



Texas Direct



TEXAS Direct Secure Messaging Participant Agreement Identity Verification Form

[IF SIGNATORY IS SIGNING ON BEHALF OF MULTIPLE PROVIDERS FOR AN ORGANIZATION, PLEASE ATTACH LIST OF PROVIDERS THAT INCLUDES FIRST NAME, LAST NAME, AND LICENSE/CERTIFICATION TYPE AND NUMBER.]

Date:

First Name

Last Name:

Email:

License/Certification Type:

License/Certification Number:

Practice Name: _____

Address: _____

Address 2: _____

City, State, Zip: _____

PRINTED NAME OF PARTICIPANT OR ORGANIZATION'S SIGNING AUTHORITY

SIGNATURE OF PARTICIPANT OR ORGANIZATION'S SIGNING AUTHORITY

INSTRUCTIONS FOR NOTARY

FOR THE PURPOSES OF THIS DOCUMENT, PERSONAL ACQUAINTANCE WITH THE INDIVIDUAL IS INSUFFICIENT. YOU MUST:

1. Review a current government-issued ID containing the individual's name and photograph.
2. Record the serial number and type of government-issued ID presented by the applicant. You should also record in your "notary's journal" the ID serial number of the identification that was presented to you.
- 3.

The undersigned applicant warrants, represents, and attests that all facts and information provided are accurate, current, complete and not misleading and that

- he or she is who he or she represents himself or herself to be;

- if signing on behalf of an organization, that the attached list of providers is accurate and contains only the names of individuals whose identities and credentials have been verified by the organization; and
- agrees, on behalf of himself, herself or his/her organization, to comply with the responsibilities associated with being a Participant, including the terms and conditions found in this TEXAS Direct Secure Messaging Participant Agreement.

The applicant agrees, on behalf of himself, herself or his/her organization, to accurately represent himself, herself or his/her organization in all communications using the TEXAS Direct Secure Messaging system.

Signed By: _____
(Sign Only in the Presence of Notary)

Printed Name: _____
First Name, Middle Initial, Last Name

ACKNOWLEDGEMENT

State of: _____

County of: _____

The foregoing instrument was acknowledged before me this ___ day of _____, 201__ by the signer and subject of the above form, who personally appeared before me and signed or attested the same in my presence, and presented the following government-issued photo ID card as proof of his/her identity:

Exact Name Listed on Photo ID _____

Serial Number of Photo ID Expiration ID Type _____

Notary Public: _____

Residing in: _____

My Commission Expires: _____

Street Address of Branch or Office _____

Name of Organization Employing Notary _____

Space Reserved for Notary Seal



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TEXAS Direct Secure Messaging Participant Agreement Fee Statement

[IF SIGNATORY IS SIGNING ON BEHALF OF MULTIPLE PROVIDERS FOR AN ORGANIZATION, PLEASE ATTACH LIST OF PROVIDERS THAT INCLUDES FIRST NAME, LAST NAME, AND LICENSE/CERTIFICATION TYPE AND NUMBER.]

Date:

First Name

Last Name:

Email:

License/Certification Type:

License/Certification Number:

Practice Name:

Address:

Address 2

City, State, Zip

Email:

Telephone:

Website:

PRINTED NAME OF PARTICIPANT OR ORGANIZATION'S SIGNING AUTHORITY

SIGNATURE OF PARTICIPANT OR ORGANIZATION'S SIGNING AUTHORITY

TEXAS Direct fees are as follows:

Individual TEXAS Direct addresses:

\$100 initiation fee and \$15/month* per person. This service is designed to support unlimited professional email usage but excludes machine generated messaging.

Organizations that have ten or more participants with individual TEXAS Direct addresses:

\$1,000 initiation fee and \$150/month* for the organization for up to 15 TEXAS Direct addresses. Additional TEXAS Direct address are \$15/month per person. This service is designed to support unlimited professional email usage but excludes machine generated messaging.

Departmental TEXAS Direct addresses (tied to a machine):

\$250 initiation fee and \$25/month* per machine.

