

**OHIO DEPARTMENT OF MEDICAID
TRADING PARTNER
DATA SHARING AND CONFIDENTIALITY AGREEMENT**

D-1617-07-_____

This Trading Partner Data Sharing and Confidentiality Agreement (Agreement) is entered into by and between the Ohio Department of Medicaid (ODM) and the party (Trading Partner) as identified on the signature page of this Agreement.

ARTICLE I - PURPOSE AND LEGAL AUTHORITY

- A. This Agreement is entered into by ODM and Trading Partner for the purpose of sending and receiving data in agreed formats in substitution for conventional paper-based documents. This Agreement further assures that such Transactions shall be deemed legally valid and/or enforceable as a result of this use of available electronic technologies for the mutual benefit of the parties. Once signed by both parties, this Agreement shall evidence the parties' mutual intent to facilitate payment pursuant to electronic transmission.
- B. The authority to release this data is found in Title 42 of the Code of Federal Regulations (CFR), specifically 42 CFR 431.300, 431.302, 431.304, 431.305 431.306, 435.945; privacy regulations 45 CFR 164.502(e) and 164.504(e); and security regulations 45 CFR 164.308 and 164.314, issued pursuant to the Health Insurance Portability and Accountability Act [42 USC 1320d - 1320d-8], relevant amendments effected by the American Recovery and Reinvestment Act of 2009 [Pub.L.111-5, §§ 13400, *et seq.*] and the terms of this Agreement, or more stringent provisions of the law, rules, or regulations of the State of Ohio.
- C. The parties agree that any data or records provided under this Agreement may only be used or disclosed in accordance with Medicaid regulations.

ARTICLE II – DOCUMENT REQUIREMENTS

- A. Each party may electronically transmit to or receive from the other party any of the transaction sets listed in the Medicaid Trading Partner Profile and transaction sets which parties by written agreement add to the Medicaid Trading Partner Profile (collectively Documents). Any transmission of data which is not a Document shall have no force or effect between parties unless justifiably relied upon by the receiving party. All Documents shall be transmitted in accordance with the standards (and the published industry guidelines) set forth in the Medicaid Trading Partner Profile and the Medicaid Trading Partner Information Guide.
- B. Any Document properly transmitted pursuant to this Agreement shall be considered in connection with any Transaction to be a "writing" or "in writing", and any such Document when containing, or to which there is affixed, a signature (Signed Document) shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.
- C. The parties agree not to contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements must be in writing and signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. The parties shall not contest the admissibility of copies of Signed Documents under the business records exception to the hearsay rule, or the best evidence rule, or on the basis that the Signed Documents were not originated or maintained in documentary form.

ARTICLE III - CONFIDENTIALITY OF INFORMATION

- A. Trading Partner agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. Trading Partner specifically agrees to comply

with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Agreement exists, including, but not limited to:

1. United States Code, 42 USC 1320d through 1320d-8 (HIPAA);
 2. Code of Federal Regulations, 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502(e), 164.504(e), and 162.100;
 3. Ohio Revised Code, ORC 173.20, 173.22, 2305.24, 2305.251, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5160.39, 5168.13, and 5165.88; and
 4. Corresponding Ohio Administrative Code rules.
- B. Trading Partner shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper and/or electronic protected personal data and health information that it creates, receives, maintains, or transmits on behalf of ODM against use or disclosure not provided for by this Agreement.
- C. Trading Partner agrees that access to the records and data provided by ODM and described in ARTICLE II will be restricted to only those authorized employees, officials, subcontractors, and other persons who need it to perform duties related to this Agreement. Trading Partner agrees to provide the ODM Agreement Manager with a complete listing of any and all such persons who shall have access to the above referenced records and/or data as needed.
- D. Trading Partner agrees that the above records and/or data and any records, reports, databases, and/or other derivative documents created from the information provided under this Agreement shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information provided under this Agreement shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. Trading Partner expressly agrees that no records will be accessed, tested, maintained, backed up or stored outside of the United States.
- E. Trading Partner shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional disclosure. No subcontractor shall receive any information without a written agreement with Trading Partner incorporating these assurances.
- F. Trading Partner shall not disclose any of the above referenced information to any third party not involved in treatment, payment, or healthcare operations without the specific written authorization of the Director of ODM.
- G. Trading Partner shall permit onsite inspection by the State of Ohio (including but not limited to ODM, the Auditor of the State of Ohio, the Inspector General of Ohio, the Ohio Attorney General or any duly authorized law enforcement officials) and by agencies of the United States government.
- H. The express terms and conditions of this Article shall be included in all subcontracts executed by Trading Partner for any and all work under this Agreement.

