

CONFIDENTIALITY AND DATA TRANSMISSION AGREEMENT
between
, NETWORK HEALTH ADMINISTRATIVE SERVICES,
LLC,
NETWORK HEALTH PLAN, NETWORK HEALTH INSURANCE CORPORATION AND

This Confidentiality and Data Transmission Agreement (the “**Agreement**”) is entered into by and between _____, as plan sponsor of its employee welfare benefit plan (the “**Plan**”), Network Health Administrative Services, LLC on behalf of itself and its affiliates, Network Health Plan and Network Health Insurance Corporation (collectively, “**NH**”) and (“**Vendor**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

WHEREAS, the Plan is a Covered Entity subject to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations governing the privacy and security of certain health information (collectively, “**HIPAA**”)

WHEREAS, the Plan has entered into certain prior agreement(s) with NH and Vendor, under which and in accordance with HIPAA, the Plan furnished or will furnish certain PHI of Plan participants to NH and Vendor in order for NH and Vendor to perform services for or on behalf of the Plan.

WHEREAS, NH and the Plan have entered into or will enter into a Business Associate Agreement (“**BAA**”) under which this Agreement is considered a services agreement.

WHEREAS, Vendor and the Plan have entered into or will enter into a BAA under which this Agreement is considered a services agreement.

WHEREAS, the Plan now desires for NH to transmit data to Vendor (“**NH Data**”). And the Vendor to transmit data to NH (“**Vendor Data**”).

WHEREAS, to facilitate the efficient transmission of NH Data and Vendor Data (collectively, “**Data**”) as well as decrease the risk of inappropriate access to Protected Health Information (“**PHI**”) during multiple transmissions, the Parties wish to facilitate the direct transmission of certain PHI from NH to Vendor and from Vendor to NH.

NOW, THEREFORE, in consideration for the mutual promises herein, the Parties agree as follows.

1. DEFINITIONS

1.1 Capitalized terms. The following capitalized terms shall have the meaning given to them in the regulations to the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Part 160-164, as amended:

- a. Disclosure (160.103)
- b. Limited Data Set (164.514)
- c. Required by Law (164.103)

Any other terms not defined in this Agreement shall have the same meaning set forth in HIPAA.

1.2 “Confidential Information” shall mean all information in any form provided by one Party (the “**Disclosing Party**”) to another Party (the “**Receiving Party**”) under this Agreement, including NH Data and Vendor Data and any information which relates to the business,

expertise and/or operations of the Parties and/or their respective affiliates, including, without limitation, information in any form generally understood to be trade secret, proprietary or confidential and/or that is related to products and services, commercial and financial information, system functionality charts and descriptions, trade secret information, and information about customers and/or business partners.

1.3 “Party” shall include those persons employed by or under contract with Vendor, Broker, and the Client on a need to know basis, and that are subject to obligations of confidentiality, nonuse and non-disclosure equivalent to those hereunder.

2. REPRESENTATIONS AND WARRANTIES.

2.1 Plan Representations. The Plan represents and warrants that (a) it is not bound by or aware of any legal or contractual restrictions which would prohibit or limit NH’s ability to deliver the Confidential Information to Vendor or Vendor’s ability to deliver the Confidential Information to NH; (b) it has full authority under the Plan to provide Vendor and NH with the Confidential Information; and (c) it has an executed Business Associate Agreements with NH and Vendor and is otherwise in compliance with all applicable laws and regulations.

2.2 Plan and NH Representation and Warranty. The Plan and NH represent and warrant that the Plan and NH are parties to an ongoing agreement for services that, upon the Plan’s direction, permits NH to fulfill its obligations under this Agreement, including the Use, Disclosure and receipt of the Data in accordance with HIPAA; and the Plan hereby authorizes: (i) NH’s Use and Disclosure of PHI to Vendor on behalf of the Plan; (ii) NH’s receipt and Use of PHI from Vendor on behalf of the Plan; and (iii) NH to Use, Disclose and/or transmit Data as necessary to accomplish the purposes of this Agreement as an additional permitted Use and Disclosure of PHI pursuant to the BAA.

2.3 Plan and Vendor Representation and Warranty. The Plan and Vendor represent and warrant that the Plan and Vendor are parties to an ongoing agreement for services that, upon the Plan’s direction, permits Vendor to fulfill its obligations under this Agreement, including the Use, Disclosure and receipt of the Data in accordance with HIPAA; and the Plan hereby authorizes: (i) Vendor’s Use and Disclosure of PHI to NH on behalf of the Plan; (ii) Vendor’s receipt and Use of PHI from NH on behalf of the Plan; and (iii) Vendor to Use, Disclose and/or transmit Data as necessary to accomplish the purposes of this Agreement as an additional permitted Use and Disclosure of PHI pursuant to the BAA.

