

## TRADING PARTNER INFORMATION SHARING AGREEMENT

This Trading Partner Information Sharing Agreement (“Agreement”) is entered into and is in effect as of \_\_\_\_\_, by and between **Harvard Pilgrim Health Care, Inc.**, a Massachusetts non-profit corporation, on behalf of itself and all present and future affiliates, including but not limited to, affiliates doing business as Tufts Health Plan (collectively, “HPHC”) and \_\_\_\_\_, on behalf of itself and all present and future affiliates (collectively, “Trading Partner”).

**WHEREAS**, each party is a “covered entity” or a “business associate” of a covered entity as defined by HIPAA (defined below) and recognizes its legal obligations to protect the privacy and security of health information concerning individual persons pursuant to HIPAA;

**WHEREAS**, the parties will be accessing or sharing such information in connection with treatment, payment, and health care operations under HIPAA; and

**WHEREAS**, the parties will be accessing or sharing such information through a number of media, including electronic data interchange via secure File Transfer Protocol (FTP), Virtual Private Network (VPN), secure portals or various other electronic channels.

**NOW THEREFORE**, in consideration of the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### 1. DEFINITIONS

- 1.1 “Applicable State Laws” means the applicable state statutes and regulations for the protection of Personal Information and the reporting of security breach incidents in the state in which an individual whose information is being protected resides.
- 1.2 “Authorized Users” shall mean employees and agents of Trading Partner or Covered Entity with a need to know Confidential Information, and who have been authorized by Trading Partner or Covered Entity to have access to Confidential Information.
- 1.3 “Confidential Information” shall mean information obtained from or on behalf of HPHC, whether oral or recorded, that relates to HPHC, its members, clients, personnel, network of health care providers, or any other party with which it has business dealings, including, but not limited to: rate information; members’ personal and health information (including claims and enrollment information, and Personal Information and PHI as defined below); providers’ Tax Identification Numbers (TINs), which may be Social Security Numbers; and corporate information (including financial and contractual arrangements). In addition, Confidential Information shall include any information that would be understood to be confidential by a reasonable person, whether or not it is marked as confidential.
- 1.4 “Covered Entity” shall mean a HIPAA defined covered entity for whom Trading Partner acts as a HIPAA defined business associate (when applicable).
- 1.5 “Electronic Protected Health Information” or “EPHI” shall have the meaning given to the term in 45 C.F.R. Section 160.103.
- 1.6 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, and as may be amended thereafter, and regulations promulgated thereunder.
- 1.7 “Personal Information” shall have the meaning given by the Applicable State Laws that govern the use of such information.

- 1.8 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form, or medium: (a) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (b) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual, and shall have the meaning given to the term under HIPAA, including, but not limited to, 45 C.F.R. Section 160.103. For purposes of the Agreement, the terms “Protected Health Information” and “PHI” shall include EPHI.

