

BUSINESS ASSOCIATE TRADING PARTNER AGREEMENT

This Agreement (this "Agreement") is made and entered into as of this _____ day of _____, _____ by and between _____, ("Customer") a _____ and Availity, L.L.C. ("Availity"), a Delaware limited liability company.

WHEREAS, Customer and Availity are parties to an agreement (the "Customer Agreement"), pursuant to which the fulfillment of the Parties' obligations thereunder necessitates the exchange of, or access to, data including individually identifiable health information,

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the meanings set forth below.

1.1 "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.

1.2 "Electronic PHI" means PHI transmitted by or maintained in electronic media.

1.3 "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

1.4 "HIPAA Administrative Simplification Rules" means Rules adopted by the Department of Health and Human Services pursuant to Title II of HIPAA, including, but not limited to, the Transactions Rule, the Privacy Rule, and the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

1.5 "Individual" means the subject of PHI or his or her personal representative.

1.6 "Parties" shall mean Availity and Customer. (Availity and Customer, individually, may be referred to as a "Party".)

1.7 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

1.8 "PHI" shall have the same meaning as the term "protected health information" in 45 CFR §164.501, limited to the information created or received by Availity from or on behalf of the Customer.

1.9 "Required By Law" shall have the same meaning as "required by law" in 45 CFR §164.103.

1.10 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

1.11 "Transactions Rule" means the Code of Federal Regulations ("CFR") at Title 45, Sections 160 and 162.

ARTICLE 2 CONFIDENTIALITY

2.1 Obligations and Activities of Availity.

Availity agrees as follows:

(a) not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law;

(b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;

(c) to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Customer;

(d) to report to Customer any use, or disclosure of the PHI not provided for by this Agreement of which it becomes aware;

(e) to report to Customer any of the following incidents of which Availity becomes aware: (A) unauthorized access, use, disclosure, modification, or destruction of Customer's Electronic PHI, or (B) unauthorized interference with system operations in Availity's information systems that contain or provide access to Customer's Electronic PHI;

(f) to report upon Customer's request any of the following incidents of which Availity becomes aware: (A) unsuccessful unauthorized attempts to access, use, disclose, modify, or destroy Customer's Electronic PHI, or (B) unsuccessful unauthorized attempts to interfere with system operations in Availity's information systems that contain or provide access to Customer's Electronic PHI;

(g) to enforce and maintain appropriate policies, procedures, and access control mechanisms to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this Agreement to Availity with respect to such information;

(h) at the request of Customer and in the time and manner reasonably designated by Customer, furnish access to PHI in a Designated

Record Set, to Customer or, as directed by Customer, to an Individual in order to meet the requirements under 45 CFR §164.524, provided that Availity will not be required to furnish access to PHI that is maintained in more than one Designated Record Set or at more than one location, as provided in 45 CFR §164.524(c)(1);

(i) to make any amendment(s) to PHI in a Designated Record Set that Customer directs or agrees to pursuant to 45 CFR §164.526 at the request of Customer or an Individual, and in the time and manner reasonably requested by Customer;

(j) subject to Availity's reasonable confidentiality and security practices, to make internal practices, books, and records relating to the use and disclosure of PHI available to Customer or, at the request of Customer, to the Secretary, in a time and manner reasonably requested by Customer or designated by the Secretary, for purposes of the Secretary determining Customer's compliance with the Privacy Rule;

(k) to document such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;

(l) to provide to Customer or an Individual, in a time and manner reasonably requested by Customer, information collected in accordance with Section 2.1(k) above to permit Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;

2.2 Specific Use and Disclosure Provisions.

(a) Except as otherwise limited in this Agreement, Availity may use PHI only (i) to transmit electronic transactions, as defined in the Customer Agreement, directly or indirectly between Customer and payers, (ii) for the proper management and administration of Availity or (iii) to carry out Availity's legal responsibilities.

(b) Except as otherwise limited in this Agreement, Availity may only disclose PHI for the purposes set forth in (a)(ii) and (a)(iii) above (i) as Required By Law, or (ii) provided that Availity has first obtained (A) reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (B) reasonable assurances from the person to whom the information is disclosed that such person will notify Availity of any instances of which it is aware in which the confidentiality of the information has been breached.

