

CLEARINGHOUSE/VENDOR TRADING PARTNER AGREEMENT

This Trading Partner Agreement (“Agreement”) is made by and between Highmark Inc. and one or more of its affiliated companies (collectively “Highmark”), and “Company,” an entity further identified on the EDI Transaction Application.

WHEREAS, Highmark Inc. performs certain claims processing and administrative services; and,

WHEREAS, Company provides services including receiving information from a party and sending all or part of that information to various other entities, or to the party, in standard and nonstandard formats; and,

WHEREAS, the information Highmark Inc. ("Highmark") and Company (collectively, the "Parties") desire to exchange electronically may include individually identifiable financial and/or protected health information (“PHI”) as defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 Code of Federal Regulations Parts 160-164, and applicable state regulations that implement Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., (the "GLB Regulations") now or as later amended; and,

WHEREAS, the Parties agree to safeguard, in accordance with applicable law and regulation, any and all PHI or other Data received, transmitted or accessed electronically to or from each other, and desire to set forth in writing their understanding with respect to these communications and the covenant of confidentiality and non-disclosure of PHI or other Data.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

Clearinghouse. A public or private entity, including a billing service, repricing company, community health management information system or health information system, or “value-added” networks and switches, that: (1) process or facilitate the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into a standard data element or a "Standard Transaction" as defined in Section II, below; or (2) receive a Standard Transaction from another entity, and process or facilitate the processing of health information into nonstandard format or nonstandard data content for the receiving entity. If a party to this Agreement acts as a Clearinghouse, this definition shall apply. If a party to this Agreement acts as both as a Clearinghouse and a Vendor, this definition and the definition of Vendor shall both apply. If a party to this Agreement does not act as a Clearinghouse, this definition shall not apply.

Data. Any information provided and/or made available by either of the Parties to the other, and includes, but is not limited to enrollment and eligibility data, claims data, and PHI.

Electronic Data Interchange ("EDI") Reference Guide ("Guide"). A technical user's manual provided to Company to assist it in electronic data interchange. Highmark reserves the right to revise and update the Guide in its sole discretion.

Health and Human Services ("HHS") Privacy Standard Regulation. Code of Federal Regulations Title 45, Parts 160 through 164.

HHS Transaction Standard Regulation. Code of Federal Regulations ("CFR") Title 45, Parts 160 and 162.

Individual. The person who is the subject of the Data, as defined by 45 CFR § 164.501.

Proprietary Data. That Data used in Highmark's business or business practices to which Company would not have access but for this Agreement, including but not limited to information systems technologies and practices, and operational processes.

Vendor. A public or private entity that exchanges data electronically with Highmark in connection with any of Highmark's business. If a party to this Agreement acts as a Vendor, this definition shall apply. If a party to this Agreement acts as both a Clearinghouse and a Vendor, this definition and the definition of Clearinghouse shall both apply. If a party to this Agreement does not act as a Vendor, this definition shall not apply. If the definition of Clearinghouse does not apply to a party who is a Vendor, use of the term "Clearinghouse" in this Agreement shall be considered to mean "Vendor" when applicable, except as otherwise set forth in these Definitions.

II. INTRODUCTION

This Agreement authorizes the Parties to electronically exchange Data, including PHI, through a public or private telecommunications network in an efficient and cost-effective manner, using, when required, language and code sets authorized at 45 CFR § 160 et seq., without limiting each party's obligations as set forth in this Agreement or imposed by applicable law, solely for the purposes set forth herein, and in accordance with the terms "Standard" and "Transactions" as defined at 45 CFR § 160.103 (hereinafter aggregated and referred to as "Standard Transactions"), the privacy standards described and referenced below, and the requirements for non-standard transactions (if applicable). Any Data, Proprietary Data or PHI exchanged under this Agreement is to be used and exchanged solely as authorized by HIPAA, and is further subject to the terms and conditions set forth in this Agreement.