Payment is required at enrollment and Net 15 days from invoice date on a monthly basis, unless Participant chooses to pay monthly fees on an annual basis.

*In the event a Participant chooses to pay monthly fees on an annual or semi-annual basis, CSSS shall grant the following monthly fee discounts:

If paid in advance on an annual basis: 10% discount

If paid in advance on a semi-annual basis: 5% discount

Participant hereby authorizes CSSS to provide the services as described above and warrants and represent that Participant has the requisite authority to legally bind and approve payment of forthcoming invoices. Via written notice to CSSS, Participant may cancel services for any reason with 30 days advance written notice. Written notice must be sent to:

Centex Systems Support Services
Attn: TEXAS Direct
8627 N. Mopac Expressway, Suite 350
Austin, Texas 78759

Participant must provide its own web browser and workstations, desktops, laptops or other hardware, software, and applications as necessary to access the internet. The minimum technical requirements are:

Internet Explorer versions 6 through 9
FireFox versions 2 and higher
Opera versions 9 and higher
Safari versions 3 and higher
Google Chrome (any version)

TEXAS Direct does not impose an internet connection speed requirement; however, transferring any large files via a slow (dial-up) connection may not be workable. A broadband connection is recommended.



Texas Direct



TEXAS Direct Secure Messaging Participant Agreement

Participant/Organization Legal Name: _____ ("Participant").

This TEXAS Direct Secure Messaging Participant Agreement is an agreement between the Participant set forth above and Centex Systems Support Services ("CSSS"), a Texas non-profit company located at 8627 N. Mopac Expressway, Suite 350, Austin, Texas 78759. CSSS is providing the TEXAS Direct Secure Messaging Services to Participant on behalf of the Integrated Care Collaboration ("ICC"), the regional health information organization ("RHIO"),.

This Agreement is made effective as of _____ (the "Effective Date").

RECITALS

- A. Participant furnishes, or may furnish, healthcare or healthcare related services to individuals in Texas.
- B. ICC furnishes health information exchange related services and products, directly and through its certified vendors, including CSSS, to subscribing participants.
- C. Participant desires to access and use the services provided by CSSS set forth below, and CSSS agrees to furnish such services under the terms of this Agreement, including the CSSS General Terms and Conditions of Participation, as amended from time to time, (the "Terms and Conditions").
- D. Capitalized terms used but not defined in the body of this Agreement shall have the meanings given to them in the Terms and Conditions.

In consideration of the Recitals and the mutual agreements that follow, the parties agree as follow:

AGREEMENT

1. Services and Support. CSSS shall furnish the following to Participant:
 - (a) Access to TEXAS Direct Secure Messaging; provided, however, that CSSS shall not be responsible for or verify the accuracy of any messages or whether any participant is authorized to send, receive, use, or disclose particular information and/or Health Data;
 - (b) Documentation on how to access and use the TEXAS Direct Secure Messaging available to Participant online.
 - (c) Telephone support during business hours to answer reasonable questions regarding how to use the TEXAS Direct Secure messaging.
 - (d) All licenses necessary for Participant to access the TEXAS Direct Secure Messaging.
 - (e) Any other custom, professional, or technical services as agreed in a writing signed by the parties from time to time.
 - (f) Create and maintain for seven (7) years an audit trail of Participant's (including each Participant Authorized User) transactions.
2. Permitted Purposes for this TEXAS Direct Secure Messaging Service. Participant agrees to use TEXAS Direct Secure Messaging to send Health Data to, or use Health Data received from other participants only in strict compliance with HIPAA, HITECH and all other Applicable Law and for only the following (the "Permitted Purposes"):
 - (a) Participant's or another health care provider's Treatment (as that term is defined in the HIPAA Regulations) of the individual who is the subject of the PHI sent or received by Participant or a Participant Authorized User.
 - (b) Participant's or another Covered Entity's Health Care Operations (as that term is defined in the HIPAA Regulations); provided, however, that in the case of Participant's disclosure of PHI to another Covered Entity: (i) Participant and the other Covered Entity each had or shall have a Treatment relationship with the Individual who is the subject of the PHI; (ii) the disclosure is for a purpose permitted by the HIPAA Regulations; and (iii) Participant shall disclose or request and use only the Minimum Necessary (as that term is defined in the HIPAA Regulations) PHI.
 - (c) Public health activities, as permitted by Applicable Law.

