TRADING PARTNER AGREEMENT
BETWEEN
STATE OF WASHINGTON HEALTH CARE AUTHORITY
AND
SUBMITTER

This Trading Partner Agreement (the "Agreement") is entered into as of the Effective Date by and between Submitter ("Submitter") and the State of Washington Health Care Authority ("HCA"), collectively "the Parties."

This Agreement is a trading partner agreement as defined by 45 CFR 160.103 and sets forth the terms and conditions which will govern all Electronic Data Interchange communications between the parties by electronic transactions in agreed-upon formats as a means of accomplishing their business objectives for the mutual benefit of the Parties and compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

RECITALS

HCA is the State of Washington government agency responsible for administering certain State and federal social and Health Care services programs including, without limitation, the Medicaid program and as such is a Covered Entity under HIPAA;

Submitter is a Covered Entity or is a Business Associate under a Business Associate Agreement with a Covered Entity;

Submitter wishes to participate in Electronic Data Interchange with HCA;

Submitter agrees to perform certain functions or activities as required by HCA in accordance with HIPAA transaction standards;

Submitter agrees to conduct these transactions according to the limitations set forth in this Agreement;

HCA is willing to exchange data in electronic Transactions with Submitter subject to HIPAA and the terms and conditions identified in this Agreement and subject to the terms and conditions of all other applicable written agreements between HCA and Submitter (if any);

Each party is or will be equipped at its own expense with an operating system (including equipment, software, and trained personnel) necessary for successful electronic data transmission and exchange; and

Each party agrees to ensure the confidentiality and security of the data exchanged.

Therefore, in consideration of the foregoing premises and the mutual promises and covenants as set forth below, the Parties agree as follows:

1. Definitions. The following terms as used throughout this Agreement shall have the meanings as set forth below:

1.1. "Business Associate": shall have the same meaning as defined in 45 CFR 160.103.

1.2. "Business Associate Agreement": shall have the same meaning as defined in 45 CFR 160.103.

1.3. "CFR": The Code of Federal Regulations.

1.4. "Code Set": shall have the same meaning as defined in 45 CFR 162.103.

1.5. "Companion Guide": the HCA Companion Guide which supplements the CMS Implementation Guide(s) and provides information about and requirements for the exchange of electronic data with HCA. HCA may update the Companion Guide from time to time. The Companion Guide that is current on the Effective Date of the Agreement and all updated versions subsequent to the Effective Date and during the life of the Agreement, by this reference, are made a part of this Agreement, as though completely set forth herein. Failure of Submitter to

comply with any Companion Guide requirement(s) shall constitute default of a material obligation of the Agreement under Section 11.1.

1.6. **"Covered Entity":** shall have the same meaning as defined in 45 CFR 160.103.

1.7. **"Data Condition":** shall have the same meaning as defined in 45 CFR 162.103.

1.8. **"Data Element":** shall have the same meaning as defined in 45 CFR 162.103.

1.9. **"DHHS":** The United States Department of Health and Human Services.

1.10. **"Disclosure":** shall have the same meaning as defined in 45 CFR 160.103.

1.11. **"Effective Date":** The Effective Date of this Agreement is the date of its execution by HCA.

1.12. **"Electronic Data Interchange" or "EDI":** the electronic transfer of information via a Standard Transaction between trading partners.

1.13. **"Electronic Data Transaction Standards and Code Sets":** the standards authorized by Sections 1171 through 1179 of the Social Security Act, Title 45 of the CFR, and adopted in the FR for electronic transactions and for code sets to be used in those transaction as well as the requirements concerning the Use of those standards.

1.14. **"FR":** the Federal Register.

1.15. **"HCA Clients":** individuals eligible to receive covered social and/or healthcare services.

1.16. **"HCA Provider":** a Health Care or social services provider enrolled and under a Core Provider Agreement or other agreement with HCA to provide health or social services to HCA Clients.

1.17. **"Health Care":** shall have the same meaning as defined in 45 CFR 160.103.

1.18. **"Health Information":** shall have the same meaning as defined in 45 CFR 160.103.

1.19. **"HIPAA":** The Health Insurance Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8, and its attendant regulations as promulgated by the U.S. Department of Health and Human Services ("HHS"), the Centers for Medicare and Medicaid Services ("CMS"), the Office of the Inspector General ("OIG"), and the Office for Civil Rights ("OCR").

