**WASHINGTON HEALTH BENEFIT EXCHANGE**

**TRADING PARTNER AGREEMENT**

**Trading Partner Name:**

**Trading Partner Address:**

This Agreement is entered into as of Date (“Effective Date”) between Name of Health Plan(“Trading Partner”) and the Washington Health Benefit Exchange (“the Exchange”).

1. **Purpose and Scope of This Agreement.**

This Agreement is a trading partner agreement as defined by 45 CFR 160.103 and sets forth the terms and conditions which govern all Electronic Data Interchange (“EDI”) communications between the Exchange and the Trading Partner 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”), 45 CFR parts 160 and 162, and 45 CFR section 155.260.

In order to secure data that reside in the Exchange network and data maintained by the Trading Partner for purposes of enrollment of individuals or employers in health insurance coverage through the Exchange, and in order to ensure the integrity, security, and confidentiality of that data, and to permit appropriate disclosure and use of such data as permitted by law, the Exchange and the Trading Partner enter into this Agreement to address the conditions under which data will be exchanged for the purpose of coordinating enrollment between the Exchange and the Trading Partner.

Notwithstanding anything to the contrary in this Agreement, this Agreement applies solely to P.I.I. contained in Standard Transactions between the parties. Once Trading Partner extracts the data from a Standard Transaction for legitimate business purposes in compliance with applicable law, that data is no longer covered by this Agreement. Trading Partner shall treat such data, as well as other data received by Trading Partner that is not in a Standard Transaction, in accordance with HIPAA and other applicable laws.

1. **Definitions.** For the purpose of this Agreement:

**“Process Guide”** means the Enrollment & Payment Process Guide issued to provide operational and policy guidance on eligibility, enrollment, payment, and reconciliation activities within the Washington Health Benefit Exchange. The Exchange may update the Enrollment & Payment Process Guide from time to time.  The Process 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 through completely set forth herein.

**“Companion Guide”** means the Washington Health Benefit Exchange Companion Guide 834 Enrollment Transaction issued by the Exchange to specify transmission requirements for exchanging data with the Exchange.  The Exchange 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 through completely set forth herein.

**“Electronic Data Interchange” or “EDI”** meansthe electronic transfer of information via a Standard Transaction between the parties.

**“Exchange”** means the Washington Health Benefit Exchange.

**“Personally Identifiable Information” or “P.I.I.”** means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, or mother’s maiden name, etc. (Office of Management and Budget Memorandum M-07-16)

**“Standard Transaction”** means either one of the transactions listed in 45 CFR Parts 160 and 162 between the Parties pursuant to this Agreement.

**“Trading Partner”** means the entity identified in the introductory paragraph that receives, delivers and maintains data for purposes of enrolling individuals in health or dental coverage through the Exchange’s Individual or small group (SHOP) markets.

1. **Compliance with Process Guide and Companion Guide.** Each electronic transaction the Trading Partner submits to the Exchange shall comply with the Process Guide and Companion Guide. The Trading Partner understands that the Exchange may make modifications to either Guide and shall give Trading Partner an opportunity to review and comment on modifications prior to implementation. Trading Partner shall not be required to implement such modifications sooner than 60 days after notice of the modified Companion Guide is provided to Trading Partner, unless a shorter compliance period is necessary to conform to applicable federal law or regulation. The Exchange may reject any transaction that does not conform to the applicable Process Guide or Companion Guide. Failure of Trading Partner to comply with the Process Guide and/or Companion Guide shall constitute default of a material obligation of the Agreement under Section 11 of this Agreement.
2. **Reasonable Care.** Each party will take reasonable care to ensure that the information it submits in each electronic transaction is timely, complete, accurate, and secure, and will take reasonable precautions to prevent impermissible access to its transmission and processing systems.
3. **Costs.** Each party is responsible for all costs, charges, or fees it may incur by transmitting electronic transactions to, or receiving electronic transactions from, the other party.
4. **Testing.** Before initiating any transmission in Standard Transaction format, and thereafter throughout the term of this Agreement, the Parties will cooperate in such testing of the transmission and processing systems used in connection with the Exchange to ensure the accuracy, timeliness, completeness, and security of each data transmission. EDI testing will be as described in the Companion Guide and according to the schedule published by the Exchange. Trading Partner agrees to comply with requirements, scheduling, and responsibilities for testing before production transaction files will be exchanged. Trading Partner agrees to bear the costs of testing and to hold the Exchange harmless for any damages caused by Trading Partner's failure to test.
5. **Deficiencies**. Trading Partner agrees to cure errors or deficiencies in transactions identified by the Exchange.
6. **Compliance with Applicable Authorities.** The Exchange and Trading Partner shall comply with all applicable State and federal laws, rules, and regulations regarding the security of PII exchanged by the Parties under this Agreement. The Exchange and Trading Partner shall establish appropriate administrative, technical, procedural, and physical safeguards to protect the privacy and confidentiality of the data and to prevent impermissible access to or use or disclosure of the data. Failure of Trading Partner to comply with any applicable State and federal law, rule, regulation or Companion Guide regarding the security of P.I.I. exchanged by the Parties under this Agreement shall constitute default of a material obligation of the Agreement under Section 11.
7. **Reporting of Impermissible Disclosures.** In the event Trading Partner determines that an impermissible disclosure of P.I.I. has occurred, the Trading Partner shall promptly report to the Exchange the impermissible disclosure. Trading Partner shall also promptly resolve any problems it identifies and submit a corrective action plan with steps designed to prevent any future impermissible disclosures or return data files to the Exchange.

