

AGREEMENT REGARDING TERMS AND  
CONDITIONS  
FOR  
HEALTH INFORMATION EXCHANGE  
PARTICIPATION

Effective May 2018

AGREEMENT REGARDING TERMS AND CONDITIONS FOR HEALTH INFORMATION EXCHANGE  
PARTICIPATION

1. DEFINITIONS

- 1.1. "Agreement" shall mean the collective reference to the Participation Agreement, the Terms and Conditions, and the Policies and Procedures.
- 1.2. "Alerts" shall mean an outbound message or "notification" triggered by an event where information flows from the GNOHIE to a Participant, as applicable.
- 1.3. "Authorized User" means a Participant or an individual who has been authorized by a Participant to access data via the GNOHIE in accordance with the Terms and Conditions and the Policies and Procedures.
- 1.4. "Data Provider" means a Participant that provides Patient Data to the GNOHIE.
- 1.5. "Data Recipient" means a Participant that obtains Patient Data from the GNOHIE.
- 1.6. "Data Source(s)" means a (i) Data Provider, (ii) third party entity providing data (including laboratory diagnostic testing results or medication history information), and (iii) any other sources from which data originates.
- 1.7. "External Networks" means statewide, nationwide, or other Health Information Exchange networks, which enable the secure exchange of health information among authorized parties.
- 1.8. "Greater New Orleans Health Information Exchange" or "GNOHIE" is a HIE operated by PATH and consists of PATH's systems, devices, mechanisms, and infrastructure which facilitates the electronic movement of Patient Data among Participants according to nationally recognized standards.
- 1.9. "Health Information Exchange" or "HIE" means the mobilization of health information electronically sent across a network of organizations.
- 1.10. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and its implementing regulations set forth in 45 CFR Parts 160 and 164.
- 1.11. "Louisiana Public Health Institute" or "LPHI" is an independent Louisiana 501(c)(3) organization that uncovers complementary connections across sectors to combine social, economic and human capital needed to "align action for health" (i.e. the mission of LPHI).
- 1.12. "Participant" shall mean an entity or person who has entered into a Participation Agreement or similar legal arrangement with PATH.
- 1.13. "Participation Agreement" means the HEALTH INFORMATION EXCHANGE PARTICIPATION AGREEMENT entered into by and between PATH and the Participant which sets forth the terms and provisions governing participation in the GNOHIE.

- 1.14. “Partnership for Achieving Total Health” or “PATH” is a Louisiana 509(a)(3) supporting organization to the Louisiana Public Health Institute. PATH is a health information organization that operates a Health Information Exchange network (i.e. the GNOHIE) with an objective to support LPHI through collaborative efforts in health information, research, education and training opportunities, and to promote positive health practices through collaboration in program initiatives and policy development, operating the GNOHIE, and other activities.
- 1.15. “Patient Data” means health information that is created or received by a health care provider and relates to the past, present, or future physical or mental health condition of an individual or the provision of health care to an individual and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, including such information that is made available for exchange by a Data Provider or Data Source pursuant to Section 6 herein below.
- 1.16. “Policies and Procedures” means PATH’s policies and procedures as listed on the GNOHIE website located at <http://gnohie.org>, as may be amended, repealed, and/or replaced from time to time.
- 1.17. “Services” refers to the services for which the Participant registers and means the information-sharing and aggregation services that PATH provides, as available from time to time, to enable Participants to exchange Patient Data on the GNOHIE, including:
- (a) Acting as an intermediary between, and operating a network of, Participants seeking to exchange information;
  - (b) Managing access to and use of the GNOHIE;
  - (c) Providing Participants access to External Networks; and
  - (d) Other services furnished by or available through GNOHIE from time to time.
- 1.18. “Terms and Conditions” means this AGREEMENT REGARDING TERMS AND CONDITIONS FOR HEALTH INFORMATION EXCHANGE PARTICIPATION as listed on the GNOHIE website located at <http://gnohie.org>, as amended, repealed, and/or replaced from time to time.
- 1.19. “Unauthorized Use” means (i) any attempt at or any action that results in circumventing the access controls or access policies of the GNOHIE; (ii) use in violation of intellectual property, privacy, publicity, proprietary information, rights and policies of others; and/or (iii) use other than in accordance with the Terms and Conditions, the Policies and Procedures, or applicable laws and regulations.
- 1.20. “Vendor” means each third-party vendor of software, hardware, and/or related services that, together with the software, hardware, and/or related services provided by other Vendors, comprise the GNOHIE and the Services.
- 1.21. “Vendor Agreement” means each agreement between PATH and a Vendor, respecting that Vendor’s provision of software or hardware and/or performance of related services.