## 2. CONFIDENTIALITY AND SECURITY

- 2.1 Permitted Use and Disclosure of Confidential Information. Trading Partner shall not, without the prior written consent of HPHC: (i) use or access any Confidential Information except to conduct its business as a HIPAA defined covered entity or business associate, and as provided herein; or (ii) disclose any portion of the Confidential Information to any persons or entities other than Authorized Users (subject to Section 2.2 below) or subcontractors, provided however that such subcontractors have agreed in writing to protect the Confidential Information in a manner substantially similar to the terms set forth in this Agreement.
- 2.2 Confidentiality Safeguards. Trading Partner shall use its best efforts, including employment of all reasonable safeguards, to prevent any use, access or disclosure of the Confidential Information not authorized by this Agreement. Such safeguards shall include, but not be limited to: (i) limiting Authorized Users to those having a need to know such information; (ii) limiting the number of Authorized Users; (iii) ensuring that access of any Authorized User is terminated immediately once access is no longer needed, including upon termination of employment; (iv) ensuring that Authorized Users understand and comply with the obligations of Trading Partner under this Agreement; (v) establishing a disciplinary policy for breach of confidentiality by Authorized Users; and (vi) instituting appropriate password controls.
- 2.3 Notice and Reporting of Violations. Trading Partner will immediately notify HPHC, in writing, of any incident of which it becomes aware related to the integrity of the Confidential Information supplied by HPHC or the security of HPHC’s systems, including provider portal(s) accessed by Trading Partner. Trading Partner shall notify HPHC of the identity of the individuals responsible for the incident (if known), the nature of the incident, and the action taken by Trading Partner. In the event Trading Partner receives Confidential Information in error, Trading Partner agrees that such information will be protected in accordance with HIPAA, not further used or disclosed, and deleted where deemed appropriate.
- 2.4 Compliance with Laws. Trading Partner agrees to comply with all applicable state and federal regulatory and statutory requirements, including HIPAA, related to the protection of Confidential Information, including the execution of business associate contracts with both its subcontractors and Covered Entity, as applicable, when required by HIPAA.
- 2.5 Subcontractors. If Trading Partner engages any subcontractor who has a need for access to Confidential Information directly from HPHC, then any such subcontractor will be required to execute a Trading Partner Information Sharing Agreement with HPHC and any required agreements with Trading Partner prior to being given such access.
- 2.6 Substance Use Disorder Information. Trading Partner acknowledges that some Confidential Information may be protected by federal regulations under 42 C.F.R. Part 2 *et. seq.*, which prohibit disclosure of certain identifiable substance use disorder information without the express written consent of the individual to whom it pertains or as otherwise permitted by such regulations. Trading Partner acknowledges that it and its subcontractors are bound by 42 C.F.R. Part 2, *et. seq.*, upon receipt of such substance use disorder information. Notwithstanding anything to the contrary contained herein, neither Trading Partner nor its subcontractor shall re-disclose such information to a third-party unless that third-party is an agent of Trading Partner or its subcontractor that is helping conduct its business as a HIPAA

defined covered entity or business associate and provided the agent only further discloses the information back to the entity from which it originated.

### 3. MISCELLANEOUS TERMS

- 3.1 Term and Termination. The term of this Agreement shall continue in full force and effect until Trading Partner no longer receives Confidential Information from HPHC. HPHC shall have the right to stop providing Confidential Information at any time. Any termination will not alter the rights or duties of the parties with respect to Confidential Information received before the effective date of the termination.
- 3.2 Miscellaneous. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws provisions, and the Commonwealth of Massachusetts shall be the sole forum for resolution of disputes regarding this Agreement or the subject matter thereof. If any provision herein is declared invalid by a court of competent jurisdiction, this Agreement shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties as expressed herein. This constitutes the entire Agreement among the parties with respect to the subject matter hereof and can only be amended in writing, signed and dated by each of the parties hereto. This Agreement supersedes all prior agreements and understandings (whether oral or written) among the parties with respect to such subject matter. This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.
- 3.3 Specific Performance. Because of the nature of the Confidential Information, HPHC shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance, or other equitable relief without prejudice to any other rights and remedies that HPHC may have for breach of this Agreement.
- 3.4 Certification and Audit. Trading Partner shall, upon request, certify to HPHC that it complies with the terms of this Agreement. In addition, HPHC shall have the right, at its own expense, to conduct an audit of Trading Partner at any time during normal working hours upon reasonable notice to Trading Partner to determine if Trading Partner is in compliance with the terms of this Agreement.
- 3.5 Limitation of Liability. To the full extent allowed by applicable law, HPHC and its directors, officers, employees, affiliates, subsidiaries, successors and assigns, and third-party agents will not be liable, directly or indirectly, for any damages, whether direct, incidental, consequential, special or punitive, for any reason arising from or relating to Trading Partner's use or disclosure of any Confidential Information, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.
- 3.6 Representative Trading Partner. If Trading Partner is representing another entity for claims submission and payment activities, then Trading Partner shall promptly notify HPHC of any changes to the list of entities which it is representing.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day first written above.

**TRADING PARTNER**

**HARVARD PILGRIM HEALTH CARE, INC.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_