III. TERM, TERMINATION and SUSPENSION

The term of this Agreement shall commence upon its complete execution. A party's ability to transmit, receive or access Data electronically will cease if this Agreement is terminated. This Agreement may be terminated by either party without cause upon sixty- (60) days written notice, or immediately by either party for cause. Cause shall include, but not be limited to, breach of any material term(s) of this Agreement, fraud, abuse, and/or failure to protect PHI. The terminating party may rescind notice of termination if the other party successfully cures the breach complained of to the terminating party's satisfaction. Each party may also temporarily suspend electronic communications under this Agreement to protect computer or data systems in cases of emergencies, or to perform maintenance. Each party agrees to minimize the frequency and duration of these temporary suspensions, and further agrees to develop and implement a Data recovery plan to facilitate protection of Data and continuity of operations.

IV. HIGHMARK OBLIGATIONS

- A. **ID(s) and Passwords.** Following receipt of the executed Agreement, Highmark will assign logon ID(s) and password(s) to Company to allow Company to authenticate its identity and transmit data electronically. Highmark shall retain title to, and reserves the right to change any logon ID or password at any time, for any reason, or if required to do so by law, regulation, or court order.
- B. **Data.** Highmark does not warrant the accuracy of the Data it may send to Company. In addition, Highmark's acceptance of the Data Company sends electronically, on any Provider's behalf, does not constitute guarantee of reimbursement.

V. COMPANY OBLIGATIONS AND AUTHORIZATIONS

- A. **Provision of Data.** Company may provide Highmark Data electronically, including PHI, in accordance with the terms of this Agreement and the Guide.

- B. **Logon ID and Password.** Company agrees to protect Highmark's logon ID(s) and password(s) from compromise, release or discovery by any unauthorized person, and shall not disclose the logon ID(s) and password(s) to any third party in any manner. If a breach of this provision occurs, Company must notify Highmark immediately as set forth in the Guide. Company acknowledges that only Company personnel it designates shall be permitted to use the logon ID(s) and password(s). Company's use of logon ID(s) and password(s) constitutes an Electronic Signature that confirms Company's willingness to: remain bound by these terms and conditions, and ratify any transaction conducted electronically by Highmark.
- C. **Company's Costs.** Company shall assume all its internal costs to transmit, access and receive Data electronically including, but not limited to, the costs of computers, terminals, connections, modems, and browsers, and the costs of providing sufficient security measures to safeguard receipt and transmission of PHI in accordance with 42 USC § 1320d-2(d), 45 CFR § 164.530(c), and the implementing regulations issued by HHS to preserve the integrity and confidentiality of, and to prevent non-permitted use or violations of disclosure of PHI.
- D. **Authorization to Use Data.** Company's use of a Highmark system or process under this Agreement constitutes authorization and direction to Highmark to use PHI or other Data to adjudicate and process health care claims Highmark receives from Company on behalf of Company's contracted employer groups or health care providers. Company acknowledges the sensitive, confidential and proprietary nature of this Data, and of Highmark's proprietary electronic communications processes. Company acknowledges Highmark may disclose the PHI or Data it makes available to Highmark in a manner consistent with HIPAA and this Agreement.
- E. **Relationship with Employer Groups and/or Providers.** Company agrees to execute business associate, trading partner or other necessary agreements with each individual Employer Group and/or Provider with whom Company does business, and shall provide Highmark, at such reasonable time(s) as Highmark shall request, written verification of any or all Employer Group or Provider(s)' status in executing such agreements. Highmark reserves the right to refuse to accept any Data from Company that has been sent from any Employer Group or Provider which has not executed any necessary agreement with Company.

VI. INDEMNIFICATION

Each party shall release, defend, indemnify and hold harmless the other party, its corporate subsidiaries, affiliates officers, directors, employees, agents, persons, firms, divisions, successors and assigns, against any and all: liability, losses or damages, whether direct or indirect, to person or property; claims; judgments; costs and reasonable attorney's fees; legal action or potential for the same which may result from the first party's improper use or unauthorized disclosure or use of Data or PHI, Proprietary Data, or the other party's information systems, in violation of this Agreement. Each party assumes all liability for any damage, whether direct or indirect, to the Data on the other party's information systems, or to the systems themselves, caused by the unauthorized acts or omissions of the first party, or the unauthorized use of Data by that party, its employees, agents or third parties who gain access to these systems through the acts or omissions of that party, its employees or agents. Neither party shall be liable to the other party for damages caused by circumstance beyond its control, including, without limitation: "hackers" who gain access to the system or Data in spite of a party's compliant security measures, a major disaster, epidemic, the complete or partial destruction of its facilities, riot, civil insurrection, war or similar causes. Neither party shall be liable to the other party for any special, incidental, exemplary or consequential damages.