## 2. TERMS AND CONDITIONS; POLICIES AND PROCEDURES

### 2.1. Terms and Conditions

The Terms and Conditions apply to the operation of the GNOHIE, the provision of the Services, and the relationship among PATH and Participant, and are incorporated by reference into the Participation Agreement entered into by and between PATH and Participant.

## 2.2. Policies and Procedures

Under the authority, guidance, scrutiny and approval of GNOHIE governance, PATH has developed policies to protect the health information entrusted to the exchange. The Policies and Procedures is incorporated by reference into the Participation Agreement entered into by and between PATH and Participant.

## 2.3. Procedures for Amendments

PATH is solely responsible for the development of the Terms and Conditions and the Policies and Procedures, and may amend, repeal, or replace the Terms and Conditions and/or the Policies and Procedures at any time as stated in the Participation Agreement entered into by and between PATH and Participant.

### 3. PARTICIPATION AGREEMENT

#### 3.1. Participation Agreement Required

Prior to accessing the GNOHIE or using the Services, the Participant must enter into a Participation Agreement with PATH and must comply with all terms and provisions stated therein the Participation Agreement.

### 4. AUTHORIZED USERS

#### 4.1. Identification of Authorized Users

To enable PATH to establish appropriate access for each Authorized User, the Participant shall provide PATH with a list, in a medium format approved by PATH, identifying all of the Participant's Authorized Users and as may be further described and/or requested therein Policies and Procedures. Thereafter, the Participant shall provide notification to PATH whenever an Authorized User is added or removed for any reason and notify PATH of such change within a reasonable amount of time but in no event later than seven (7) calendar days.

#### 4.2. Requirements for Participant's Authorized Users and PATH's Personnel

Participant shall ensure that each of its Authorized Users satisfies all of the requirements for Authorized Users whether set forth herein the Terms and Conditions and/or therein the Policies and Procedures. PATH shall ensure that each person utilizing the HIE, on behalf of PATH, satisfies all of the requirements for its personnel set forth herein the Terms and Conditions and/or therein the Policies and Procedures.

#### 4.3. No Use by Other than Authorized Users

Both PATH and the Participant shall restrict access to the HIE and, if applicable, use of the Services only to Authorized Users in accordance with this Section 4 and PATH's employees, agents, or contractors.

#### 4.4. Responsibility for Conduct of Participant and Its Authorized Users

Participant shall be solely responsible for all acts and/or omissions of Participant, its Authorized Users, and all other individuals who access the GNOHIE and/or use the Services either through the Participant or by use of any password, identifier or log-on received or obtained from the Participant or any of the Participant's Authorized Users.

#### 4.5. Rights of Authorized Users

An Authorized User shall have no rights to access the GNOHIE, and/or to use the Services or any Patient Data or other information made available therefrom, other than those granted to the Authorized User by PATH or by the Participant on whose behalf the Authorized User accesses the HIE and/or uses the Services or the Patient Data or other information made available therefrom, whether by virtue of the Authorized User's relationship with the Participant or otherwise. Any such rights of an Authorized User shall cease and terminate upon

(i) the removal of that Authorized User by PATH or the Participant or (ii) upon termination of the Participation Agreement between the Participant and PATH.

#### 4.6. Termination of Authorized Users

Participant shall require that all of its respective Authorized Users use the GNOHIE and the Services only in accordance with the Terms and Conditions and the Policies and Procedures, including without limitation the provisions thereof governing the confidentiality, privacy and security of protected health information. Participant shall discipline and/or sanction appropriately any of its respective Authorized Users who fail to act in accordance with the Terms and Conditions and in accordance with the Participant's policies and procedures, as applicable.

