

ELECTRONIC TRADING PARTNER AGREEMENT

This Agreement is by and between _____ (“Trading Partner”) and Hawaii Medical Service Association (“HMSA”), and is made effective on the date last signed below.

RECITALS

WHEREAS, HMSA provides health plan benefits to and provides benefit payments on behalf of HMSA Members and Trading Partner provides health care services and supplies to HMSA Members; and

WHEREAS, HMSA has developed electronic data interchange networks and sub networks, databases, and software, including the Hawaii Healthcare Information Network and HMSA’s EDI Center (collectively referred to as “Electronic Data Systems”), to enhance communication of information needed to administer health plans and deliver and pay for health care services and supplies; and

WHEREAS, HMSA has agreed to offer access to its Electronic Data Systems to Trading Partner and Trading Partner has elected to access certain Electronic Data Systems offered by HMSA for purposes of conducting business with HMSA; and

WHEREAS, HMSA and Trading Partner consider their mutual interests to be served by engaging in the electronic transfer of data as a means of furthering their respective business objectives; and

WHEREAS, HMSA anticipates that Trading Partner may use, in the performance of this Agreement, various third party subcontractors in the electronic exchange of such Data;

NOW, THEREFORE, in consideration for the mutual promises herein, the parties agree as follows:

I. DEFINITIONS

The following terms with initial capitals have these meanings:

- 1.1 Breach Notification Rule means the Notification in the Case of Breach of Unsecured Protected Health Information rule, 45 C.F.R. Part 164, Subpart D as may be amended or modified from time to time.
- 1.2 Business Associate means a third party organization that is designated by and contracts with Trading Partner to perform services to facilitate the electronic transfer of Data or to conduct other business functions with HMSA on behalf of Trading Partner. Examples of Business Associates include, without limitation, clearinghouses, billing services, service bureaus, and accounts receivable management firms.

- 1.3 Companion Guides are the manuals or guides HMSA publishes containing requirements and instructions for Trading Partner's automated electronic data interchange of Data with HMSA.
- 1.4 Data means formalized representation of specific facts or concepts suitable for communication, interpretation, or processing. Data may include Protected Health Information.
- 1.5 Data Transmission means transfer or exchange of Data, pursuant to the terms and conditions of this Agreement, between HMSA and Trading Partner or its Business Associates by means of HMSA's Electronic Data Systems.
- 1.5 Electronic Data Systems will have the meaning established in the Recitals to this Agreement.
- 1.6 Electronic Media Claims System ("EMC System") is the Electronic Data System HMSA maintains to enable users to conduct automated electronic data interchange transactions, including claims, remittance advice, eligibility verification, claims status, and other transactions relevant to Trading Partner's relationship with HMSA.
- 1.7 Hawaii Healthcare Information Network ("HHIN") is the web-based Electronic Data System HMSA maintains to enable users to gain direct access to HMSA Data to conduct claims, remittance advice, eligibility verification, claims status, and other transactions relevant to Trading Partner's relationship with HMSA.
- 1.8 HHS means the United States Department of Health and Human Services.
- 1.9 HMSA Member means a person for whom HMSA processes or administers claims for health care services or supplies for which a governmental or private health plan may be responsible to pay.
- 1.10 Information System means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, Data, applications, communications, and people. HMSA's Information System includes the Electronic Data Systems.
- 1.11 Privacy Rule means the Privacy of Individually Identifiable Health Information rule, 45 C.F.R. Part 164, Subpart E as may be amended or modified from time to time.
- 1.12 Proprietary Information means information used or created by a party in the conduct of its business activities that is not normally made available to the party's customers, competitors or third parties, the disclosure of which will or may impair the party's competitive position or otherwise prejudice its ongoing business.

