

GROUP HEALTH PLAN TRADING PARTNER AGREEMENT

This Trading Partner Agreement (hereinafter “Agreement”) is made by and between Highmark Inc. (“Highmark”), and “Company,” the group health plan of the employer further identified on the EDI Transaction Application.

WHEREAS, Highmark performs certain claims processing and/or administrative services for Company, under the terms and conditions of Company's Group Health Benefits Contract, either under an insured arrangement or administrative services agreement (“Benefits Contract”); and,

WHEREAS, Highmark and Company (collectively, the “Parties”) desire to electronically exchange individually identifiable financial and/or protected health information (“PHI”) in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), its implementing regulations (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, 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

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 Company to assist Company in preparing and exchanging electronic data. Highmark reserves the right to revise and update the EDI Reference Guide (or “Guide”) in its sole discretion.

Group Health Plan. An employee welfare benefit plan (see section 3(1) of the Employee Retirement Income and Security Act of 1974 (“ERISA”), 29 U.S.C. § 1002(1)), including insured and self-insured plans, that provides “medical care” (see section 2791 (a)(2) of the Public Health Service Act, 42 U.S.C. § 300gg-91(a)(2)), to employees or their dependents directly or through insurance, reimbursement, or otherwise, that has 50 or more participants (see section 3(7) of ERISA, 29 U.S.C. § 1002(7)); or is administered by an entity other than the employer that established and maintains the plan.

Health and Human Services (“HHS”) Privacy Standard Regulation. 45 Code of Federal Regulations (“CFR”) Parts 160 through 164.

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

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

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

II. INTRODUCTION

This Agreement shall be interpreted consistently with Company's Benefits Contract, and authorizes the Parties to exchange Data, including PHI, through a public or private telecommunications network using language and code sets authorized at 45 CFR §160 *et seq.*, in an efficient and cost-effective manner without limiting the obligations of each party under this Agreement or applicable law, solely for the purposes set forth herein 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 more specifically 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 Company's Benefits Contract and this Agreement.

III. TERM, TERMINATION and SUSPENSION

The term of this Agreement shall commence upon execution of this Agreement and shall run concurrently with the term of the Company's Benefits Contract, if not terminated earlier as set forth below. Company agrees that its ability to transmit, receive or otherwise electronically access Data will be terminated if either Company's Benefits Contract or 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, Company's Benefits Contract, 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 temporarily suspend electronic communications under this Agreement to protect computer or data systems in emergencies, or to perform maintenance. Each party agrees to minimize the frequency and duration of these temporary suspensions.

IV. HIGHMARK OBLIGATIONS

Upon execution of this 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(s) or password(s) at any time, for any reason, or if required to do so by law, regulation, or court order. The Data the Parties exchange pursuant to this Agreement may change as a result of Company's group coverage alterations, cancellations, or deletion of members in accordance with the terms and conditions of the Company's Benefits Contract; or in response to changes in law or regulation. Highmark does not warrant the accuracy of the Data it receives from Company.

V. COMPANY OBLIGATIONS and AUTHORIZATIONS

- A. **Provision of Data.** Company 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. Company is solely responsible to make eligibility determinations, and to ensure that the Data it provides Highmark is correct.
- 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 that have the capability to use HIPAA-mandated code-set Standard Transactions, 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, or to release PHI to health care providers for treatment, payment and health care operations. Company acknowledges that any changes made to the Data, including but not limited to coverage alterations and enrollment, may impact the premium or administrative charges Company must pay under the terms and conditions of its Benefits Contract, so long as those changes are accurate. Company acknowledges Highmark may disclose the Data, including PHI, it makes available to Highmark for Individuals who are members of a plan to the plan sponsor in a manner consistent with HIPAA's requirements, and this Agreement.

VI. HIPAA REQUIREMENTS FOR DISCLOSURE OF PHI

Company must ensure that the plan documents restrict uses and disclosures of PHI consistent with the requirements of 45 CFR § 164.504 and 45 CFR § 164.508 before disclosing PHI to the plan sponsor, or permitting the disclosure of PHI to the plan sponsor by Highmark. Company may disclose PHI to the plan sponsor only after Company's plan documents are amended to incorporate provisions to: provide for adequate separation between Company and the plan sponsor; establish permitted and required uses and disclosures of PHI by the plan sponsor consistent with law and regulation; and provide that Company will disclose PHI to the plan sponsor only upon receipt of a certification by the plan sponsor that the plan documents have been amended to incorporate all requisite statutory and regulatory provisions. Company represents and warrants such certification has been made.