### 5. DATA RECIPIENTS' RIGHTS AND OBLIGATIONS

#### 5.1. Data Recipient's Use of Services

If the Participant is a Data Recipient, the terms of this Section 5 shall apply.

#### 5.2. Grant by PATH

PATH grants to Data Recipient a nonexclusive, personal, nontransferable, limited right to have access to and to use the GNOHIE and the Services as applicable, subject to the Data Recipient's full compliance with the Agreement. PATH retains all rights to the GNOHIE and all the components thereof. No Data Recipient shall obtain any rights to the GNOHIE except for the limited rights to use the GNOHIE expressly granted, if any, therein the Participation Agreement or otherwise stated herein the Terms and Conditions.

#### 5.3. Permitted Uses

A Data Recipient may use the GNOHIE, Services and Patient Data only as follows (the "Permitted Uses"):

- (a) Uses for Treatment, Payment, and Health Care Operations (as those terms are defined in HIPAA); or
- (b) Any other use that is permitted or required under HIPAA, or other applicable law governing the use and disclosure of Patient Data.

#### 5.4. Prohibited Uses

A Data Recipient shall not use or permit the use of the GNOHIE, Services or Patient Data for any purpose or use other than for the Permitted Uses set forth herein above in Section 5.3. Without limiting the generality of the foregoing, a Data Recipient shall not use the GNOHIE, Services, or Patient Data for any purpose or in any manner that is prohibited by HIPAA, or other applicable law.

#### 5.5. No Limitation on Data Recipient's Use of Its Own Data

Nothing in this Section 5 or elsewhere herein the Terms and Conditions nor therein the Policies and Procedures is intended or shall be deemed to limit Data Recipient's use of its own data, including Patient Data, in any way.

#### 5.6. Consent

Prior to accessing Patient Data, Data Recipient must comply with all applicable laws governing patient consent for the use or disclosure of information, as well as with all requirements regarding obtaining consent from patients that are set forth therein the Policies and Procedures.

### 6. DATA PROVIDERS' RIGHTS AND OBLIGATIONS

#### 6.1. Data Provider Obligations

If the Participant is a Data Provider, the terms of this Section 6 shall apply.

#### 6.2. Grants by PATH

PATH grants to each Data Provider a nonexclusive, personal, nontransferable, limited right to have access to and to use the GNOHIE for the purposes of complying with the obligations described in this Section 6, subject to the Data Provider's full compliance with the Agreement. PATH retains all rights to the GNOHIE and all the components thereof. No Data Provider shall obtain any rights to the GNOHIE except for the limited rights to use the GNOHIE expressly granted, if any, therein the Participation Agreement or otherwise stated herein the Terms and Conditions.

#### 6.3. Data Providers Generally

Data Provider shall participate in and maintain its connection to the GNOHIE and provide Patient Data through the GNOHIE.

#### 6.4. Ownership of Data

PATH and Participant acknowledge that Participant continues to own its data and that PATH holds the data on behalf of Participant as a custodian, subject to applicable law and the Agreement. Notwithstanding, in the event Participant terminates its Participation Agreement for any reason, Participant acknowledges that any Patient Data previously shared with the GNOHIE will remain with PATH, and PATH will maintain obligations with such data in accordance with the Agreement and applicable law.

#### 6.5. Measure to Assure Accuracy of Data

Data Provider shall, in accordance with the requirements described in the Agreement, use reasonable and appropriate efforts to provide Patient Data to the GNOHIE that is free from serious error, reasonably complete, and provided in a timely manner.

#### 6.6. License

The Data Provider grants PATH a perpetual, fully-paid, worldwide, non-exclusive, royalty-free right and license (i) to permit Authorized Users access through the GNOHIE to use all Patient Data provided by the Data Provider in accordance with the Agreement; (ii) to process Alerts; (iii) to use Patient Data to carry out PATH's duties under the Agreement, including without limitation system administration, testing, problem identification and resolution, management of the GNOHIE, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise permitted in the Agreement, and as PATH determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations; (iv) to use Patient Data that has been de-identified in accordance with HIPAA, (which if permitted by applicable law, may be de-identified by PATH), to assess and articulate the value of the GNOHIE in a manner consistent with PATH's mission and purpose and only in accordance with the Agreement. Except as specifically provided in the Agreement and as otherwise agreed to by both parties, nothing in the Agreement shall give rise to any right of PATH to any right, title, or interest in any Patient Data received by PATH through the GNOHIE, and PATH will not acquire any such right, title, or interest by virtue of providing the Services.