VII. COMPLIANCE WITH PRIVACY STANDARDS

Each party will develop, implement, maintain and use appropriate administrative, technical, and physical Data safeguards, and appropriate policies, process and procedures for the protection of the privacy of PHI in compliance with 45 CFR, Part 164, Subpart E.

VIII. SYSTEMS AND PERSONNEL SECURITY/UNAUTHORIZED DISCLOSURES.

The Parties shall comply with the regulations of the Department of Health and Human Services governing security standards for the protection of Electronic Protected Health Information, 45 C.F.R. § Part 64, Subpart C. If an unauthorized disclosure of PHI, or the discovery of unauthorized access to and/or tampering with the Data or Highmark's Proprietary Data is discovered, the disclosing party will immediately report to the other party, using the most expeditious medium available, no later than twenty-four (24) hours after such discovery/disclosure is made, the following information: (i) the nature of the disclosure, (ii) PHI used or disclosed, (iii) the individual(s) who made and received the disclosure, (iv) any corrective action taken to prevent further disclosure(s) and mitigate the effect of the current disclosure(s), and (v) any such other information reasonably requested by the non-disclosing party. If any such unauthorized disclosure or access should constitute a Breach (as defined in 45 C.F.R. § 164.402), the Parties will cooperate to achieve compliance with the notification requirements of 45 C.F.R., Part 164, subpart D.

IX. COMPLIANCE WITH STANDARD TRANSACTIONS

When required, the Parties shall comply with the applicable requirements of law or regulation when performing Standard Transactions to include not entering into any Trading Partner Agreement related to this Agreement that changes any definition, data condition or use of a data element or segment, nor adds any data elements or segments to the maximum defined data set as proscribed in the HHS Transaction Standard Regulation, or as further proscribed by Highmark; and, neither using any code or data elements that are either marked "not used," or are not found in the HHS Transaction Standard's implementation specifications, nor changing the meaning or intent of any of those specifications. (See 45 CFR §§ 162.915(b)(c)(d)). Section IX shall survive termination of this Agreement.

X. NOTICES

Any notice relating to this Agreement shall be in writing and transmitted by either (i) U.S. Mail, first class, postage prepaid; (ii) facsimile transmission; or (iii) e-mail, to such addresses/telephone numbers/e-mail addresses contained in the Guide. Notices or communications shall be deemed given (a) in the case of transmittal by U.S. mail, on the date of receipt by the addressee and (b) in the case of facsimile or e-mail transmission, on the date the facsimile or e-mail is sent. Notices that relate to changes or revisions to the Guide shall be made in accordance with procedures found in that Guide.

XI. RECORDS AND AUDIT

The Parties shall maintain, in accordance with their document retention policies, and for a minimum of seven (7) years, true and correct copies of any source documents from which they reproduce Data. Highmark reserves the right to audit those records and security methods of the Company necessary to ensure compliance with this Agreement or to ensure that adequate security precautions have been made to prevent unauthorized disclosure of any Data.

XII. SURVIVAL OF PROVISIONS

Any provision of this Agreement which requires or reasonably contemplates the performance or existence of obligations by either party after the termination of the Agreement shall survive such termination.

If any such unauthorized disclosure or access should constitute a Breach (as defined in 45 C.F.R. § 164.402), the Parties will cooperate to achieve compliance with the notification requirements of 45 C.F.R., Part 164, subpart D.

XIII. ASSIGNMENT

No right or interest in this Agreement, or delegation of services or other obligations under this Agreement, shall be assigned by either party without prior written consent of the other party.

XIV. GOVERNING LAW

Construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the Commonwealth of Pennsylvania, except to the extent federal law preempts them.

XV. WAIVER OF RIGHTS

No course of dealing or failure of either party to strictly enforce any term, right or condition of the Agreement shall be construed as a waiver of such term, right or condition.

XVI. SEVERABILITY

If any provisions of this Agreement shall be deemed invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing those invalid or unenforceable provision(s), and the rights and obligations of each party shall be construed and enforced accordingly.

XVII. ENTIRE AGREEMENT

This Agreement shall constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement and shall not be altered, varied, revised or amended except in writing signed by both Parties. The provisions of this Agreement supersede all prior oral or written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement