

**HARVARD PILGRIM HEALTH CARE, INC.**  
**TRADING PARTNER INFORMATION SHARING AGREEMENT**

This **TRADING PARTNER INFORMATION SHARING AGREEMENT** (“Agreement”) is made effective as of \_\_\_\_\_ (the “Effective Date”) by and between **Harvard Pilgrim Health Care, Inc.**, a Massachusetts non-profit corporation (hereinafter “HPHC”) and \_\_\_\_\_ (hereinafter “Trading Partner”).

**WHEREAS**, each party is a Covered Entity or a Business Associate of a Covered Entity and recognizes its legal obligations to protect the privacy and security of health information concerning individual persons pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, the implementing regulations at 45 C.F.R. Parts 160, 162, and 164 promulgated by the United States Department of Health and Human Services (“DHHS”), along with any guidance or regulations issued by DHHS, and other applicable laws (“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, and the Trading Partner will be responsible for managing and monitoring its users’ access.

**NOW THEREFORE**, the parties, intending to be legally bound, hereby agree as follows:

**1. DEFINITIONS**

- 1.1 “Authorized Users” shall mean Trading Partner’s employees and agents with a need to know Confidential Information (as defined below) and who have been authorized by Trading Partner to have access to Confidential Information or the Covered Entity on whose behalf the Trading Partner is requesting the Confidential Information.
- 1.2 “Business Partner” shall mean a person or entity (other than an employee of Trading Partner) that performs, or assists in the performance of a function or activity involving the use or disclosure of Confidential Information (as defined below), including without limitation claims processing or administration, data analysis, or billing, or a person or entity (other than an employee of Trading Partner) that provides legal, actuarial, accounting, consulting, management, administrative, or financial services to or for Trading Partner, where the provision of the service involves the disclosure of Confidential Information (as defined below).
- 1.3 “Confidential Information” shall mean information obtained from HPHC, whether oral or recorded, that relates to HPHC, its affiliates, 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 “Electronic Protected Health Information” or “EPHI” shall have the meaning given to the term Electronic Protected Health Information under HIPAA, including 45 C.F.R. Section 160.103.

- 1.5 “Personal Information” shall have the meaning given by the applicable state laws that govern the use of such information.
- 1.6 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form, or medium: (i) 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 (ii) 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 the HIPAA Regulations, 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 Covered Entity or as a Business Associate of a Covered Entity, and as provided herein; or (ii) disclose any portion of the Confidential Information to any persons or entities other than Trading Partner’s Authorized Users (subject to Section 2.2 below) or Business Partners , provided however that such Business Partners 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 and the User Agreement, as set forth in the Provider Manual; (v) establishing a disciplinary policy for breach of confidentiality; and (vi) instituting appropriate password controls.
- 2.3 Notice and Reporting of Violations. Trading Partner will immediately notify HPHC, in writing, in the event Trading Partner has knowledge 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 *HPHConnect*. 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, such information will be protected in accordance with HIPAA, not further used or disclosed, and deleted where deemed appropriate.
- 2.4 Compliance with Policy and Laws. Trading Partner agrees to comply with all applicable state and federal regulatory and statutory requirements related to the protection of Confidential Information, including the execution of business associate contracts when required by HIPAA.
- 2.5 Certification. Trading Partner shall, upon request, certify to HPHC that it complies with the terms of this Agreement, which may be in the form of self-certification.
- 2.6 Business Partners. If Trading Partner engages any Business Partner who has a need for access to Confidential Information directly from HPHC, then any such Business Partner 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.

**3. MISCELLANEOUS TERMS**

- 3.1 Term and Termination. The term of this Agreement shall commence upon the Effective Date and shall continue until Trading Partner no longer receives Confidential Information from HPHC (“Term”). 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, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of the Agreement will continue in full force and effect. 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 of HPHC, 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 Audit. 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 have any required agreements with such entity. Trading Partner also agrees to 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 Effective Date.

**TRADING PARTNER**

**HARVARD PILGRIM HEALTH CARE, INC.**

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

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

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

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

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

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