- (d) Reporting on clinical quality and other measures to demonstrate "meaningful use," as specified in regulations promulgated by the Department of Health and Human Services, or other payer incentive or accreditation programs, to the extent permitted by Applicable Law.
- (e) Each disclosure and each receipt of Health Data by Participant through TEXAS Direct Secure Messaging shall constitute a certification by Participant that Participant is complying with this Agreement.

3. Responsibilities of Participant. Participant shall:

- (a) Comply, and have each Participant Authorized User comply, with this Agreement;
- (b) Register with CSSS as a participant in TEXAS Direct Secure Messaging;
- (c) Provide a completed and notarized Identity Verification Form;
- (d) Provide its own web browser and the workstations, desktops, laptops or other hardware, software, and applications as necessary to access the internet;
- (e) Verify the identity of each Participant Authorized User;
- (f) Update its information with CSSS as necessary and required;
- (g) Permit its registration information to be audited for consistency with other information sources; and
- (h) Be solely responsible for its use, nonuse and interpretation of any Health Data it receives, and the accuracy of any Health Data it sends, using TEXAS Direct Secure Messaging.

4. Term and Termination. This Agreement shall commence on the Effective Date, continue for a term of one year, and automatically renew for additional one-year terms, unless earlier terminated as set forth in this Agreement (including Section 14 of the Terms and Conditions). Either of Participant or CSSS may choose not to renew this Agreement upon written notice to the other party at least 30 days prior to any renewal date.

5. Fees. As consideration for the Services, Participant shall pay to CSSS the fees set forth in the Fee Statement, in accordance with the Terms and Conditions.

6. Miscellaneous. Each party represents and warrants that the individual executing this Agreement has read and understood its terms and is duly authorized to execute and deliver this Agreement.

Accepted by PARTICIPANT:

By: _____

Print Name: _____

Title: _____

Date: _____

Address for Notices:

Accepted by CSSS:

By: _____

Print Name: _____

Title: _____

Date: _____

Address for Notices:



Texas Direct



TEXAS Direct Secure Messaging Participant Agreement Terms and Conditions

1. **Definitions.** For the purposes of the Agreement and these Terms and Conditions, capitalized terms shall have the meanings set forth below:
 - (a) “*Agreement*” means the TEXAS Direct Secure Messaging Participant Agreement entered into by and between CSSS and Participant, including Parts 1-7.
 - (b) “*Applicable Law*” means the applicable statutes, rules, and regulations of the state of Texas, as well as all applicable federal statutes, rules, and regulations such as HIPAA and HITECH (each as defined below).
 - (c) “*Covered Entity*” shall have the meaning set forth in the HIPAA Regulations.
 - (d) “*TEXAS Direct Secure Messaging*” means the service through which Participant and Participant Authorized Users send Health Data and related information regarding an Individual to, or receive such data from, other Participants.
 - (e) “*Discloser*” means Participant, a Participant Authorized User or CSSS that discloses Proprietary Information to a Receiving Party.
 - (f) “*Dispute*” means any controversy, dispute, or disagreement arising out of or relating to this Agreement.
 - (g) “*Health Data*” means that information which is requested, disclosed, stored on, made available on, or sent through TEXAS Direct Secure Messaging, including, but not limited to, Participant directory information, PHI, individually identifiable health information, de-identified data (as defined in the HIPAA Regulations), Limited Data Sets as defined in the HIPAA Regulations, pseudonymized data, metadata, and schema.
 - (h) “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, as amended and as implemented by the HIPAA Regulations.
 - (i) “*HIPAA Regulations*” means the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160, 162 and 164) promulgated by the U.S. Department of Health and Human Services.
 - (j) “*HITECH*” means Title XIII (the Health Information Technology for Economic and Clinical Health Act) of the American Recovery and Reinvestment Act of 2009.
 - (k) “*Participant Authorized User*” means Participant (if an individual) or Participant’s credentialed and/or identity-proofed employees who have been authorized by Participant to use the TEXAS Direct Secure Messaging.
 - (l) “*Permitted Purposes*” means the reasons for which Participant and Participant’s Authorized Users may legitimately exchange or use Health Data through TEXAS Direct Secure Messaging as defined in Section 2 of the Agreement.
 - (m) “*Proprietary Information*” means proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such or that is commonly understood to be proprietary information. Proprietary Information includes, but is not limited to (i) the Discloser’s designs, drawings, procedures, trade secrets, processes, specifications, source code, system architecture, processes and security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Discloser; and (iii) information or reports provided by a Discloser to a Receiving Party pursuant to this Agreement. Notwithstanding any label to the contrary, Proprietary Information does not include Health Data or any information which is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party’s written records; or, is independently developed by Receiving Party without reference to, reliance on or use of Discloser’s Proprietary Information. Health Data is excluded from the definition of Proprietary Information because other provisions of the Agreement address the appropriate protections for Health Data.
 - (n) “*Protected Health Information*” or “*PHI*” shall have the meaning set forth in the HIPAA Regulations.
 - (o) “*Psychotherapy Notes*” shall have the meaning set forth in the HIPAA Regulations.
 - (p) “*Receiving Party*” means Participant, a Participant Authorized User or TEXAS that receives Proprietary Information from a Discloser.
 - (q) “*Recipient*” means a person or organization that receives Health Data through the Network for a Permitted Purpose. Recipients may include, but are not limited to, Participants, and Participant Authorized Users.
 - (r) “*System*” means software, portal, platform, or other electronic medium used by Participant to send, receive, disclose or use Health Data, whether Participant’s use is through ownership, lease, license, or otherwise.

2. Subcontractors. CSSS may delegate its responsibilities to one or more subcontractors; provided, however, that each subcontractor shall agree that: (i) subcontractor shall comply with the security and confidentiality provisions of this Agreement and (ii) subcontractor shall comply with all Applicable Law.
3. Use of Health Data and Network.
 - (a) Agreement. Participant's use of Health Data transmitted via the TEXAS Direct Secure Messaging Service shall be governed by this Agreement, as well as the BAA attached as Exhibit A and all Applicable Law.
 - (b) Permitted Future Uses (Re-Disclosure). Subject to any rights or obligations at Termination, Recipients may retain, use and re-disclose Health Data received via the TEXAS Direct Secure Messaging Service in accordance with Applicable Law, the BAA and the Recipient's policies and procedures.
 - (c) Access of Health Data by CSSS. CSSS shall only access Health Data for the express purpose of connecting the Participants, facilitating the delivery of the Health Data on behalf of such Participants, and otherwise fulfilling its obligations under the Agreement. CSSS 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 TEXAS Direct Secure Messaging Service.
 - (d) Impermissible Purposes. Participant shall not use the TEXAS Direct Secure Messaging Service or permit any Participant Authorized User to use the TEXAS Direct Secure Messaging Service 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; (vi) attempt to gain unauthorized access to CSSS's or any Participant's computer system and (vii) impersonating another person or other misrepresentation of source.
 - (e) Other Prohibited Purposes. Participants or Participant Authorized Users may not access or use the Health Data or any Proprietary Information of another party via the TEXAS Direct Secure Messaging Service to compare patient volumes, practice patterns, or make any other comparison, unless Participant enters into a separate data sharing agreement with the other Participant(s) that is the source of the data.
4. Requests by CSSS. CSSS may request information from Participant related to potential breach, security or technical issues, and Participant shall not unreasonably refuse to provide information for such purposes. Notwithstanding the preceding sentence, in no case shall Participant be required to disclose PHI to CSSS in violation of Applicable Law. Any information, other than Health Data, provided by Participant to CSSS shall be treated as Proprietary Information as set forth in these Terms and Conditions, unless agreed otherwise.
5. Requirements for Participants.
 - (a) Compliance. All use of the TEXAS Direct Secure Messaging Service by Participant and Participant Authorized Users shall comply with this Agreement, including these General Terms and Conditions, and all Applicable Law. Nothing in this Agreement shall require a disclosure of PHI that is contrary to Applicable Law. Participant and Participant Authorized Users shall be solely responsible for their use of the TEXAS Direct Secure Messaging Service and Health Data sent or received via such Service and maintaining patient medical records, as applicable, in accordance with Applicable Law.
 - (b) Confidentiality. Participant agrees to comply with all Applicable Law governing confidentiality, privacy, disclosure and sharing of PHI and other data in its use of TEXAS Direct Secure Messaging. This includes, but is not limited to, Texas privacy laws, HIPAA, HITECH and the Gramm-Leach-Bliley Act of 1999.
 - (c) Cooperation by Participants in Service Evaluations. Participant shall cooperate in studies conducted from time to time by CSSS, ICC or its agent related to various issues surrounding the TEXAS Direct Secure Messaging Service, including the efficacy and usefulness of the Service. Such cooperation shall include, but not be limited to, participation in interviews, the completion of surveys, and the submission of other written or oral evaluations.
6. Security.
 - (a) Safeguards. Each of CSSS and Participant shall be responsible for maintaining a secure environment that supports access to, use of, and the continued development of the TEXAS Direct Secure Messaging Service, and shall use appropriate safeguards to prevent use or disclosure of Health Data by such party other than as permitted by this Agreement. Participants shall also adhere to privacy and security best practices with respect to enterprise security.
 - (b) Malicious Software. Participant and CSSS shall use commercially reasonable efforts to ensure that the information and Health Data being transmitted and any method of transmitting such information and Health Data shall 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 the TEXAS Direct Secure Messaging Service or any part thereof, or any hardware or software used by Participant or CSSS 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, shall cause the TEXAS Direct Secure Messaging Service or any part thereof or any hardware, software or data used by Participant or CSSS in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable.