- 1.13 Protected Health Information has the meaning established in 45 C.F.R. § 160.103, limited to information that relates to HMSA Members.
- 1.14 Security Access Code means an alphanumeric code that HMSA assigns to Trading Partner to allow Trading Partner access to HMSA's Electronic Data Systems for the purpose of executing Data Transmissions or otherwise carrying out this Agreement.
- 1.15 Security Rule means the Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 164, Subpart C as may be amended or modified from time to time.
- 1.16 Standard Identifier means standard unique health identifiers adopted by HHS in the Transactions Rule, including identifiers for HMSA Members, employer's (the Employer Identification Number (EIN)), health plans, and providers (the National Provider Identifier (NPI)), or, with respect to identifiers not adopted by HHS in the Transactions Rule, the identifiers HMSA's Companion Guides require Trading Partner to use.
- 1.17 Standard Transaction means an electronic transaction that complies with the applicable standard and associated operating rules adopted under the Transactions Rule.
- 1.18 Transactions Rule means the Standards for Electronic Transactions, 45 C.F.R. Parts 160 and 162, as may be amended or modified from time to time.

II. OBLIGATIONS OF THE PARTIES

- 2.1 Mutual Obligations.
- (a) Data Transmission Accuracy. The parties shall take reasonable care to ensure that Data Transmissions are timely, complete, accurate and secure. Each party shall take reasonable precautions in accordance with Article IV of this Agreement to prevent unauthorized access to the other party's Information System and Data Transmissions.
- (b) Information Systems.
- (i) *Maintenance of Information System.* Each party shall obtain and maintain an Information System that complies with the technical standards and specifications set forth in the Companion Guides or separately set forth in writing by HMSA. Each party's Information System will include trained personnel, equipment, and software necessary for timely, complete, accurate and secure Data Transmission pursuant to this Agreement.
- (ii) *Cost of Information System.* Each party shall obtain and maintain its Information System at its own expense and shall pay its own

costs related to Data Transmissions under this Agreement. Each party is responsible for its own expenses incurred for translating, formatting, and sending or receiving Data Transmissions. HMSA shall not be responsible for the cost of alterations to Trading Partner's equipment or software necessary for Trading Partner to maintain access to HMSA's Electronic Data Systems.

(c) Transmission Format.

- (i) *EMC System.* With respect to any transaction for which HHS has established a standard under the Transactions Rule, the parties shall conduct the transaction as a Standard Transaction. To the extent not inconsistent with the applicable standard under the Transactions Rule, the parties shall conduct all such transactions in accordance with the applicable Companion Guide. With respect to any transaction for which HHS has not established a standard pursuant to the Transactions Rule, the parties shall conduct the transaction in accordance with the applicable Companion Guide.
- (ii) *HHIN.* With respect to all transactions for which HHS has established a standard under the Transactions Rule, the parties shall use data content and data conditions, but not the data format, required in the applicable Standard Transaction.

(d) Lost, Indecipherable, or Misrouted Transmissions. In the event that a party receives an electronic transaction under this Agreement (i) that the party cannot process because it is garbled or incomplete, regardless of how or why the electronic transaction was rendered garbled or incomplete, or (ii) that is not intended for that party, the party shall immediately notify the other party and shall immediately delete the electronic transaction and any copy of the electronic transaction from its Information System.

(e) Standard Identifiers. The parties shall use Standard Identifiers in all Data Transmissions.

2.2 Trading Partner Obligations.

- (a) Access and Use. Trading Partner shall not obtain access by any means to HMSA's Data, Data Transmissions, or Electronic Data Systems except as specifically permitted under this Agreement. Trading Partner shall not copy, disclose, publish, distribute, alter or use HMSA's Data or Proprietary Information for any purpose, except as specifically authorized under the terms of this Agreement. HMSA grants Trading Partner access to HMSA's Electronic Data Systems on the terms and conditions set forth herein. Trading Partner may use the Electronic Data Systems solely to conduct electronic transactions with HMSA as permitted by the Transactions, Security, and Privacy Rules and other applicable law.

