

CLEARINGHOUSE/VENDOR TRADING PARTNER AGREEMENT

This Trading Partner Agreement (“Agreement”) is made by and between United Concordia Companies, Inc. and “Company,” an entity.

WHEREAS, United Concordia Companies, 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 United Concordia Companies, Inc. ("UCCI") 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. UCCI 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 UCCI'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 creates software used in submitting or receiving Data electronically. 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 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 (if applicable) the requirements for non-standard transactions. 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. UCCI OBLIGATIONS

- A. **ID(s) and Passwords**. Following receipt of the executed Agreement, UCCI will assign logon ID(s) and password(s) to Company to allow Company to authenticate its identity and transmit data electronically. UCCI 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**. UCCI does not warrant the accuracy of the Data it may send to Company. In addition, UCCI'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 UCCI Data electronically, including PHI, in accordance with the terms of this Agreement and the Guide. Company will provide the minimum necessary PHI in accordance with 45 CFR § 164.502(b) to achieve the objectives of this Agreement.
- B. **Logon ID and Password.** Company agrees to protect UCCI'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 UCCI 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 UCCI.
- 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 UCCI system or process under this Agreement constitutes authorization and direction to UCCI to use PHI or other Data to adjudicate and process health care claims UCCI 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 UCCI's proprietary electronic communications processes. Company acknowledges UCCI may disclose the PHI or Data it makes available to UCCI for Individuals who are members of a plan to the plan sponsor in a manner consistent with HIPAA's requirements, and this Agreement.
- E. **Relationship with Employer Groups and/or Providers.** Company agrees to execute business associate, trading partner or chain of trust agreements with each individual Employer Group and/or Provider with whom Company does business, and shall provide UCCI, at such reasonable time(s) as UCCI shall request, written verification of any or all Employer Group or Provider(s)' status in executing such agreements. UCCI 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 an appropriate business associate, trading partner or chain of trust 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, in compliance with 42 U.S.C. § 1320d-2(d), 45 CFR § 164.530 and the patient confidentiality provisions of applicable state statutes or regulations, and shall comply with any applicable GLB Regulations, or any amendments to these statutes or regulations.

Each party shall execute appropriate trading partner, and/or business associate agreements with those subcontractors or agents that provide services involving maintenance, use or disclosure of PHI, that contain requirements to protect PHI that are specifically applicable to the 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 a party to become a "Business Associate" of another entity under 45 CFR. § 160.103, 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 party 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 Data under this Agreement; (vi) If applicable, make PHI available to individuals as required by 45 CFR § 164.524; (vii) If applicable, make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526; (viii) Make available the Data 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 maintains in any form and retain no copies of such Data; or, if return or destruction is not feasible, or the Data is still used to perform business functions, continue to treat all such Data as provided in this Agreement, and applicable law and regulation.

VIII. 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 Security Standard to prevent unauthorized access to Data. If an unauthorized disclosure of PHI occurs, or 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 means available, no later than twenty-four (24) hours after the discovery is made: (i) the nature of the disclosure, (ii) the 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 use, transfer or disclosure of Data. Failure to adhere to this section may constitute violation(s) of applicable federal and state laws and regulations and may constitute just cause for immediate termination of this Agreement.

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 UCCI; 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. UCCI 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.

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.

BY SIGNING BELOW, the individual with authority to bind each of Parties represents that he/she has read the foregoing Agreement and agrees on behalf of the party represented to be bound by it. For purposes of this Agreement, an electronic signature shall have the full force and legal effect of an original signature.

COMPANY

By _____
(Signature)

(Title)

(Business Name)

(Date)

UNITED CONCORDIA COMPANIES, INC.

By _____
(Signature)

(Title)

(Business Name)

(Date)