7. Breach Notification. Each party shall report to the other any serious breach of confidentiality or security with respect to Health Data of which it becomes aware. This Section shall not be deemed to supersede or relieve a party's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of this Agreement and Applicable Law,
8. Disclaimers.
 - (a) Accuracy of Health Data. Nothing in these Terms and Conditions shall be deemed to impose responsibility or liability on Participant, CSSS or ICC related to the clinical accuracy, content or completeness of any Health Data provided pursuant to these Terms and Conditions.
 - (b) Incomplete Medical Record. Each Participant acknowledges that Health Data received via TEXAS Direct Secure Messaging may not include the Individual's full and complete medical record or history.
 - (c) Reliance on Health Data Availability. Participant acknowledges that neither CSSS nor ICC can guarantee that another Participant shall read and/or reply to a request for Health Data in a timely manner and therefore Participant shall not rely upon the availability of another Participant's or provider's Health Data. Participant is responsible for developing and maintaining backup procedures to be used in the event of a failure or unavailability of the TEXAS Direct Secure Messaging Service, and is responsible for implementing any such backup procedures, as determined necessary by Participant.
 - (d) Carrier Lines. Participant acknowledges that the exchange of Health Data via the TEXAS Direct Secure Messaging Service may be provided over various facilities and communications lines, and information shall be transmitted over local network 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 Participant's or CSSS's control. Provided Participant and CSSS use security measures, no less stringent than those in these Terms and Conditions, Participants and CSSS shall assume no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information transmitted over such carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of Health Data or other information attributable to transmission over such carrier lines.
9. Proprietary Information. Each Receiving Party shall hold Proprietary Information of the other party or another Participant in confidence and agrees that it shall not, during the term or after the termination of this Agreement, redisclose to any person or entity, nor use for its own business or benefit, any information obtained by it in connection with this Agreement, unless such use or redisclosure is permitted by the terms of these Terms and Conditions and Applicable Law. Proprietary Information may be redisclosed under operation of law, provided that the Receiving Party immediately notifies the Discloser of the existence, terms and circumstances surrounding such operation of law to allow the Discloser its rights to object to such disclosure. If after Discloser's objection, the Receiving Party is still required by law to redisclose Discloser's Proprietary Information, it shall do so only to the minimum extent necessary to comply with the operation of the law and shall request that the Proprietary Information be treated as such.
10. Business Associate Provisions. In the event that Participant is a Covered Entity, CSSS and each of its subcontractors furnishing services to Participant shall be a Business Associate of Participant and, along with Participant, shall be subject to the terms and conditions of the Business Associate Agreement attached hereto as Exhibit A.
11. Limitation of Liability. Neither party will be liable to the other for indirect, special, incidental, exemplary or consequential (including but not limited to loss of profit or goodwill) damages of any kind in connection with or arising out of the furnishing, performance or use of network or other deliverables provided or services performed under this agreement, whether alleged as arising under a breach of contract, tort or other legal theory, even if party has been advised of the possibility of such damages. In addition, neither party will be liable for any damages caused by delay in delivery or furnishing services, other deliverables or other services performed under this agreement. Each party's liability under this agreement for any direct damages of any kind will not exceed an amount equal to the fees paid or payable by Participant to CSSS under this agreement in the preceding twelve (12) months.
12. Termination. In the event that: (a) Participant fails to make any undisputed payment due to CSSS hereunder within ten (10) days after written notice of non-payment is received from CSSS to Participant; or (b) an involuntary petition in bankruptcy is filed against Participant or CSSS and is not dismissed within ninety (90) days; or (c) Participant or CSSS files a voluntary petition in bankruptcy or seeks other relief under the Federal bankruptcy laws; or (d) a receiver is appointed for Participant and such appointment is not removed or discharged within ninety (90) days; then, all amounts payable hereunder shall become immediately due and payable and this Agreement shall terminate. In the event that either party materially defaults in the performance of any of its obligations under this Agreement and does not substantially cure such default within thirty (30) days after being given written notice specifying the default, the non-defaulting party may, by giving written notice to the defaulting party, terminate this Agreement as of a date specified in such notice of termination. Either party shall have the right to terminate this Agreement upon ninety (90) days' written notice to the other. Participant shall pay CSSS any amounts due and owing up to and until the time of termination.
13. Warranty. CSSS represents and warrants to Participant that: (i) CSSS has the authority to enter into this Agreement; (ii) CSSS will perform the Services required under the Agreement in a professional and workmanlike manner. CSSS's exclusive obligation, and Participant's exclusive remedy, in the event of a breach of the warranties in this Agreement will