- (b) Security Access Codes and Passwords. Trading Partner shall:
- (i) Use Security Access Codes on each Data Transmission as an electronic signature to authenticate that (1) Trading Partner sent the transmission and (2) the Data in the transmission are valid.
 - (ii) Protect and maintain the confidentiality of Security Access Codes issued to Trading Partner by HMSA.
 - (iii) Limit disclosure of Security Access Codes to authorized personnel on a need-to-know basis and apply the restrictions contained in Article IV of this Agreement to the Codes.
 - (iv) Promptly request HMSA to terminate Security Access Codes to which unauthorized personnel, including former employees, have access.
 - (v) Trading Partner shall use passwords that:
 - Contain at least seven characters;
 - Are different than the previous 4 passwords Trading Partner has used;
 - Contain a combination of upper case letters, lower case letters, numbers, and special characters, such as @, #, \$, or *;
 - Do not contain easily-guessable elements such as proper names or nicknames of people or pets, significant dates such as birthdays or anniversaries, favorite sports teams, telephone numbers and zip codes or dictionary words in any language.
- (c) Companion Guide. Trading Partner shall comply with all instructions and requirements set forth in Companion Guide that HMSA makes available to Trading Partner. Any failure to comply with these requirements shall constitute a material breach of this Agreement by Trading Partner.
- (d) Accuracy of Data. Trading Partner shall ensure the accuracy of all information provided by Trading Partner or on Trading Partner's behalf. Trading Partner shall research and correct any and all billing discrepancies caused by it or its Business Associate. Trading Partner shall reimburse HMSA for any and all claims against HMSA resulting from misrepresentations, discrepancies and errors in any claim, whether submitted by Trading Partner or its Business Associate.
- (e) Duplicate Claims. Trading Partner shall not submit claims for services that have already been submitted on Trading Partner's behalf or for which Trading Partner has already received payment, unless Trading Partner

notes in the claim transmission the previous transmission or previous payment, as applicable.

- (f) Change of IP Address. Trading Partners that utilize a site to site VPN connection shall notify HMSA a minimum of two weeks prior to changing any IP address.
- (g) Genetic Information. Trading Partner shall not include in a Data Transmission any genetic information. For purposes of this provision, “genetic information” will include information indicating the manifestation of a disease or disorder in an individual’s family member.
- (h) Privacy and Security Rule Compliance. Trading Partner represents and warrants that it is either (1) subject to the Privacy and Security Rules as a “covered entity,” as defined in 45 C.F.R. § 160.103, or (2) the Business Associate of a “covered entity,” subject to a business associate agreement that complies with Privacy and Security Rule requirements.
- (i) National Provider Identifier. If Trading Partner is a health care provider as defined in 45 C.F.R. § 160.103, Trading Partner shall, if eligible, obtain one or more National Provider Identifiers (NPIs) and use the identifiers to identify itself in all Standard Transactions with HMSA in accordance with 45 C.F.R. Part 162, Subpart D. If Trading Partner is not eligible for an NPI under 45 C.F.R. Part 162, Subpart D, Trading Partner and HMSA will agree on an appropriate identifier, which Trading Partner shall use to identify itself in all Standard Transactions with HMSA.

2.3 HMSA Obligations.

- (a) Access to Electronic Data Systems. HMSA shall provide Trading Partner access to Electronic Data Systems to conduct Data Transmissions. Trading Partner acknowledges that the Electronic Data Systems may, from time to time, be inaccessible for a variety of reasons. Notwithstanding Article 8.5 of this Agreement, HMSA may, at any time and in HMSA’s sole discretion, terminate Trading Partner’s or any Business Associate’s access to any or all of HMSA’s Electronic Data Systems.
- (b) Security Access Codes. HMSA shall provide Trading Partner Security Access Codes that will allow Trading Partner access to HMSA’s Electronic Data Systems. HMSA reserves the right to change Security Access Codes at any time and in such manner as HMSA, in its sole discretion, deems necessary.

III. RELATIONSHIPS WITH THIRD PARTIES

- 3.1 HMSA’s Vendor Obligations. HMSA may contract with one or more vendors to perform services related to this Agreement. HMSA shall require any such vendor to comply with the terms of this Agreement.