3. ADDITIONAL PERMITTED USE AND/OR DISCLOSURE OF PHI.

3.1 No Violation. As a permitted Use and Disclosure, the Parties understand that NH’s receipt, Use, Disclosure and/or transmission of Data pursuant to this Agreement shall not violate the terms of the BAA between the Plan and NH. As a permitted Use and Disclosure, the Parties also understand that Vendor’s receipt, Use, Disclosure and/or transmission of Data pursuant to this Agreement shall not violate the terms of the BAA between the Plan and Vendor.

3.2 Disclaimer of PHI. NH and Vendor shall not be liable under the terms of this Agreement for any damages arising out of NH’s or Vendor’s receipt, Use, Disclosure and/or transmission of Data in order to effectuate the purposes of this Agreement; but rather, all rights and obligations with respect to NH’s and Vendor’s receipt, Use, Disclosure and/or transmission of Data continue to be governed by the existing BAAs between the Parties.

4. DISCLOSURE OF DATA

4.1 NH Data. The Plan hereby directs NH to Disclose NH Data directly to Vendor. For purposes of this Agreement, NH Data means Eligibility file feeds, Claims data feeds, and other data that the Plan Sponsor may direct NH to disclose to Vendor for provision of services above. NH Data to be Disclosed shall be delivered on the media or via a transmission agreed to by NH and Vendor, and shall be secured using an encrypted secure file transfer portal connection between NH and Vendor.

4.2 Vendor Data. The Plan hereby directs Vendor to Disclose Vendor Data directly to NH. For purposes of this Agreement, Vendor Data means those elements of data needed by NH to provide third-party administrative services for the Plan. Vendor Data to be Disclosed shall be delivered on the media or via a transmission agreed to by NH and Vendor, and shall be secured using an encrypted secure file transfer portal connection between NH and Vendor.

4.3 Frequency. The Parties shall communicate directly with each other to coordinate the date(s) and time(s) the Data is to be transmitted.

5. OBLIGATIONS. Vendor agrees that, with regard to any NH Data received by Vendor from NH, Vendor will Use and Disclose NH Data only as permitted by the BAA between the Plan and Vendor. NH agrees that, with regard to any Vendor Data received by NH from Vendor, NH will Use and Disclose Vendor Data only as permitted by the BAA between the Plan and NH. The obligations outlined in this Section 5 shall survive the expiration or termination of this Agreement.

6. TERM AND TERMINATION.

6.1 Term. This Agreement shall continue in effect until all Data is transmitted and/or Disclosed between NH and Vendor, or unless terminated as set forth in Section 6.2 below.

6.2 Termination. If any applicable service agreements or the BAA between the Plan and NH or any applicable services agreements or the BAA between the Plan and Vendor terminate for any reason prior to the completion of the Data Disclosure, this Agreement shall terminate immediately and no further Data Disclosure shall be permitted under this Agreement. In addition, upon the Plan's knowledge of a material breach of this Agreement, or of a pattern of activity or practice of a Party that constitutes a material breach of this Agreement, the Plan shall provide the breaching Party with written notice of such breach and afford the breaching Party an opportunity to cure such breach; provided, however, that if the breaching Party fails to cure the breach within the cure period, the Plan may immediately terminate this Agreement. The Plan agrees that notices provided pursuant to this Section 6.2 shall contain a detailed description of the material breach allegedly committed by the breaching Party, which sets forth all the specific facts necessary for the breaching Party to evaluate and cure such alleged breach.

7. MISCELLANEOUS. The terms of this Agreement shall override any conflicting terms of the BAA between the Plan and NH and the BAA between the Plan and Vendor, with regard to permitted Uses and Disclosures of Data. To the extent HIPAA is materially amended in a manner that changes the obligations of the Parties, such changes shall be incorporated by reference into this Agreement on the effective date of such revisions under law, as if set forth in this Agreement in their entirety. This Agreement and the rights and obligations of the Parties shall be construed, interpreted and enforced in accordance with, and governed by, the laws of the State of Wisconsin,

without regard to its conflicts of laws provision. The waiver by any Party of a breach of this Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach. Any notice, report or other communication required or permitted under this Agreement shall be in writing and made to the Privacy Officer of the Party. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7.1 Relationship of Parties. For purposes of this Agreement, the Parties are independent contractors of each other, and nothing in this Agreement shall be construed to create an agent-principal relationship between the Parties.

7.2 Indemnification. Except as specifically identified herein, each Party is responsible for all acts and omissions of itself and its Workforce members, Subcontractors and agents, and no Party agrees to indemnify any other Party for such acts or omissions; provided, however, this provision does not constitute a waiver by any Party of any right to indemnification, contribution, subrogation or other remedy available to that Party at law or at equity.

7.3 Amendments. This Agreement states the entire agreement of the Parties regarding the subject matter herein and it cannot be altered or amended without a writing signed by the Parties.

7.4 Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or email shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the dates set forth below, to be effective as described above.

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**NETWORK HEALTH ADMINISTRATIVE
SERVICES, LLC/ NETWORK HEALTH PLAN/
NETWORK HEALTH INSURANCE CORPORATION**



Name: Penny Ransom

Title: Chief Administrative Officer

Date: _____