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DATA TRANSFER AGREEMENT

This Data Transfer Agreement (the “Agreement”) is entered into and effective as of the ___ day of _____, 201_ (the “Effective Date”) by and between the [organization] (hereinafter “[org abbreviation]”), a [org type] having an office at [address], and [data source organization] (hereinafter “Health Insurance Carrier”), a [org type].

WHEREAS, Data Members of the [organization] (defined in Section 1.03) desire to access and use the [org abbreviation]'s Database (defined in Section 1.02) in accordance with the terms and conditions of data use agreements between the [org abbreviation] and the Data Members (“Data Use Agreements”); and

WHEREAS, Health Insurance Carrier issues group health insurance policies to one or more Data Members or acts as a third-party administrator for one or more Data Members and is a “covered entity” or “business associate” as such terms are defined under HIPAA (defined in Section 1.05) and HITECH (defined in Section 1.06); and

WHEREAS, the [org abbreviation] is a “business associate” (as such term is defined under HIPAA and HITECH) of Health Insurance Carrier or is a “business associate” of each Data Member that sponsors a self-funded group health plan, and has entered into a “business associate agreement” with Health Insurance Carrier or with each Data Member that sponsors a self-funded group health plan, which agreement permits the disclosure of Information (defined in Section 1.08) to the [org abbreviation] and its designated data vendor in order to allow Data Members to access certain Information pertaining to health plan beneficiaries of Data Members; and

WHEREAS, Health Insurance Carrier agrees to transfer Information pertaining to the health plan beneficiaries of the Data Members to the [organization] and its designated data vendor on behalf of the Data Members; and

WHEREAS, the Parties recognize the potential cost efficiencies and potential improvements in the quality of patient care that may be gained from the sharing of Information pursuant to this Agreement; and

WHEREAS, the Parties further recognize the potential to utilize the Information for the Treatment (defined in Section 1.13) of health plan beneficiaries including, among other things, the provision of health care to Data Members’ health plan beneficiaries and patient care coordination and care management for such beneficiaries; and

WHEREAS, the Parties further recognize the potential to utilize the Information for certain Health Care Operations (defined in Section 1.04) purposes related to, among other things, quality improvement, patient safety, and cost management; and

WHEREAS, the Parties further recognize the potential to utilize the Information for the Plan Administration (defined in Section 1.09) of the plan sponsor of a group health plan.

NOW, THEREFORE, in consideration of these presents and the mutual promises contained herein, the Parties hereby agree as follows:

SECTION I - Definitions

Section 1.01 Authorized User. The term “Authorized User” shall mean an employee of or other person under the control of a Data Member, who is authorized by a Data Member to access and use the [org abbreviation] Database in accordance with the terms and conditions of such written agreements that may exist between a Data Member and the [org abbreviation] relating to the Data Member’s access and use of the [org abbreviation] Database.

Section 1.02 [Org Abreviation] Database. The term “[org abbreviation] Database” shall mean the software and services the [org abbreviation] or its designated data vendor shall make available for access and use by Data Members.

Section 1.03 Data Member. The term “Data Member” shall mean an employer who has signed a Data Use Agreement and is participating in the [org abbreviation]’s health care claims data project, subject to the requirements of the Data Use Agreement relating to the use of the Information and the protection of the security of the Information.

Section 1.04 Health Care Operations. The term “Health Care Operations” shall have the same meaning as defined in 45 CFR §164.501.

Section 1.05 HIPAA. The term “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (1996), as amended by the Health Information for Economic and Clinical Health Act, Pub. L. No. 111-005 (2009), and the Privacy Standards and Security Standards, promulgated in regulations thereunder at 45 C.F.R. Parts 160 and 164, as amended.

Section 1.06. HITECH. The term HITECH shall mean the Health Information for Economic and Clinical Health Act, Pub. L. No. 111-005 (2009), and any regulations promulgated thereto, as amended.

Section 1.07 Individual. The term “Individual” shall mean a person who is the subject of Protected Health Information (“PHI”), and shall have the same meaning as the term “individual” as defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

Section 1.08 Information. The term “Information” shall mean the data elements specified on Exhibit A attached hereto that relate to an Individual who is a health plan beneficiary of a Data Member and such other information as the Health Insurance Carrier may agree in writing to provide.

Section 1.09 Plan Administration. The term “Plan Administration” shall have the same meaning as defined in 45 CFR §164.504, namely the performance of administration functions by the plan sponsor of a group health plan, excluding functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor.

Section 1.10 Privacy Rule. The term “Privacy Rule” shall mean the privacy standards promulgated pursuant to HIPAA and set forth at 45 CFR Part 160 and Part 164, Subparts A and E, as same may be amended from time to time.