2.3 Obligations of Customer

(a) Customer shall notify Availity of any limitations in its notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Availity's use or disclosure of PHI.

(b) Customer shall notify Availity of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Availity's use or disclosure of PHI.

(c) Customer shall notify Availity of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Availity's use or disclosure of PHI.

2.4 Permissible Requests by Covered Entity.

Customer shall not request Availity to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Customer.

ARTICLE 3 EXCHANGE OF STANDARD TRANSMISSIONS

3.1 Obligations of the Parties.

Each of the Parties agrees that it will not enter into a trading partner agreement that affects the Transactions Rule's implementation specifications by:

(a) changing the definition, data condition, or use of a data element or segment.

(b) adding any data elements or segments to the maximum defined data set.

(c) using any code or data elements that are either marked "not used" or are not contained in the implementation specifications.

(d) changing the meaning or intent of any of the implementation specifications.

3.2 Additional Specifications.

Availity shall, from time to time, inform Customer of acceptable formats in which to transmit data. Customer shall only transmit data in such formats and in accordance with the Availity Electronic Data Interchange Guidelines, as applicable.

3.3 Costs.

Customer shall assume all costs associated with its establishment and operation of electronic data interchange including, but not limited to, the costs of terminals, connections, telephone charges and modems. Customer shall assume all costs associated with security authentication or encryption software/hardware located at Customer.

3.4 Backup.

Customer shall maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary.

3.5 Incorporation of Modifications to HHS Transaction Standards.

Each of the Parties agrees and understands that from time-to-time, HHS may modify and set compliance dates for the Transactions Rule. Each of the Parties agrees to incorporate by reference into this Agreement any such modifications or changes.

**ARTICLE 4
MISCELLANEOUS**

4.1 Indemnification.

Each Party agrees to indemnify the other for any damages, costs, expenses or liabilities, including legal fees and costs, incurred in connection with third-party claims arising from or related to a breach of such Party's obligations hereunder.

4.2 Term and Termination.

(a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI provided by Customer to Availity, or created or received by Availity on behalf of Customer is destroyed or returned to Customer, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause. Upon a material breach by either Party of its obligation hereunder, the other Party may terminate this Agreement and the Customer Agreement or report the violation to the Secretary.

(c) Effect of Termination.

(i) Except as provided in paragraph 4.2(c)(ii), upon termination of this Agreement, for any reason, Availity shall return or destroy all PHI received from Customer or created or received by Availity on behalf of Customer. This provision shall apply to PHI that is in the possession of subcontractors or agents of Availity. Availity shall retain no copies of the PHI.

(ii) In the event that Availity determines that returning the PHI is infeasible, Availity shall provide to Customer notification of the conditions that make return or destruction

infeasible. In such case, Availity shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Availity maintains such PHI.

4.3 Disputes.

Both Parties agree to meet and confer in good faith to resolve any dispute, controversy or claim arising out of or relating to this Agreement. Any such dispute, controversy or claim that cannot be resolved through such informal dispute resolution shall be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA").

4.4 Regulatory References.

A reference in this Agreement to a section in the HIPAA Administrative Simplification Rules means the section as in effect or as amended.

4.5 Amendment.

The Parties agree to take such action as is reasonably necessary to amend this Agreement from time to time to the extent necessary for each Party to comply with the requirements of HIPAA and the HIPAA Administrative Simplification Rules. All amendments to this agreement shall be in writing and signed by both Parties.

4.6 Survival.

The respective rights and obligations of the Parties under Sections 4.1 and 4.2(c) of this Agreement shall survive the termination of this Agreement.

4.7 Limitation of Damages.

Other than liabilities under Section 4.1, neither party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any breach of this agreement, or any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.

4.8 No Third Party Beneficiaries.

Nothing in this Agreement will create any right in any third party as against Availity or Customer or be construed for the benefit of any third party.

4.9 Interpretation.

Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the HIPAA Administrative Simplification Rules.



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first stated above.

AVAILITY, L.L.C.

CUSTOMER

Signed

Signed

Printed Name

Printed Name

Title

Title

Availity, L.L.C.
Organization Name

Organization Name

P.O. Box 550857
Address

Address

Jacksonville, FL 32255-0857
Address

Address

904-470-4900 or 800-282-4548
Phone

Phone

Tax Identification Number