1.20. **"Implementation Guide":** the specific DHHS instructions for implementing a Standard.

1.21. **"Implementation Specification":** shall have the same meaning as defined in 45 CFR 160.103.

1.22. **"Maximum Defined Data Set":** shall have the same meaning as defined in 45 CFR 162.103.

1.23. **"Protected Health Information" or "PHI":** shall have the same meaning as defined in 45 CFR 160.103.

1.24. **"Segment":** shall have the same meaning as defined in 45 CFR 162.103.

1.25. **"Standard":** shall have the same meaning as defined in 45 CFR 160.103.

1.26. **"Standard Transaction":** shall have the same meaning as defined in 45 CFR 162.103.

1.27. **"State":** the State of Washington.

1.28. **"Subcontractor":** a person, partnership, or company, not in the employment of or owned by Submitter, which performs services for the Submitter under a separate agreement with or on behalf of Submitter and which may have access to Health Information exchanged under this Agreement.

1.29. **"Submitter":** the undersigned "Submitter".

1.30. **"Transaction":** shall have the same meaning as defined in 45 CFR 160.103.

1.31. **"Use":** shall have the same meaning as defined in 45 CFR 160.103.

2. **Applicability.** This Agreement applies to all transactions between the Parties that are covered by HIPAA.

3. **Submitter Provisions.** Submitter agrees to comply with all State and federal law, rule, regulation and policy applicable to the Agreement, including without limitation HIPAA, Sections 1171 through 1179 of the Social Security Act, Title 45 of the CFR (including without limitation Parts 160, 162, and 164), all applicable FR, the Electronic Data Transaction Standards and Code Sets, the HIPAA Implementation Guides, and the Companion Guide and further agrees:

3.1. At all times during the life of the Agreement and in performing all activities under the Agreement, the Submitter shall be responsible for adhering to the version of the Companion Guide that is current at the time it performs such activity. Failure of Submitter to comply with any Companion Guide requirement(s) shall constitute default of a material obligation of the Agreement under Section 11.1.

3.2. Data shall be exchanged between the Parties only using the Electronic Data Transaction Standards and Code Sets.

3.3. Submitter shall comply at all times with the requirements concerning the Use of the Electronic Data Transaction Standards and Code Sets.

3.4. Submitter shall not change the definition, Data Condition, or Use of a Data Element or Segment in a Standard Transaction. 45 CFR 162.915(a).

3.5. Submitter shall not add any Data Elements or Segments to the Maximum Defined Data Set. 45 CFR 162.915(b).

3.6. Submitter shall not Use any code or Data Elements that are either marked "Not Used" in the Standard's Implementation Specification or are not in the Standard's Implementation Specification(s). 45 CFR 162.915(c).

3.7. Submitter shall not change the meaning or intent of the Standard's Implementation Specification(s). 45 CFR 162.915(d).

3.8. HCA shall not be obligated to respond to and at its sole discretion may reject a transaction that does not comply with the requirements identified in the Agreement.

3.9. Submitter shall submit eligibility inquiries only for the sole purpose of verifying patients' eligibility for services in accordance with, and subject to, the requirements and limitations identified in the Companion Guide, including but not limited to the transaction size and daily volume limits identified therein (if any). Failure of Submitter to comply with this Section shall constitute default of a material obligation of the Agreement under Section 11.1.

3.10. Submitter agrees and understands that there exists the possibility that HCA or others may request an exception under 45 CFR 162.940 from the Uses of a Standard in the Electronic Data Transaction Standards and Code Sets, in whole or in part. If this occurs, Submitter agrees that it will cooperate with HCA in requesting an exception and will participate in any test of proposed modifications to the Standard in which HCA is participating.

4. **Testing.** EDI testing shall be as described in the Companion Guide and according to the schedule identified therein. Submitter agrees to comply with requirements, scheduling and responsibilities for testing as detailed in the Companion Guides to HCA's satisfaction before production transaction files will be exchanged. Submitter agrees to bear the costs of this testing and to hold HCA harmless for any damages caused by Submitter's failure to test.

5. **Deficiencies**. Submitter agrees to cure errors or deficiencies in Transactions identified by HCA, and errors or deficiencies in Transactions identified by another impacted entity. If Submitter is a Business Associate of a Covered Entity, Submitter agrees to properly communicate deficiencies and other pertinent information regarding electronic transactions to HCA Providers for which they provide Business Associate services.