- 3.2 Trading Partner's Business Associate Obligations. Trading Partner may contract with one or more Business Associates to perform services related to this Agreement, such as billing services or service bureaus. HMSA shall permit Trading Partner's Business Associates to use HMSA's Electronic Data Systems, provided that:
- (a) Completion of Business Associate Authorization. Trading Partner submits to HMSA for each Business Associate acting on Trading Partner's behalf a complete, executed Business Associate Authorization form (Exhibit A of this Agreement) authorizing HMSA to conduct transactions with Business Associate as Trading Partner's representative and designating the Electronic Data System (or Systems) to which the Business Associate is to have access; and
 - (b) Compliance with Terms of Agreement. Trading Partner requires each Business Associate to comply with the terms of this Agreement.
- 3.3 Business Associate Authorization. A Business Associate Authorization form (see Exhibit A) will be effective and incorporated into this Agreement on the date it is received by HMSA. With respect to any Business Associate that Trading Partner designates in a Business Associate Authorization, Trading Partner shall notify HMSA at least fourteen (14) days prior to the date of any material change to (i) Trading Partner's relationship with the Business Associate or (ii) the information in the applicable Business Associate Authorization.
- 3.4 Unauthorized Changes in Data. Trading Partner shall prohibit Business Associate from making unauthorized changes to the Data Trading Partner furnishes Business Associate for submission to HMSA in Data Transmissions.
- 3.5 Responsibility for Business Associate. Trading Partner shall be liable to HMSA for its Business Associate's compliance with provisions of this Agreement and the accuracy of Data that Business Associate submits to HMSA in claims and other Data Transmissions.

IV. CONFIDENTIALITY AND SECURITY

- 4.1 Data Security. Each party shall develop, implement, and maintain safeguards reasonably necessary to ensure the security of a) Protected Health Information transmitted or maintained by the party, b) each party's own Information System, and c) each party's records relating to its Information System. Each party shall maintain adequate policies and procedures to a) prevent unauthorized access to Data, Data Transmissions, Security Access Codes, backup files, Information Systems, and HMSA's Electronic Data Systems; b) assure Data are not inappropriately modified, deleted, or destroyed; and c) assure the availability of Data. Each party shall document and keep current its security measures. Each party's security measures will include, at a minimum, the safeguards required by the Security Rule.

4.2 Data Breaches.

- (a) Breach Notification. Each party shall comply with the requirements of the Breach Notification Rule with respect to a “breach” (as defined under the Breach Notification Rule) involving Protected Health Information the party maintains or transmits. The parties shall cooperate as necessary to comply with any applicable Hawaii State law relating to a “breach” (as defined under the State law) involving Protected Health Information. Trading Partner shall promptly notify HMSA of any infringement of Security Access Codes or other circumstances that may lead to (or may have caused) a “breach” (as defined under either applicable State law or the Breach Notification Rule) of HMSA’s Protected Health Information.
- (b) Cooperation. The parties shall cooperate in any investigation of a breach under this Article 4.2. The parties shall cooperate with each other in the event of litigation concerning the unlawful or unauthorized disclosure or use of Protected Health Information or Proprietary Information.

4.3 Confidentiality.

- (a) Protected Health Information. Each party shall comply with all federal and state laws regarding protection, use, and disclosure of Protected Health Information. Trading Partner shall instruct its employees and agents, including Business Associates, of the terms and conditions of this Agreement and Trading Partner’s obligations under the Privacy, Security, and Breach Notification Rules. Trading Partner shall ensure all employees and agents, including Business Associates, who access HMSA’s Data, Data Transmissions, or Electronic Data Systems receive appropriate Privacy and Security Rule training. Trading Partner shall permit its employees and agents, including its Business Associates, to access Protected Health Information only related to those HMSA members who are (or were) patients of health care providers associated with Trading Partner.
- (b) Proprietary Information. Each party shall treat the other party’s Proprietary Information obtained or learned in connection with this Agreement as confidential and shall not use the other party’s Proprietary Information for its own commercial benefit or any other purpose not authorized by this Agreement. Each party shall safeguard the other party’s Proprietary Information against unauthorized disclosure and use.