VII. 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, including 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.

VIII. COMPLIANCE WITH PRIVACY STANDARDS

Each party will develop, implement, maintain and use appropriate administrative, technical and physical Data safeguards, in compliance with 42 U.S.C. § 1320d-2(d), 45 CFR § 164.530(c) and the patient confidentiality provisions of applicable state statutes, and shall comply with any applicable GLB Regulations, or any amendments to any of these statutes or regulations.

Each party shall execute trading partner, and/or business associate agreements with subcontractors or agents that provide services involving maintenance, use or disclosure of PHI, ensuring that any subcontractors or agents to whom it provides PHI agree in writing to those restrictions that, with respect to such PHI, apply to that individual subcontractor or agent. Each party agrees that it will not maintain, use, make available or further disclose PHI other than as permitted or required by this Agreement or as required by law.

If any activity under this Agreement would cause any Party to be considered a "Business Associate" of any other Party under 45 CFR. § 160.103, the following restrictions will apply to all uses and disclosures of PHI. The Business Associate will: (i) Not use or further disclose PHI other than as permitted or required by this Agreement, or to comply with judicial process or any applicable statute or regulation; (ii) Notify the other Party in advance of any disclosure of PHI that the Business Associate is required to make under any judicial or regulatory directive; (iii) Use appropriate safeguards to prevent use or disclosure of PHI other than for the purposes required in this Agreement; (iv) Report to the other parties any use or disclosure of PHI not provided for in this Agreement of which the Business Associate becomes aware; (v) Ensure that any agents or subcontractors to whom the Business Associate discloses PHI received from another party, or created on behalf of another party, agrees to the same restrictions and conditions that apply to the protection of information under this Agreement; (vi) Make PHI available to individuals as required by 45 CFR § 164.524; (vii) Make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526; (viii) Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528; (ix) Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or collected by the Business Associate on behalf of another Party, available to the Secretary of HHS when called upon for purposes of determining the other Party's compliance with federal privacy standards; and (x) At termination of this Agreement, if feasible, return or destroy all PHI received from another Party, or created or collected by the Business Associate on behalf of the other Party, that the Business Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, or if the PHI is still used to perform business functions, continue to treat all such PHI in accordance with the limits provided in this Agreement, and applicable law and regulation.

IX. SYSTEMS AND PERSONNEL SECURITY/UNAUTHORIZED DISCLOSURES

The Parties shall comply with the final version of the data security standard promulgated by HHS (proposed version found at 45 CFR Part 142, published August 12, 1998, 63 Federal Register, Pages 43241-43280, the "Security Standard"). On or before the required compliance date of the final Security Standard, the Parties will adopt any necessary modifications to their practices for maintaining PHI or transmitting PHI electronically, and shall provide any written assurances required under the final Security Standard to prevent unauthorized access to Data. 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. The Parties will cooperate in the event of any litigation concerning unauthorized use, transfer or disclosure of such Data.

The Parties acknowledge that failure to adhere to this section may constitute violation(s) of applicable federal and state confidentiality laws and regulations and may constitute just cause for immediate termination of this Agreement.

X. 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 proscribed in the HHS Transaction Standard Regulation, and as further proscribed 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)).

XI. NOTICES

Any notice relating to this Agreement shall be in writing and transmitted from either party to the other by: (i) U.S. Mail, first class, postage prepaid; (ii) facsimile transmission; or (iii) e-mail to such address as contained in the Benefits Contract or 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. Notice that relate to changes or revisions to the Guide shall be made in accordance with procedures found in that Guide.

XII. 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.

XIII. 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.

XIV. ASSIGNMENT

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

XV. GOVERNING LAW

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

XVI. 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.

XVII. 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.

XVIII. ENTIRE AGREEMENT

This Agreement constitutes 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. This Agreement supersedes all prior oral or written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.