Section 1.11 Protected Health Information (“PHI”). The term “Protected Health Information” and the abbreviation “PHI” shall have the same meaning as the term “protected health information” defined in 45 CFR § 160.103, limited to the individually identifiable health information created or received by the [org abbreviation] from or on behalf of Health Insurance Carriers or Other Health Insurance Carriers.

Section 1.12 Security Rule. The term “Security Rule” shall mean the security standards promulgated pursuant to HIPAA and set forth at 45 CFR Part 160 and Part 164, Subparts A and C, as same may be amended from time to time.

Section 1.13 Treatment. The term “Treatment” shall have the same meaning as defined in 45 CFR §164.501, namely, the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.

SECTION II – Health Insurance Carrier Responsibilities

Section 2.01. Health Insurance Carrier Transfer Responsibilities. Health Insurance Carrier shall transfer encrypted Information relating to Data Member’s health plan beneficiaries for each calendar quarter to the [org abbreviation]’s designated data vendor by means of a secure connection specified by [org abbreviation]’s data vendor. Health Insurance Carrier will send an initial data feed of Information to the [org abbreviation]’s designated data vendor by _____ which will include Information for 201_, 201_ and 201_. Thereafter, Health Insurance Carrier will send a data feed of Information to the [org abbreviation]’s designated data vendor by March 10th, June 10th, September 10th, and December 10th of each year for claims paid through February, May, August and November of each year. Notwithstanding the foregoing, the parties may alter the schedule for the data feeds by mutual agreement. The Information transferred by the Health Insurance Carrier shall meet the following content and technical requirements:

- (a) the data will include records for the specified time periods;
- (b) the format and content of the data will completely match the agreed upon layout on Exhibit A and any related references or codes provided with the initial data transfer, will not vary from the prior format, and will not require the [org abbreviation] or its designated data vendor to modify its translation programs to facilitate the use of such data;
- (c) data elements values (including diagnoses, procedures, types of service, etc.) will be consistent with trends determined from previous data submissions; and
- (d) data will be grouped, or able to be grouped, by the tabular grouping methodology specified by the [org abbreviations] or its designated data vendor.

Section 2.02. Transfer of Information to [Org Abbreviation] Database. Unless otherwise expressly agreed to by the Parties in writing, Health Insurance Carrier shall transfer to the [Org abbreviation].

Database all Information in its possession relating to Data Member's health plan beneficiaries. Notwithstanding the foregoing, Health Insurance Carrier shall remove or not include, any Information that it is prohibited from disclosing by applicable laws or regulations.

Section 2.03 Cooperation with Foundation. Health Insurance Carrier agrees to cooperate with [org abbreviation] with regard to the transfer of Information to the [org abbreviations].

SECTION III-[Org Abbreviations] Responsibilities

Section 3.01 Responsibilities Related to [org abbreviation] Data Base. The [org abbreviation] shall take all reasonable measures to ensure that its designated data vendor complies with all industry standards regarding the maintenance and operation of the database.

Section 3.02 Responsibilities Related to Access and Use of Information by Data Members. The [organization] shall enter into Data Use Agreements that: (a) restrict access to the Information strictly to Data Members and their Authorized Users; (b) limit use of Information by Data Members and Authorized Users to those purposes specified on Exhibit B hereto; and (c) without intending to limit the foregoing restriction, require that all Data Members and their Authorized Users access and use Information only for Treatment, Health Care Operations and Plan Administration purposes and only in accordance with all applicable state and fed

SECTION IV – Mutual Representations and Covenants

Section 4.01 Authority and General Legal Compliance. Each Party hereby represents to and covenants with the other that: (a) it has and will have full power and authority to enter into this Agreement and perform its obligations hereunder; and (b) it will at all times comply with all laws, rules, regulations, decrees and orders of governmental authorities applicable to the [org abbreviation] Database, the Information and the performance of its obligations and exercise of its rights under this Agreement.

Section 4.02 Legal Compliance. Without intending to limit the foregoing representations and covenants, each Party acknowledges it has established a Legal Compliance Program ("Program") that is intended to reflect and comply with the applicable requirements of federal, state, and local laws and regulations regarding the privacy and security of individual health information. Each Party hereby affirms its commitment to its Program, represents that nothing in its Program would limit its ability to perform its obligations under this Agreement and agrees to take such steps as may be necessary to assure that all transactions undertaken pursuant to this Agreement are taken in a manner consistent with the requirements of its Program.

