

PROVIDER TRADING PARTNER AGREEMENT

This Trading Partner Agreement (hereinafter “Agreement”) is made by and between Highmark Inc. and/or one or more of its affiliated companies (collectively “Highmark”) and “Provider”, a licensed health care provider further identified on the EDI Transaction Application.

WHEREAS, Highmark, performs certain claims processing and administrative services in connection with health benefit plans; and,

WHEREAS, Provider renders certain professional health care services ("Services") to members of employer groups and individuals, and submits documentation of those Services to Highmark; and,

WHEREAS, Provider and Highmark (collectively, the "Parties") desire to exchange by and through electronic communications, certain claims and billing information that may contain 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 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 any and all PHI or other data received, transmitted or accessed electronically to or from each other in accordance with HIPAA and the GLB Regulations, 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 hereto agree as follows:

I. DEFINITIONS

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. A technical user's manual provided to Provider to assist Provider in preparing and completing electronic data interchange. Highmark reserves the right to revise and update the EDI Reference Guide (“Guide”) in its sole discretion.

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

HIPAA. Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d *et seq.*, as added by section 262 of the Health Insurance Portability and Accountability Act of 1996, and regulations adopted thereunder by the Department of Health and Human Services, 45 C.F.R. Parts 160, 162 and 164.

HHS Transaction Standard Regulation. 45 CFR Parts 160 and 162.

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

Proprietary Data. That information used in Highmark's business or business practices to which Provider would not otherwise have access but for its contractual relationship with Highmark, including but not limited to information systems technologies and practices, and operational processes.

Regulatory References. Any capitalized term not defined herein will have the meaning ascribed to it in the applicable HHS regulation.

II. INTRODUCTION

This Agreement authorizes the Parties to electronically exchange Data, including PHI, through a public or private telecommunications network solely for the purposes set forth herein, in accordance with the privacy and security standards described and referenced below. Any Data, Proprietary Data or PHI exchanged under this Agreement is to be used and exchanged solely as authorized by HIPAA and other applicable laws, 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 execution. Provider agrees that its ability to transmit, receive or otherwise electronically access Data will cease if Provider or Highmark terminates this Agreement.

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. Notice of termination may be rescinded by the terminating party 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.

IV. HIGHMARK OBLIGATIONS

- A. **ID(s) and Password(s)**. Upon execution of this Agreement, Highmark will assign logon ID(s) and password(s) to Provider to allow Provider to authenticate its identity and transmit data electronically. Highmark shall retain title to all logon ID(s) and password(s), 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**. The Data the Parties may exchange pursuant to this Agreement may change as a result of changes in law or regulation, or actions taken by an employer group in accordance with the terms and conditions of certain health care benefits contracts, or changes made to those contracts. Highmark does not warrant the accuracy of the Data it sends to Provider; acceptance by Highmark of the Data Provider sends electronically does not constitute guarantee of reimbursement.

V. PROVIDER OBLIGATIONS AND AUTHORIZATIONS

- A. **Provision of Data**. Provider may provide Highmark Data electronically, including the minimum necessary PHI (see 45 CFR § 164.502(b)) in accordance with the terms of the Agreement and the Guide. Provider is solely responsible to ensure that the Data it provides Highmark is correct.
- B. **Logon ID and Password**. Provider agrees to protect Highmark's logon ID(s) and password(s) from compromise, release or discovery by any unauthorized person, and shall not disclose logon ID(s) and password(s) to any third party in any manner. If a breach of this provision occurs, Provider must notify Highmark immediately as set forth in the Guide. Provider acknowledges and agrees that only Provider personnel it designates shall be permitted to use the logon ID(s) and password. Provider's use of logon ID(s) and password(s) constitutes an Electronic Signature that confirms Provider's willingness to: remain bound by these terms and conditions and ratify any transaction conducted electronically by Highmark.
- C. **Provider's Costs**. Provider 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 that have the capability to comply with any HIPAA-mandated privacy

security or Standard Transaction rules, and the costs of providing sufficient security measures to safeguard receipt and transmission of PHI in accordance with applicable HHS regulations.

- D. **Authorization to Use Data.** Provider'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 Provider. Provider may access, receive and transmit only that Data in such format as described in the Guide. No electronic communication will give rise to any obligation until it is accessible at the receiving party's computer as set forth in the Guide. Provider acknowledges that Highmark may re-disclose PHI transmitted to it for proper purposes relating to Payment, Treatment or Health Care Operations, as authorized by HIPAA.

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 that first party's improper use or unauthorized disclosure or use of Data or PHI in violation of this Agreement. Each party assumes all liability for any damage, whether direct or indirect, to the Data or the other party's information systems caused by the unauthorized use of such Data or information systems by the first party, its employees or agents or any third party who gains access to the systems through their acts or omissions. 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, in compliance with HIPAA and patient confidentiality provisions of applicable state statutes or regulations.

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 each applicable regulation when performing "Standard Transactions." The Parties will not enter 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 prescribed in the HHS Transaction Standard Regulation, and as further prescribed by Highmark. (See 45 CFR § 162.915(b)). The Parties further agree that they will neither use any code or data elements marked “not used” or which are not found in the HHS Transaction Standard’s implementation specifications, nor change the meaning or intent of any of the HHS Transaction Standard implementation specifications. (See 45 CFR § 162.915(c)(d)).

X. NOTICES

Any notice relating to this Agreement shall be in writing and transmitted by either (i) U.S. Mail, first class, postage prepaid; or (ii) facsimile transmission; or (iii) e-mail, to the 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 e-mail or facsimile transmission, on the date the e-mail or facsimile is sent.

XI. RECORDS AND AUDIT

The Parties shall maintain, in accordance with their document retention policies and applicable law and regulation, 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 Provider 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.

XIII. ASSIGNMENT

No right or interest in this Agreement shall be assigned by either party without the prior written permission of the other party.

XIV. GOVERNING LAW

The 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 and any Manuals, Guides, Exhibits and Attachments thereto 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.