4.4 Survival. The provisions of this Article IV will survive termination of this Agreement.

V. RIGHT TO AUDIT

5.1 Right to Audit. HMSA shall have the right, with prior notice, to audit relevant Trading Partner and Business Associate records, as HMSA deems necessary to

ensure compliance with this Agreement. Trading Partner and Business Associate shall cooperate with such audit and shall provide all information necessary to verify compliance with the terms and conditions of this Agreement.

- 5.2 Government Requests for Information. Trading Partner shall notify HMSA immediately upon Trading Partner's receipt of any request from a government authority for information or documents relating to this Agreement, except to the extent such notification is prohibited by law.

VI. WARRANTIES

- 6.1 Warranties Regarding Business Associates. Trading Partner warrants that Business Associate will make no unauthorized changes to the Data that Trading Partner furnishes Business Associate for submission to HMSA in Data Transmissions. Trading Partner further warrants that Trading Partner will advise Business Associate of this Agreement and that Business Associate will comply in all respects with the terms of this Agreement.

- 6.2 HMSA Warranties.

- (a) Interruption of Service. HMSA specifically disclaims any warranty or guarantee that Trading Partner's access to Electronic Data Systems will be uninterrupted.
- (b) Implied Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, HMSA HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS WARRANTIES OF ANY KIND OR NATURE AND ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

VII. RESPONSIBILITY FOR ACTS

- 7.1 Responsibility for Acts. Each party is responsible for its own actions
- 7.2 Participation in Actions. HMSA reserves the right, at its option and expense, to participate in the defense of any suit or action brought against Trading Partner or its Business Associate arising out of any act or omission in connection with this Agreement even if Trading Partner or its Business Associate choose not to pursue a defense.
- 7.3 Dispute Assistance. Each party shall reasonably cooperate in providing necessary assistance to the other party when the other party is actively involved in a dispute with a third party concerning Data Transmissions that either are or reasonably could be the source of litigation with that third party.
- 7.4 Limitation of Liability. Neither party shall be liable for any special, incidental, indirect, exemplary or consequential damages resulting from any claim or cause

of action arising out of any delay, omission or error in any Data Transmission or the other party's performance or failure to perform in accordance with the terms of this Agreement, including, without limitation, loss of use, revenues, profits or savings, even if a party has been advised in advance of the possibility of such damages.

- 7.5 Survival. The provisions of this Article VII will survive termination of this Agreement.

VIII. MISCELLANEOUS

- 8.1 Amendments. This Agreement, including the provisions of this paragraph, may not be changed or modified except by an instrument in writing signed by each party's authorized representative.
- 8.2 Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held or declared to be illegal, invalid or unenforceable, the remainder of the Agreement will continue in full force and effect as though the illegal, invalid or unenforceable provision had not been contained in the Agreement.
- 8.3 Automatic Amendment for Regulatory Compliance. This Agreement will automatically amend to comply with any final regulation or amendment to a final regulation adopted by HHS concerning the subject matter of this Agreement upon the effective date of the final regulation or amendment.
- 8.4 Par Agreements Not Affected. This Agreement in no way supersedes or affects any participating provider agreement between HMSA and Trading Partner. The Agreement neither supersedes nor affects any provision of an HMSA plan, plan certificate or brochure outlining the terms and conditions upon which HMSA has agreed to provide or pay benefits.
- 8.5 Termination of Agreement. This agreement will be effective until terminated by either party. Either party may terminate it for any reason upon sixty (60) days' written notice to the other party.
- 8.6 Independent parties. Trading Partner acknowledges that this Agreement constitutes an agreement between Trading Partner and HMSA and that HMSA is an independent plan operating under a license from the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting HMSA to use the Blue Cross and Blue Shield Service Marks in the State of Hawaii. HMSA is not contracting as the agent of the Association. Trading Partner further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than HMSA and that no person, entity, or organization other than HMSA shall be held accountable or liable to Trading Partner for any of HMSA's obligations to Trading Partner created under this Agreement.