ARTICLE IV - TIME OF PERFORMANCE

- A. This Agreement shall be in effect upon execution by the Director of ODM, until terminated unless this Agreement is suspended pursuant to ARTICLE VI.
- B. The Confidentiality and Business Associate provisions of this Agreement shall survive the termination of this Agreement.

ARTICLE V - SUSPENSION AND TERMINATION

- A. Upon 30 calendar days written notice to the other party, either party may terminate this Agreement.

- B. Notwithstanding Section A of this Article, ODM may suspend or terminate this Agreement immediately upon delivery of written notice to Trading Partner, if ODM discovers any illegal conduct on the part of Trading Partner or if there is any breach of the confidentiality provisions of ARTICLE III herein.
- C. Notice of termination or suspension under either Section A or B of this Article must be sent to: the ODM Chief Legal Counsel, 50 West Town Street, 4th Floor, Columbus, Ohio 43215; and to Trading Partner's representative at the address appearing on the signature page of this Agreement.

ARTICLE VI - BREACH OR DEFAULT

- A. Upon breach or default of any of the provisions, obligations or duties embodied in this Agreement, ODM may exercise any administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and ODM retains the right to exercise all remedies hereinabove mentioned.
- B. If either of the parties fails to perform an obligation or obligations under this Agreement and thereafter such failure(s) is (are) waived by the other party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s) hereunder. Waiver by ODM shall not be effective unless it is in writing signed by the ODM Director.

ARTICLE VII - AMENDMENTS

This Agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the Director of ODM and Trading Partner. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing a written amendment.

ARTICLE VIII - INDEPENDENT CONTRACTOR

Trading Partner agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement. Trading Partner also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder. Trading Partner agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio Tax law, Workers Compensation law, and Unemployment Insurance law. Trading Partner certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained and are operative. If at any time during the contractual period Trading Partner becomes disqualified from conducting business in Ohio, for whatever reason, Trading Partner must immediately notify ODM of the disqualification and will immediately cease performance of its obligations hereunder.

ARTICLE IX - LIMITATION OF LIABILITY

To the extent allowable by law, Trading Partner agrees to defend, indemnify and hold ODM, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) or claims for personal injury, property damage, patent and copyright infringement, or for any liability and/or any other type of claim that arises from the performance of the Deliverables under this Agreement. Trading Partner's sole and exclusive remedy for any ODM failure to perform under this Agreement will be an action in the Ohio Court of Claims pursuant to ORC Chapter 2743 that will be subject to the limitations set forth in this Article. In no event will ODM be liable for any indirect or consequential damages, including loss of profits, even if ODM knew or should have known of the possibility of such damages. To the extent that ODM is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio. Subject to ORC 109.02, Trading Partner agrees to defend ODM against any such claims or legal actions if called upon by ODM to do so.

ARTICLE X - CONSTRUCTION

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Agreement be found to be unenforceable by operation of statute or by administrative or judicial decision, the operation of the balance of this Agreement is not affected thereby; provided, however, the absence of the illegal provision does not render the performance of the remainder of this Agreement impossible.

ARTICLE XI – COUNTERPART

This Agreement may be executed in one, or more than one counterpart, and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail courier or electronic mail, all of which together shall constitute one and the same agreement.

SIGNATURE PAGE FOLLOWS

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**OHIO DEPARTMENT OF MEDICAID
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Signature Page

D-1617-07-_____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signature of the Director of the Ohio Department of Medicaid.

Trading Partner

Ohio Department of Medicaid

Name of Entity

John B. McCarthy, Director

Authorized Signature (Blue Ink Please)

Date

50 West Town Street
Columbus, Ohio 43215

Printed Name

Date

Address

City, State, Zip

Phone

Email

Please Mail Trading Partner Agreements to:

Ohio Department of Medicaid
Trading Partner Agreements
c/o Office of Contracts and Procurement
PO Box 182709
Columbus, Ohio, 43218-2709