be for CSSS to re-perform the applicable services not in compliance with the warranty, provided CSSS receives written notice from Participant of such breach within thirty (30) calendar days after such services were originally performed. OTHER THAN AS EXPRESSLY SET FORTH IN THIS SECTION 13, CSSS MAKES NO EXPRESS OR IMPLIED WARRANTIES TO PARTICIPANT REGARDING, THE TEXAS DIRECT SECURE MESSAGING SERVICES, THE HEALTH DATA MADE AVAILABLE THROUGH THE TEXAS DIRECT SECURE MESSAGING OR OTHERWISE REGARDING THIS AGREEMENT. ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED. TEXAS DOES NOT WARRANT THAT THE TEXAS DIRECT SECURE MESSAGING SERVICES WILL OPERATE ERROR FREE, THAT THEY WILL OPERATE UNINTERRUPTED, THAT THEY WILL OPERATE IN COMBINATION WITH OTHER SOFTWARE NOT LICENSED OR SUBLICENSED BY CSSS OR THAT ANY DEFECTS ARE CORRECTABLE. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF QUIET ENJOYMENT, ACCURACY OF THE DATA AND NON-INFRINGEMENT. THE HEALTH DATA MADE AVAILABLE BY PARTICIPANTS THROUGH THE TEXAS DIRECT SECURE MESSAGING SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." EACH OF PARTICIPANT AND CSSS DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS, OR OTHER THIRD PARTIES OR DUE TO HARDWARE OR SOFTWARE FAILURES.