- 8.7 Arbitration. If any dispute arises between the parties to this Agreement, the parties shall settle the dispute by binding arbitration in Hawaii. All expenses of the arbitration including the arbitrator's fee, the costs of a reporter and transcript and the fees of an arbitration service, will be shared equally by the parties. Each party shall pay its own attorney and witness fees. The decision of the arbitrator shall be binding on both parties and no action may be brought in any court in connection with this decision except as stated in The Federal Arbitration Act, 9 U.S.C., § 1 *et seq.*
- 8.8 Entire Agreement. This Agreement along with the signature page, attachments and Companion Guides constitute the entire agreement between the parties.
- 8.9 Copyright. If a third party claims that Trading Partner infringes the third party's copyright with respect to Trading Partner's use of an Electronic Data System, HMSA shall defend Trading Partner against that claim at HMSA's expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that (a) Trading Partner promptly notifies HMSA in writing of the claim and (b) Trading Partner allows HMSA to control and cooperates with HMSA in the defense of the claim and any settlement negotiations related to the claim. This provision is HMSA's entire obligation to Trading Partner regarding any claim of infringement.
- 8.10 Trade Marks and Service Marks. Neither party grants to the other the right to use its trademarks, service marks, trade names, or other designations in any promotion or publication. Notwithstanding the foregoing, this provision does not affect any rights HMSA may have under an applicable participating provider (or other) agreement to use Trading Partner's name, address and telephone number for the purposes of communicating to HMSA Members, HMSA's customers and other parties in connection with the Trading Partner's relationship with HMSA.
- 8.11 Assignment. Neither party may assign or otherwise transfer this Agreement without the prior written consent of the other party and any attempt to do so is void.
- 8.12 Governing Law. Except as otherwise indicated herein, this Agreement will be governed by the laws of the State of Hawaii without reference to its conflicts or choice of law provisions.
- 8.13 Force Majeure. Neither party shall be held liable for failure to fulfill its obligations under the Agreement, if such failure is caused by flood, communications failure, extreme weather, fire or other natural calamity, acts of governmental agency, or similar causes beyond the control of such party.
- 8.14 No Waiver. Failure or delay on the part of either party to exercise any right, power, privilege, or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either party except by a writing signed by an authorized representative of the party making the waiver.

IX. SIGNATURES

The parties shall be bound by all the terms, provisions and conditions of this Agreement upon execution of the Agreement by each party's authorized representative.

Trading Partner

Hawaii Medical Service Association

Signature

Signature

Name (please print)

Mark M. Mugiishi

Name (please print)

Practice Name

Senior Vice President

Title

Address

Date

City, State, Zip Code

(808)

Telephone

Date

EXHIBIT A
Business Associate Authorization Form

In consideration of HMSA permitting the "Business Associate" named below to access HMSA's Electronic Data Systems (Electronic Media Claims System and the Hawaii Healthcare Information Network) on Provider's behalf, the Provider named below shall require Business Associate to comply with the terms of HMSA's "Electronic Trading Partner Agreement." In the event HMSA suffers any loss because of improper or inaccurate transmissions sent by Business Associate on Provider's behalf, Provider shall reimburse HMSA for such loss, including any expense incurred to recover said loss.

The appointment of the below-named Business Associate(s) will remain in effect and may be conclusively relied upon by HMSA, until Provider or Business Associate cancels the appointment in writing.

Provider Name _____

Office Address _____

City _____ State _____ Zip Code _____

Provider Signature _____ Date _____

Business Associate #1

Business Associate #2

Name _____

Name _____

Address _____

Address _____

City _____

City _____

State _____ Zip Code _____

State _____ Zip Code _____

Contact _____

Contact _____

Phone # _____

Phone # _____

Please fax this completed form for Business Associates to (808) 948-6008 or mail it to:

HMSA
EDI/HHIN Support – Room 521
P.O. Box 860
Honolulu, HI 96808-0860

Please retain a copy of this document for your records

- Notes: 1. This form applies to all HMSA business.
2. If you would like to authorize more than two Business Associates, please submit an additional form.