6. **Code Set Retention**. Both Parties agree to comply with the Code Set retention requirements identified in 45 CFR 162.925(c)(2).

7. **Trade Data Log**. Submitter shall establish and maintain a trade data log, which shall record any and all data transmissions taking place between the Parties, and shall be retained by Submitter for no less than twenty-four (24) months following the date of the data transmission. The trade data log may be maintained on computer media or other suitable means provided that, if requested by HCA, or if necessary to respond to the DHHS Center for Medicare or Medicaid Services ("CMS") or other governmental oversight agencies, the information contained in the trade data log may be timely retrieved and presented in readable form.

8. **Property Rights**. The Health Information shall be and remain the property of HCA. Submitter agrees that it acquires no title or rights to the Health Information, including any de-identified information, as a result of the Agreement.

9. **Security of Health Information**

9.1. Health Information. Submitter shall comply with, all applicable State and federal law, rule, regulation and policy regarding the security of Health Information exchanged by the Parties under this Agreement. This includes without limitation the security standards identified in HIPAA including without limitation the DHHS Security Rule Standards and Implementation Guides for ensuring the security of Health Information exchanged by the Parties. Failure of Submitter to comply with any applicable State and federal law, rule, regulation and policy regarding the security of Health Information exchanged by the Parties under this Agreement shall constitute default of a material obligation of the Agreement under Section 11.1.

9.2. Audit. HCA reserves the right to monitor, audit or investigate Submitter's use of Health Information collected, used, or acquired by Submitter under this Agreement. Such monitoring, auditing or investigative activities may include without limitation those relevant business records, trade data log or operating system of the Submitter and/or its agents as necessary to ensure compliance with this Agreement and also to ensure that adequate security precautions have been made and are implemented by the Submitter to prevent unauthorized disclosure of any data, data transmissions or other information.

10. **Term.** The term shall begin on the Effective Date and continue until the Agreement is terminated as provided in the Agreement.

11. **Termination.**

11.1. Termination for Cause. Either party may terminate the Agreement upon fifteen (15) days written notice to the other party upon the default of any material obligation of the Agreement, provided that the written notice sets forth the default with reasonable specificity and the default is incurable, or being capable of cure has not been cured within the 15 day period after the notice is provided.

11.2. Termination for Convenience. Either party may terminate this agreement for its convenience upon thirty (30) days prior written notice to the other party.

12. **General Conditions.**

12.1. Assignment. Submitter may not assign or transfer this Agreement or any of its rights or duties hereunder without the prior written consent of HCA. Any attempted assignment, transfer or delegation by Submitter without such prior written consent of HCA shall be null and void. HCA may assign this Agreement to any public agency, commission, board, or the like, within the political boundaries of the State of Washington. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

12.2. Authority. Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

12.3. Binding Effect. Each party agrees that the Agreement binds it and each of its employees, agents, independent contractors, and representatives.

12.4. Compliance With Civil Rights Laws. During the term of this Agreement, Submitter shall comply with all federal and applicable State nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Submitter's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be terminated (in whole or in part) by HCA under Section 11.1 (Termination for Cause), and Submitter may be declared ineligible for further agreements and/or contracts with HCA.

12.5. Conflicts between Documents; Order of Precedence. In the event that there is a conflict between the documents comprising the Agreement, the following order of precedence shall apply:

12.5.1. Applicable federal and State laws, rules, regulations, policies, standards;
12.5.2. Implementation Guide;
12.5.3. The terms and conditions in the body of this Agreement;
12.5.4. Companion Guide; and
12.5.5. HCA Data Security Requirements

12.6. Counterparts. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes.

12.7. Cooperation of Parties. The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Agreement.

12.8. Debarment and Suspension. Submitter certifies to HCA that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal or State government contracts. Submitter certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

12.9. Entire Agreement; Acknowledgement of Understanding. HCA and Submitter acknowledge that they have read the Agreement and the Companion Guide, which is incorporated herein by this reference, understand them and agree to be bound by their terms and conditions. Further, HCA and Submitter agree that the Agreement and the Companion Guide are the complete and exclusive statement of the Agreement between the parties relating to EDI of HIPAA transactions and supersede all letters of intent or prior contracts, oral or written, between the parties relating to EDI of HIPAA transactions. This Section does not impact other related contracts or agreements between the Parties including without limitation any Core Provider Agreement, social services provider agreement, or Business Associate Agreement to which HCA and Submitter are parties.

