PROVIDER TRADING PARTNER AGREEMENT

This Provider Trading Partner Agreement ("Agreement") is made by and between Highmark Inc. and 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 maintains and operates a platform for the performance of certain claims processing and administrative services by Highmark for itself and by or on behalf of certain entities with whom Highmark has contractual relationships, which may include unaffiliated health plans ("Contract Partners"); 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 for Highmark or a Contract Partner; and,

WHEREAS, Provider and Highmark (collectively, the "Parties" and individually, a "party" or "Party") 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"), the HITECH Act (as defined below), Health and Human Services ("HHS") Privacy Standard Regulation (as defined below), and applicable regulations that implement Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, et seq. (the "GLB Regulations"), all 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 other applicable laws, 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, PHI, and Proprietary Data.

HIPAA Transaction Standard Companion Guide ("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 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.

HITECH Act. The Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009.

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.

law. All applicable laws, rules and regulations, including, without limitation, HIPAA, the HITECH Act, HHS Privacy Standard Regulations and the GLB Regulations, as may be amended, supplemented or superseded from time to time.

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

II.   INTRODUCTION

This Agreement authorizes the Parties to electronically 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 as set forth in this Agreement or imposed by 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 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 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 electronic approval by Provider. 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. Highmark may also terminate this Agreement in part without cause upon thirty (30) days written notice in the event Highmark chooses to cease conducting EDI business on behalf of certain payers under this Agreement so long as Highmark provides in its notice of termination the names of the payers that are subject to the termination in part.

Cause shall include, but not be limited to, breach of any material term(s) of this Agreement, fraud, abuse, Provider's failure to submit a Standard Transaction for a period of at least six (6) months, 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. In the event Provider fails to submit a Standard Transaction for at least six (6) months, Provider shall be suspended for a period of sixty (60) days, after which time, this Agreement shall be terminated. However, if during such sixty (60) day suspension period, Provider submits a Standard Transaction, then this Agreement shall continue in accordance with its terms, subject to the possibility that another sixty (60) day suspension and potential subsequent termination could arise pursuant to this paragraph.

IV.   HIGHMARK OBLIGATIONS

A.   **ID(s) and Password(s).** Upon Provider's electronic approval 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 to Provider the accuracy of the Data it may send to Provider; acceptance by Highmark of the Data that

Provider sends electronically does not constitute guarantee of reimbursement by Highmark or its applicable Contract Partner.

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 this Agreement and the Guide. Provider is solely responsible to ensure that the Data that 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 the 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(s). 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 or its Contract Partners.

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 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. Provider acknowledges that any changes made to Data may impact any reimbursement it receives.

D.   **Authorization to Use Data**. Provider is responsible for obtaining all authorizations required under applicable law to transmit the Data before transmitting the Data to or from Highmark. Provider's use of a Highmark system or process under this Agreement constitutes authorization and direction to Highmark and its Contract Partners to use PHI or other Data to adjudicate and process health care claims Highmark receives from Provider for Highmark or its Contract Partners. 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 and its Contract Partners may disclose the PHI or Data that Provider makes available to Highmark concerning Individuals who are members of a plan to the plan sponsor consistent with the requirements of all applicable laws, including, without limitation, HIPAA's requirements, and the language set forth herein.

VI.   INDEMNIFICATION

Each party (in such capacity, the "indemnifying party") shall release, defend, indemnify and hold harmless the other party and, in the case of Highmark, its Contract Partners, and each of their respective 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 indemnifying party's breach of this Agreement, including the improper use or unauthorized disclosure or use of Data (including PHI and 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 or the other party's information systems caused by the unauthorized acts or omissions or use of such Data or information systems by such party, its employees, agents or third parties who gain access to such Data or information systems through such party's (or its employees' or agents') 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, nor in the case of

Highmark, its Contract Partners, shall be liable to any other party for any special, incidental, exemplary or consequential damages.

VII.   COMPLIANCE WITH PRIVACY STANDARDS; CONFIDENTIALITY

Provider shall comply with all applicable laws. Provider acknowledges that changes in laws, including new or modified requirements related to HIPAA, may require modifications to this Agreement and hereby agrees to any amendments to this Agreement requested by Highmark in connection with such changes.

Each party will develop, implement, maintain and use appropriate administrative, technical and physical Data safeguards, policies and procedures to prevent unauthorized access to or disclosure of the Data, including those safeguards, policies and procedures required for compliance with HIPAA, 42 U.S.C. § 1320d-2(d), 45 CFR § 164.530(c) and patient confidentiality provisions of applicable state statutes or regulations, and shall comply with any applicable GLB Regulations and any other applicable laws, and any amendments to any of these laws.

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.

Without limiting the foregoing, each party shall use commercially reasonable efforts to protect the confidentiality of the other party's (and any Contract Partners') proprietary and confidential information, and may disclose such information solely to those individuals having a need to know such information for the purposes permitted under this Agreement (and, with respect to any disclosure to an agent or subcontractor of such party, provided that the applicable agent or subcontractor is bound by confidentiality restrictions substantially similar to those set forth in this Agreement). However, in the event of any conflict between the foregoing provisions of this paragraph and the confidentiality requirements set forth in a separate agreement between Provider and Highmark, the provisions of such separate agreement shall control.

VIII.   SYSTEMS AND PERSONNEL SECURITY/UNAUTHORIZED DISCLOSURES.

Without limiting the generality of the compliance obligations set forth above, the Parties shall comply with the regulations of the Department of Health and Human Services governing standards for the security of Electronic Protected Health Information, 45 CFR Part 164, subpart C. If an unauthorized disclosure of PHI, or the discovery of unauthorized access to and/or tampering with the Data or 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 CFR § 164.402), the Parties will cooperate to achieve compliance with the notification requirements of 45 CFR Part 164, subpart D, with the costs for providing notice, mitigating the Breach, and any enforcement penalties imposed by the Department of Health and Human Services related to such Breach borne by the Breaching party.

IX.   COMPLIANCE WITH STANDARD TRANSACTIONS

When required, the Parties shall comply with the applicable requirements of law or 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)). Without limiting the generality of <u>Section XII</u>, this Section IX shall survive termination of this Agreement.

X.   <u>NOTICES</u>

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 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.   <u>RECORDS AND AUDIT</u>

The Parties shall maintain, in accordance with their document retention policies and applicable law and regulation, and for a minimum of ten (10) years, true and correct copies of any source documents from which they reproduce Data. Highmark (for itself and the Contract Partners) 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.   <u>SURVIVAL OF PROVISIONS</u>

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.   <u>ASSIGNMENT</u>

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

XIV.   <u>GOVERNING LAW</u>

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.   <u>WAIVER OF RIGHTS</u>

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.   <u>SEVERABILITY</u>

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.   <u>ENTIRE AGREEMENT</u>

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.