14. Insurance. CSSS shall secure and maintain sufficient insurance coverage in an amount not less than \$1,000,000, in effect through the performance of its obligations under this Agreement and following termination of this Agreement arising from its obligations under this Agreement.
15. General Fee Terms for Services. Unless expressly modified the following terms shall apply to Participant's payment of fees.
 - (a) Taxes. All fees and other charges for a particular service shall be exclusive of all federal, state, municipal, or other government excise, sales, use occupational, or like taxes now in force or enacted in the future, and Participant shall pay any tax (excluding taxes on CSSS's net income) that CSSS may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items or services provided pursuant to these Terms and Conditions.
 - (b) Third-Party Fees and Charges. Participant shall be solely responsible for any other charges or expenses Participant may incur to access or use the service.
 - (c) Failure to Pay Fees.
 - i. Interest on Late Payments. Fees not paid for the service by the due date, as defined in this Agreement, shall bear interest at the rate of 1.5% per month or the highest legal rate of interest, whichever is lower. The accrual of such interest shall not affect the rights and remedies of CSSS under these Terms and Conditions.
 - ii. Suspension of Service. In the event fees are not paid within 30 days following the due date (or, in the event Participant disputes any portion of the fees due), CSSS may suspend Participant's access to the TEXAS Direct Secure Messaging Services on 5 days' prior notice. CSSS may charge a reasonable renewal fee to cover its costs and overhead associated with restoring a suspended service after suspension due to non-payment.
 - iii. Collection. In the event that payment due to CSSS is collected at law or through an attorney-at-law, or under advice therefrom, or through a collection agency, Participant shall pay all costs of collection, including without limitation all court costs and reasonable attorneys' fees.
16. Notices. All notices to be made under this Agreement shall be given in writing to the appropriate party's representative at the address listed in the signature blocks of this Agreement and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by U.S. Postal Service Certified Mail, return receipt requested; or (iii) if by nationally recognized overnight courier service that has the capability to track the notice, upon receipt. A party may change its address for receiving notices by written notice to the other party.
17. Governing Law; Venue. The laws of the State of Texas shall govern this Agreement, without regard to its conflicts of law provisions. The venue of any action will be Travis County, Texas.
18. Changes to Applicable Law. Any new legislation or amendments to government regulations or administrative rules that become effective after the Effective Date of this Agreement shall be mutually agreed to by CSSS and the Participant as to the applicability of the change to this Agreement. Upon mutual agreement of the parties, a written amendment will subsequently be made to this Agreement to incorporate the requisite change(s).
19. Assignment. Participant may not assign this Agreement, in any respect, without the prior written consent of CSSS, which consent shall not be unreasonably withheld.
20. Severability. If any term or condition of this Agreement shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

21. Force Majeure. A party shall not be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (i) severe weather or storms; (ii) earthquakes or other disruptive natural occurrences; (iii) strikes or other labor unrest; (iv) power failures; (v) nuclear or other civil or military emergencies; (vi) terrorist attacks; (vii) acts of legislative, judicial, executive, or administrative authorities; or (viii) any other circumstances that are not within its reasonable control. This Section shall not apply to obligations imposed under Applicable Law.
22. Waiver. Failure or delay by either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.
23. Entire Agreement. The Agreement and its Exhibits constitute the entire agreement between the parties with regard to the subject matter of the Agreement and supersede all previous communications, whether oral or written, between the parties with respect to such subject matter.
24. Other Amendments. Except as set forth in Section 18, this Agreement may be amended only by an instrument in writing signed by the party against whom the change, waiver, modification, extension, or discharge is sought, unless otherwise indicated in this Agreement.
25. Relationship of the Parties. The parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the parties. No party hereto shall have any authority to bind or make commitments on behalf of one another, nor shall any such party hold itself out as having such authority.
26. Licenses. CSSS or its subcontractor shall issue Direct accounts/addresses and digital certificates (if applicable) to the Participant for use of Direct Secure Messaging only in accordance with the terms of this Agreement.
27. Survival. The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance by the parties shall so survive the completion of the performance, expiration, or termination of this Agreement.
28. Counterparts. This Agreement may be may be executed in two or more counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.