SECTION V - Term and Termination

Section 5.01 Term; Renewal. The initial term of this Agreement shall begin on _____, 201_ and shall remain in effect up to and through _____, 201_, (the "Initial Term"), unless earlier terminated in accordance with the provisions set forth in Section 5.02. Thereafter, this Agreement shall renew automatically for successive one year terms, unless either party notifies the other of its intent not to renew this Agreement at least thirty (30)

business days in advance of end of the Initial Term or any applicable renewal term.

Section 5.02 Termination Rights. Either party may terminate this Agreement immediately upon the occurrence of any of the following events: (i) the other party has failed to cure a breach of this Agreement within thirty (30) business days after receiving written notice thereof; (ii) the other party institutes proceedings under bankruptcy or insolvency laws, for corporate reorganization, receivership, dissolution or similar proceedings; (iii) proceedings under bankruptcy or insolvency laws, for corporate reorganization, receivership, dissolution or similar proceedings are pending against the other party for more than sixty (60) business days; (iv) the other party makes a general assignment for the benefit of creditors; (v) the other party becomes insolvent; (vi) either party ceases to conduct the business as to which this Agreement is pertinent.

Section 5.03 Effect of Termination. Except as otherwise agreed by the Parties in writing, upon termination of this Agreement for any reason Health Insurance Carrier shall cease transferring Information to the [Org Abbreviation] Database.

Section 5.04 Surviving Rights and Obligations. The following Sections of this Agreement shall survive any termination or expiration of this Agreement: IV, V, and VI.

SECTION VI - Miscellaneous Provisions

Section 6.01 Governing Law. The scope, performance, validity, enforcement, and all other aspects of this Agreement shall be governed by the laws of the [State], unless otherwise preempted by the laws of the United States of America.

Section 6.02 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same Agreement.

Section 6.03 Incorporation By Reference. All Exhibits attached to this Agreement are incorporated by reference and made a part of this Agreement as if those Exhibits were set forth at length in the text of this Agreement.

Section 6.04 Rules of Construction. Unless the context otherwise clearly indicates, (a) words used in the singular include the plural and words used in the plural include the singular; and (b) the masculine shall include the feminine and neuter.

Section 6.05 Headings. Any subject headings used in this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

Section 6.06 Succession and Assignment. This Agreement will be binding on, and will inure to the benefit of, the Parties and their respective successors and assigns. No party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

Section 6.07 Amendment. This Agreement contains the entire agreement of the Parties and supersedes all previous negotiations and agreements, whether written or oral. This Agreement may be amended only by an instrument in writing signed by the Party against whom the change, waiver, modification, extension, or discharge is sought, unless otherwise indicated in this Agreement.

Section 6.08 No Third Party Rights. This Agreement does not and will not create in any natural person, corporation, partnership, or other organization (including, without limitation, any Authorized Users) any benefits or rights, and this Agreement will be effective only as to the Parties and their successors and assigns.

Section 6.9 Compliance with Laws. The Parties to this Agreement intend and in good faith believe that this Agreement complies with all federal, state, and local laws. If any provision of this Agreement is declared void by a court, administrative body, or arbitrator, or rendered invalid by any law or regulation, that portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of the severance would be to substantially alter the Agreement or obligations of the Parties, in which case, the Parties agree to attempt in good faith to renegotiate the Agreement to comply with such law(s) to the satisfaction of the Parties. In the event the Parties are not able to mutually agree to a new agreement within one hundred eighty (180) days, then this Agreement shall terminate.

Section 6.10 Notice. All notices, requests, demands, and other communications associated with this Agreement shall be in writing and will be deemed to have been duly given on the date of service if served personally on, or by facsimile transmission to, the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given by certified mail, return receipt requested, and properly addressed as set forth below:

(a) If to [org abbreviation]:

[Organization Name]
[Address 1]
[Address 2]
[City, State, Zip Code]
Attn: [Name or Role]

(b) If to Health Insurance Carrier:

[Insert Address and Attention to]

Or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party.

Section 6.11 Notification of Claims. Each Party shall promptly notify the other Party upon notification or receipt of any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions arising out of or related to this Agreement, regardless of

whether the other Party is named as a party in such claims, demands, causes of action, lawsuits, or enforcement actions.

Section 6.12 Regulatory References. A reference in this Agreement to a section in a federal, state, or local statute, law, or regulation means the section as in effect or as amended.

Section 6.13 Waiver of Breach. No failure or delay by any party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.

Section 6.14 Force Majeure. Neither party shall be responsible for failure to comply with this Agreement due to causes beyond its reasonable control.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated below.

Health Insurance Carrier

By: _____
Signature

Date

Printed

Title

Address

[Organization]

By: _____
Signature

Date

Printed

Title

Address