6.7. No Limitation on Data Provider's Use of Its Own Data

Nothing in this Section 6 or elsewhere herein the Terms and Conditions nor therein the Policies and Procedures is intended or will be deemed to limit Data Provider's use of its own data, including Patient Data, in any way.

6.8. Consent

Data Provider must comply with all applicable laws governing patient consent for the use or disclosure of information, as well as with all requirements regarding obtaining consent from patients that are set forth therein the Policies and Procedures.

7. OTHER OBLIGATIONS OF PARTICIPANTS

7.1. Software and Hardware Provided by Participant

Participant shall be responsible for procuring all equipment and software necessary for it to access the GNOHIE, use the Services, and provide PATH all information required to be provided by the Participant. Participant's required hardware and software shall conform to PATH's then-current specifications, as set forth therein the Policies and Procedures. Without limiting any other provision of the Terms and Conditions, PATH may change such specifications from time to time in its sole discretion upon not less than ninety (90) days prior notice to each Participant affected by the change. As part of the Participant's obligation to provide Participant's required hardware and software, the Participant shall be responsible for ensuring that all the Participant's computers to be used to interface with the GNOHIE are properly configured, including but not limited to the operating system, web browser, and Internet connectivity.

7.2. Other Resources



Participant shall be responsible for providing such other resources as may be reasonably necessary for connection with the implementation of the GNOHIE, including but not limited to making available such Participant staff members as may be necessary for such purposes.

7.3. Malicious Software, Viruses, and Other Threats

Participant shall use reasonable efforts to ensure that its connection to and use of the GNOHIE, including without limitation the medium containing any data or other information provided to the GNOHIE, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or “malware”, viruses, worms, and Trojan Horses) which will disrupt the proper operation of the GNOHIE, or any part thereof or any hardware or software used by PATH. An occurrence of such event, or the failure to take action around such an event, may cause such data and hardware of and with the GNOHIE to be destroyed by PATH in order to maintain protection of the GNOHIE and other Participant’s data.

7.4. Training

Participant shall provide appropriate and adequate training to all of the its Authorized Users, prior to them becoming Authorized Users, in accordance with the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of Protected Health Information, including without limitation requirements imposed under HIPAA. PATH may, from time to time, make certain training materials available for the Participant’s use.

7.5. Audits, Investigation and Reports

Participant shall review periodic audits and reports conducted and prepared by PATH and shall ensure compliant use of the GNOHIE by Participant and its Authorized Users, including taking appropriate follow-up actions as required by the Policies and Procedures.

7.6. Cooperation with PATH’s Participation in External Networks

Participant agrees, in accordance with the Policies and Procedures, to reasonably cooperate on issues relating to PATH’s participation in External Networks, a list of which are posted on PATH’s website, including but not limited to providing information and/or allowing audit of information, to the extent necessary for PATH to fulfill its reporting, audit, investigation and other obligations with respect to its participation in External Networks.

7.7. Unauthorized Use

Participant shall not engage in any Unauthorized Use of the GNOHIE and shall ensure that its Authorized Users do not engage in any Unauthorized Use of the GNOHIE.

7.8. Compliance with Participant’s Policies and Procedures

In the event of a conflict between the Policies and Procedures and a Participant’s own policies and procedures, the Participant shall comply with the policy that is more protective of individual privacy and security.

7.9. Compliance with Laws and Regulations

Without limiting any provision in the Agreement relating to Participant's compliance with applicable laws and regulations, the Participant shall comply with federal, state, and local laws, ordinances and regulations, and the Participant's policies and procedures applicable to its operations.

## 8. PATH'S RIGHTS, OBLIGATIONS, AND OPERATIONS

### 8.1. Compliance with Terms and Conditions

All Participants must comply with the Terms and Conditions including all applicable provisions relating to the Terms and Conditions therein the Participation Agreement.