If Trading Partner reports an impermissible disclosure of P.I.I. to the Exchange, the Exchange may require the Trading Partner to demonstrate that adequate security measures have been made and are implemented to prevent impermissible disclosure of P.I.I. that is transferred under this Agreement.

1. **Term.** The term shall begin on the Effective Date and continue until five years from the signature date or the Agreement is terminated as provided in the Agreement.
2. **Termination.** 
   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.
   2. **Termination On Expiration of Participation Agreement.** This Agreement shall automatically terminate upon termination of the Trading Partner’s Participation agreement with the Exchange. The Agreement shall survive that termination only for the time period necessary to complete all obligations, including transaction corrections based on state and federal requirements, and transactions between the Parties related to the period prior to termination.
3. **General Conditions.**
   1. **Assignment**. Trading Partner and the Exchange may engage agents or subcontractors to perform duties under this Agreement so long as the agent or subcontractor is obligated to comply with the terms of this Agreement. The parties may not assign or transfer this Agreement or any of its rights or duties hereunder without the prior written consent of the Exchange. Any attempted assignment, transfer, or delegation without such prior written consent shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.
   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.
   3. **Binding Effect**. Each party agrees that the Agreement binds it and each of its employees, agents, independent contractors, and representatives.
   4. **Order of Precedence**. In the event that there is a conflict between the documents comprising the Agreement, the following order of precedence shall apply:

**12.4.1.** Applicable federal and State laws, rules, regulations, policies, standards;

**12.4.2.** The terms and conditions in the body of this Agreement; and

**12.4.3.** The Companion Guide.

* 1. **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.
  2. **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.
  3. **Entire Agreement; Acknowledgement of Understanding**. The Exchange and Trading Partner acknowledge that they have read the Agreement, the currently available Process Guide, and the currently available Companion Guide understand them and agree to be bound by their terms and conditions. Further, the Exchange and Trading Partner 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.
  4. **Force Majeure**. Neither Trading Partner nor the Exchange 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 o r failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).
  5. **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. Trading partner accepts the personal jurisdiction of such courts.
  6. **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.
  7. **Limitation of Liability**. Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees, and agents. Each party shall use reasonable efforts to assure that the information, data, electronic files, and documents supplied hereunder are accurate. The Exchange shall not be liable to the Trading Partner or any other party for any damages or expenses including, without limitation, direct or indirect, special, incidental, consequential or punitive damages, court costs, and attorney fees. To the fullest extent required by law, rule, or regulation, the Trading Partner shall be responsible for and shall indemnify, defend, and hold Exchange harmless from all claims, loss, liability, damages, or fines arising out of or relating to: (a) the Trading Partner's or any subcontractor's performance or failure to perform according to this Agreement; or (b) the acts or omissions of the Trading Partner or any subcontractor.
  8. Independent Status of Trading Partner. 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 ventures, 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. Trading Partner shall not make any claim of right, privilege, or benefit that would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.
  9. **Legal and Regulatory Compliance**. The activities under the Agreement shall comply with all applicable federal, State, and the Exchange laws, regulations, codes, standards and ordinances during the term. It shall be the sole responsibility of Trading Partner to bring its EDI into compliance at no cost to the Exchange in the event that any EDI by Trading Partner are subsequently found to be in violation of such laws, regulations, codes, and ordinances.
  10. **Licensing Standards.** Trading Partner shall comply with all applicable Exchange, State, and federal licensing requirements and standards necessary in the performance of this Agreement.
  11. **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. **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 either party for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. No term or condition of this Agreement may be waived, modified, or deleted except by a written instrument signed by both parties.
  13. **Notices**.

**12.17.1.** 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.

**12.17.2.** 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.

* 1. **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 that can be given effect without the invalid term, condition, or application; to this end, the terms and conditions of this Agreement are declared severable.
  2. **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 to Section 9 (Reporting of Impermissible Disclosures), Section 12.9 (Governing Law); and Section 12.11 (Limitation of Liability).

The person signing below on behalf of the Trading Partner certifies that he or she has the authority to bind the Trading Partner to the Agreement.

WASHINGTON HEALTH BENEFIT EXCHANGE TRADING PARTNER

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:       Date:

Printed Name:       Printed Name:

Title:       Title:

Mailing Address: Business Name:

WA Health Benefit Exchange Phone Number:

P.O. Box 657 Email Address:

Olympia, WA 98507 Mailing Address: Address

City, State, Zip

\*Please note: When requesting a TPA from the Washington Health Benefit Exchange, original signatures are required. Copies will be returned.