulations.
- s. **Individual** shall mean a person who is the subject of PHI, shall have the same meaning as the term “individual” is defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- t. **Individually Identifiable Health Information** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.
- u. **Minimum Necessary** shall refer to the standard set forth at 45 CFR § 164.502(b) and 164.514(d) of the HIPAA Regulations.
- v. **Network** shall mean the network operated by Vendor that allows for the exchange of Health Data and/or information between and among Participants and Participant Users, through the Direct Secure Messaging Service, as described in the Agreement.
- w. **notice** or **notify** shall mean a written communication, unless otherwise specified in the Agreement, sent to the appropriate Party’s representative at the address listed in the Participant Agreement in compliance with Policy 1015 of these Policies and Procedures or as provided in the Participant Agreement.
- x. **Notice of Privacy Practices** shall have the meaning set forth at 45 CFR § 164.520.
- y. **Participant** shall mean any organization that (i) meets the requirements for participation in the Network as contained in the applicable Network Operating Policies and Technical Requirements, (ii) is accepted by Vendor and GaHIN for participation, and (iii) is a signatory to a Participation Agreement.
- z. **Participant Agreement** shall have the meaning set forth in Policy 1000.
- aa. **Participant Users** shall mean those persons who have been identified and authorized by a Participant to access Health Data through the Network and in a manner defined by the respective Participant, in compliance with the Policies and Procedures of the Agreement and Applicable Law. Participant Users may include, but are not limited to, health care organizations such as hospitals and clinics, health care providers and employees, contractors, or agents of a Participant.
- bb. **Parties** shall mean Vendor and Participants collectively and **Party** shall mean each Participant or Vendor individually.
- cc. **Payment** shall have the meaning given such term under HIPAA Regulations at 45 C.F.R. § 164.501.

- dd. **Permitted Purposes** shall mean the reasons for which Participants may legitimately exchange or use Health Data through the Network as set forth in Policy 1002.
- ee. **Proprietary Information**, for the purposes of the Agreement, shall mean proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such or that is commonly understood to be proprietary information. Proprietary Information includes, but is not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, processes and security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Discloser; and (iii) information or reports provided by a Discloser to a Receiving Party pursuant to the Agreement. Notwithstanding the foregoing, Proprietary Information does not include Health Data; any information which is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it; is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party's written records; or, is independently developed by or for a Receiving Party without reference to, reliance on, or use of, a Discloser's Proprietary Information.
- ff. **Protected Health Information** or **PHI** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.
- gg. **Receiving Party** shall mean the receiver of Proprietary Information from a Discloser.
- hh. **Required By Law** shall have the meaning set forth at 45 CFR § 164.103 of the HIPAA Regulations.
- ii. **Secretary** shall have the meaning set forth in Policy 1009.
- jj. **Services** shall mean the provision and use of the Network and all related services, including, without limitation, the Direct Secure Messaging Service, currently offered by GaHIN under the name "GeorgiaDirect".
- kk. **System** shall mean software, portal, platform, or other electronic medium controlled by a Participant through which the Participant sends, receives, discloses or uses Health Data through or from the Network. For the purposes of this definition, it shall not matter whether the Participant controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.
- ll. **Treatment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.
- mm. **Vendor Contract** shall mean the contract then in effect between Vendor and GaHIN, pursuant to which Vendor provides the Services.
- nn. **Vendor** shall have the meaning set forth in Policy1000.