### 8.2. Maintenance of the GNOHIE

PATH shall maintain the functionality of the GNOHIE and the Services, including maintenance of a disaster recovery plan, all as described therein the Policies and Procedures and shall in a timely manner provide such service, security, and other updates as are commercially available and appropriate.

### 8.3. Malicious Software, Viruses, and Other Threats

PATH shall use reasonable efforts to ensure that its provision of the GNOHIE and the Services, including without limitation the medium containing any data or other information provided to the GNOHIE does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or "malware", viruses, worms, and Trojan Horses) which will disrupt the proper operation of the GNOHIE, or any part thereof or any hardware or software used by PATH. Upon the occurrence of such event, or the failure to take action around such an event, may cause such data and hardware of and with the GNOHIE to be destroyed by PATH in order to maintain protection of the GNOHIE and Participants' data.

### 8.4. Training of PATH Personnel

PATH shall provide appropriate and adequate training to all of PATH's personnel, in the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of Protected Health Information, including without limitation requirements imposed under HIPAA and the Policies and Procedures.

### 8.5. Telephone and/or E-mail Support

PATH will provide or arrange for assistance in resolving difficulties in accessing and using the GNOHIE and the Services, as PATH determines appropriate to support the GNOHIE and the Services.

### 8.6. Audits, Investigations and Reports

PATH shall perform periodic audits and reports and any required follow-up actions as required from time to time.

### 8.7. Change or Termination of Services

Unless circumstances beyond PATH's control require it, changes to the GNOHIE or the Services that permanently reduce or limit the functionality or levels of service provided shall not be made without the approval of the PATH Board of Directors and not less than ninety (90) days prior notice to Participants.

#### 8.8. Compliance with Laws and Regulations

Without limiting any provision in the Agreement relating to the PATH's compliance with applicable laws and regulations, PATH shall comply in compliance with applicable federal, state, and local laws, ordinances and regulations, and its obligations in respect of its participation in External Networks.

### 9. SOFTWARE AND HARDWARE PROVIDED BY PATH

#### 9.1. Description

PATH shall from time to time enter into agreements with one or more Vendors to arrange for the provision of such software, hardware, and related services as PATH determines is appropriate to arrange for the availability of the GNOHIE and the performance of Services. Except where expressly provided otherwise herein the Terms and Conditions, PATH's obligations to provide or arrange for availability and performance of the GNOHIE, and the performance of Services shall be limited to the obligations undertaken by the Vendors pursuant to their respective Vendor Agreements with PATH.

#### 9.2. Grant of License

PATH grants to Participant and its Authorized Users a non-exclusive, personal, nontransferable, limited license to use the associated software and the associated hardware for access to or use of the GNOHIE and Service. PATH represents and warrants to each Participant that PATH has the legal right and power to grant the license described in this Section 9.2; provided, that the scope of such license, and those terms and conditions thereof, shall be limited by the terms and conditions of the licenses and other right to the associated software and hardware granted to PATH by a Vendor(s) ("Vendor Terms and Conditions"). PATH shall make Vendor Terms and Conditions of such licenses and other rights available to each Participant upon request.

#### 9.3. Modifications; Derivative Works

The Participant shall not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create the associated software or the GNOHIE, or to create any derivative works from the associated software or the GNOHIE. The Participant shall not modify the associated software or the GNOHIE or combine with any other software or services not provided or approved by PATH.

### 10. DISCLAIMERS AND EXCLUSIONS OF WARRANTIES

#### 10.1. Carrier Lines

Participant and PATH acknowledges that access to the GNOHIE is to be provided over various facilities and communications lines, and information will 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 are beyond PATH's and Participant's control. Neither PATH nor Participant assumes any liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the Participant's risk and is subject to all applicable, state, national, and international laws.

#### 10.2. No Warranties

ACCESS TO THE GNOHIE, USE OF THE SERVICES, AND THE INFORMATION OBTAINED BY A PARTICIPANT PURSUANT TO THE USE OF THOSE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND, EXCEPT AS PROVIDED IN A VENDOR AGREEMENT, NON-INFRINGEMENT. THE PARTICIPANT SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE GNOHIE OR THE INFORMATION IN THE GNOHIE, INCLUDING BUT NOT LIMITED TO INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL PATH OR ANY OTHER PARTICIPANT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF INFORMATION OR DATA, BODILY INJURY, OR OTHER THIRD-PARTY LIABILITIES, 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 PATH OR THE PARTICIPANT HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. PATH AND PARTICIPANT DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE GNOHIE.