12.10. Force Majeure. Neither Submitter nor HCA shall be liable or responsible under this Agreement for acts or omissions resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

12.11. Governing Law. This Agreement shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. THE EXCLUSIVE JURISDICTION AND VENUE OF ANY ACTION HEREUNDER SHALL BE IN THE STATE COURTS OF THURSTON COUNTY, WASHINGTON. SUBMITTER ACCEPTS THE PERSONAL JURISDICTION OF SUCH COURTS.

12.12. Headings. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

12.13. Indemnification and Hold Harmless.

12.13.1. Each party to this agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. To the fullest extend required by law, rule, or regulation, the Submitter shall be responsible for and shall indemnify, defend, and hold HCA harmless from all claims, loss, liability, damages, or fines arising out of or relating to: (a) the Submitter's or any Subcontractor's performance or failure to perform according to this Agreement; or (b) the acts or omissions of the Submitter or any Subcontractor.

12.13.2. The Submitter waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

12.14. Independent Status of Submitter. The parties hereto, in the performance of this Agreement, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, contractors, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Submitter shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

12.15. Legal and Regulatory Compliance. The activities under the Agreement shall comply with all applicable federal, State, and HCA laws, regulations, codes, standards and ordinances during the term. It shall be the sole responsibility of Submitter to bring its submissions into compliance at no cost to HCA in the event that any Transactions submitted by Submitter are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances.

12.16. Licensing Standards. Submitter shall comply with all applicable HCA, State, and federal licensing requirements and standards necessary in the performance of this Agreement.

12.17. Modifications and Amendments. The Agreement may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.

12.18. Nonwaiver. Any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Agreement shall not be deemed a waiver of any such right, power, or privilege under the Agreement. Any waivers granted by HCA for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. Submitter agrees that HCA's pursuit or nonpursuit of a remedy under this Agreement for Submitter's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that HCA may have at law or equity for any other occurrence of the same or similar breach, nor estop HCA from pursuing such remedy.

12.19. Notices.

12.19.1. Any notice or other communication required or permitted under this Agreement or applicable law shall be effective only if it is in writing, properly addressed, and delivered either in person, by a recognized courier service, by mail via the United States Postal Service (postage prepaid, certified mail, return receipt requested), or via facsimile, to the parties at the addresses, fax numbers, and mail addresses provided below the Party's signature line at the end of the Agreement. In the event the individual named by a party changes or no longer serves in the capacity provided, the party making such change will provide prompt written Notice of change to the other party.

12.19.2. Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

12.20. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

12.21. Sovereign Immunity. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by HCA or the State of Washington of any immunities from suit or from liability that HCA or the State of Washington may have by operation of law.

12.22. Survival. All activities performed pursuant to the authority of this Agreement are subject to all of the terms and conditions set forth herein, notwithstanding the termination of this Agreement. Further, the terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination of this Agreement shall so survive. Terms and conditions that shall survive termination of the Agreement shall include but not limited Section 9 (Security of Health Information), Section 12.1 (Governing Law); and Section 12.2 (Indemnification and Hold Harmless).

12.23. Waiver. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

The Parties hereto, having read this Agreement in its entirety do agree thereto in every particular. In witness thereof, the Parties have set their hands hereunto as of the effective date. The person signing below on behalf of the Submitter certifies that he or she has the authority to bind the Submitter to the Agreement.

STATE OF WASHINGTON,
HEALTH CARE AUTHORITY

By: Cathie Ott

Printed Name: Cathie Ott
Title: Deputy Chief Information Officer
Mailing Address:
HCA HIPAA/EDI Unit
626 8th Avenue SE
P.O. Box 45564
Olympia, WA 98504-5564

SUBMITTER

By: _____

Date: _____
Printed Name: _____
Title: _____
Business Name: _____
ProviderOne ID: _____
Phone Number: _____
Email Address: _____
Mailing address: _____
_____
_____
Fax:
_____

APPROVED AS TO FORM BY THE OFFICE
OF ATTORNEY GENERAL