#### 10.3. Other Participants and HIEs

- (a) By using the GNOHIE and the Services, Participant acknowledges that other Participants will have access to the GNOHIE and the Services. Pursuant to the Terms and Conditions, such other Participants shall have agreed to comply with the Terms and Conditions and the Policies and Procedures concerning use of the information made available through the GNOHIE and the Services; provided, however, that the actions of such other parties are beyond the control of PATH and the Participant. Accordingly, PATH and the Participant do not assume any liability for or relation to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the GNOHIE resulting from any action or failure to act of any other Participant or other party other than PATH and the Participant.

- (b) Participant acknowledges that data may also be shared with participants of other health information exchanges in connection with PATH's participation in External Networks. Participant acknowledges that PATH shall have no responsibility for the acts or omissions of any other qualified entity ("QE"), any users accessing or utilizing the GNOHIE through any External Network, any other QE, or any participant of any other QE.

#### 10.4. Participant's Action

Participant shall be solely responsible for any damage to a computer system, loss of data, and any damage to the GNOHIE caused by the acts and omissions of the Participant and/or its Authorized Users and all other individuals who access the GNOHIE and/or use the Services either through the Participant or by use of any password, identifier or log-on received or obtained from the Participant or any of the Authorized Users.

#### 10.5. Unauthorized Access; Lost or Corrupt Data

PATH shall not be responsible for unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the GNOHIE or for unauthorized access to, or alteration, theft, or destruction of the participant's data files, programs, procedures, or information through the GNOHIE, whether by accident, fraudulent means or devices, or any other method. Participant shall be solely responsible for validating the accuracy of all output, reports and information, and protecting the Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. PATH, its Vendors and Data Sources are not responsible for the content of any information transmitted or received through the GNOHIE or provision of the Services, except to the extent that the content of such information is distorted or corrupted as a direct result of the negligent acts or omissions or willful misconduct of PATH.

#### 10.6. Inaccurate Data

By using the GNOHIE and the Services, Participant acknowledges that all data to which access is made through the GNOHIE and/or the Services originates from Data Sources and does not originate from the GNOHIE. All such data is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. PATH neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of the Terms and Conditions, PATH shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content, or delivery of any data either provided by a Data Source, or used by a Data Recipient, pursuant to the Terms and Conditions, except to the extent that the content of such information is distorted or corrupted as a direct result of the negligent acts or omissions or willful misconduct of PATH.

#### 10.7. Patient Care

Without limiting any other provision of the Terms and Conditions, Participant and the Participant's Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from or in any way related to the use of the GNOHIE or the Services or the data made available thereby. No Participant or Authorized User shall have any recourse against, and through the Participation Agreement(s) that apply thereto, each shall waive, any and all claims of any nature whatsoever against PATH, Vendors, Data Sources and other Participants for any loss damage, claim, or cost relating to or resulting from its own use or misuse of the GNOHIE and/or the Services of the data made available thereby.

#### 10.8. Limitation of Liability

In addition to the limitations of liability set forth in Section 10.2 herein above:

- (a) Notwithstanding the foregoing or anything in the Participation Agreement to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of PATH, its officers, directors, employees or agents, shall be limited to the previous 12 months of fees received from Participant.
- (b) The foregoing limitation on liability set forth in Subsections 10.8(a) above shall not apply to intentional acts or omission of PATH.

#### 10.9. Remedies Against Vendors

Upon written request by Participant to PATH describing harm to Participant as a result of an alleged act or omission or willful misconduct by a PATH Vendor, PATH will: (a) examine whether PATH has a contractual basis to seek a remedy for Participant and report the results of its examination to Participant. If PATH determines that it does have a contractual basis to seek remedy for Participant, it will use reasonable efforts to pursue that remedy, or report back to Participant its reason for not doing so; and (b) provide reasonable cooperation in any efforts by Participant to pursue a remedy against a Vendor, including providing copies of the relevant Vendor Agreement, or report back to Participant its reason for not doing so.