

## Trading Partner Agreement

AultCare Corporation, itself and on behalf of AultCare Insurance Company, AultCare Health Insuring Corporation, and AultCare Administrative Group collectively referred to as (“AultCare”) and \_\_\_\_\_ (“Trading Partner”) enter into this Trading Partner Agreement (“Agreement”) in Canton, Ohio, on \_\_\_\_\_, 201\_\_.

### Background and Intent

- A. Trading Partner is a Covered Entity (health plan, clearinghouse, health care provider) or business associate acting on behalf of a Covered Entity, that transmits and exchanges health information in electronic form in connection with Transactions covered by 45 CFR Parts 160 and 162.
- B. Trading Partner intends to conduct electronic Transactions with AultCare.
- C. Trading Partner will perform certain functions that AultCare requires according to HIPAA’s Transaction standards and this Agreement.
- D. AultCare is willing to exchange data in electronic Transactions with Trading Partner in compliance with HIPAA, including requirements for Trading Partner Agreements in 45 CFR Section 162.915.

**IN CONSIDERATION OF THE INTENT, TERMS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:**

### Terms and Conditions

1. Definitions

Capitalized terms in this Agreement have the same meaning and use as in 45 CFR, Parts 160 and 162. Specific definitions used in this Agreement are:

- 1.1. Breach or Security Breach has the same meaning given to the term “breach of security” in Section 13407 of the HITECH provisions of ARRA (42 U.S.C. § 17937) and involves the acquisition, access, Use, or Disclosure of Unsecured PHI/ePHI in a manner not permitted under HIPAA Rules that compromises the Security or Privacy of PHI/ePHI.
- 1.2. Companion Guide means a supplement to CMS Implementation Guides and provides information about the requirements for the exchange of electronic data with AultCare.
- 1.3. Data Condition means the rule describing the circumstances under which a Covered Entity must use a particular Data Element or Segment.
- 1.4. Data Element means the smallest named unit of information in a Transaction.

- 1.5. Disclosure means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.
- 1.6. Electronic Data Transaction Standards and Code Sets mean the standards authorized by Section 1171 through 1179 of the Social Security Act, Title 45 CFR, and adopted in the Federal Register for electronic Transactions and for code sets used in those Transactions, as well as the requirements for used of those standards.
- 1.7. Maximum Defined Data set means all of the required data elements for a particular standard based on a specific implementation specification.
- 1.8. Operating Rules mean the necessary business rules and guidelines for the electronic exchange of information that are not defined by a standard or its implementation specifications as adopted for purposes of 45 CFR, Part 162].
- 1.9. Security Incident means the attempted or successful, unauthorized access, Use, Disclosure, modification, or destruction of information or interference with system operations in an information system.
- 1.10. Segment means a group of related data elements in a Transaction.
- 1.11. Standard Transaction means a Transaction that complies with any applicable standard and associated operating rules adopted under 45 CFR, Part 162.
- 1.12. Transaction means the transmission of information between two parties to carry out financial or administrative activities related to health care, including the following types of transmissions: (1) health care claims or equivalent encounter information; (2) health care payment and remittance advise; (3) coordination of benefits; (4) health care claim status; (5) enrollment and disenrollment in a health plan; (6) eligibility for a health plan; (7) health plan premium payments; (8) referral certification and authorization; (9) first report of injury; (10) health claims attachments; and (11) other Transactions that the Secretary may prescribe by regulation.
- 1.13. Use means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains that information.

## 2. Relationship

- 2.1. This arms-length Agreement is between independent parties. Neither AultCare nor Trading Partner is an employer, employee, agent, or joint-venture of the other.
- 2.2. Neither party is authorized to enter into any contract with a third party that binds the other.
- 2.3. Except as permitted by this Agreement, Trading Partner may not assign this Agreement to an unrelated third party without AultCare's prior written notice and consent. AultCare may assign this Agreement to any related or affiliated entity.

- 2.4. Unless provided by this Agreement, there are no intended express or implied third-party beneficiaries.
3. Clearinghouse
  - 3.1 Trading Partner itself, or through a business associate acting on Trading Partner's behalf, may arrange for Clearinghouse services to translate the Transactions within the meaning of the HIPAA Transactions Rule 45 CFR §162.900 et seq.
  - 3.2. If Trading Partner uses a Clearinghouse in connection with Transactions submitted to or received from AultCare, Trading Partner will ensure that the Clearinghouse is bound by the mutual obligations of the parties in this Agreement even though the Clearinghouse has not signed this Agreement. Trading Partner must obtain assurances that the Clearinghouse will comply with all requirements imposed on clearinghouses under HIPAA's Transactions Rule.
  - 3.3. Trading Partner and/or Clearinghouse will be responsible for all costs, charges, or fees incurred in exchanging health information with AultCare specifically including (without limitation) operating system equipment, software and services, charges for maintaining an electronic mailbox, connection time, terminals, connections, telephones, modems, and any applicable minimum use charges.
4. Compliance
  - 4.1. Neither party has been excluded from participation in Medicare or Medicaid.
  - 4.2. Each party understands that the Privacy and Security of data held, transmitted, and exchanged by them according to this Agreement contains Protected Health Information in electronic format (PHI/ePHI).
  - 4.3. Each party will take all reasonable steps needed to ensure that Transactions between them comply with the Health Insurance Portability and Accountability Act of 1996 and HIPAA regulations, including Privacy and Security Rules, HITECH Rules, and the Omnibus Rule.
  - 4.4. Each party will take reasonable care to ensure that information submitted in an electronic Transaction is timely, complete, accurate, and secure.
  - 4.5. Each party will take reasonable precautions, including implementation of administrative, physical, and technical safeguards, to prevent unauthorized access to its own and the other party's operating system, transmission and processing systems, the transmissions themselves, and the control structure applied to transmissions between them.
5. Transaction Format and Specifications
  - 5.1. Standard Transactions conducted between AultCare and Trading Partner or between AultCare and Trading Partner's Business Associate, will use code sets, data elements and formats specified by HIPAA's Transaction Rules.

- 5.1.1. Before submitting any Transaction throughout the term of this Agreement, Trading Partner will cooperate in any testing AultCare requires of the transmission and processing systems deemed necessary to ensure the accuracy, timeliness, completeness, and security of each data Transaction.
- 5.1.2. Data will be exchanged only using the Electronic Data Transaction Standards and Code Sets.
- 5.1.3. Trading Partner will submit eligibility inquiries only for the sole purpose of verifying enrollees' eligibility for services according to the requirements and limitations identified in the Companion Guide, including transaction size and daily volume limits identified.
- 5.1.4. The parties will not violate 45 CFR §162.915 (a)-(d). Specifically, this Agreement will not:
  - 5.1.4.1. Change the definition, Data Condition, or use of a Data Element or Segment in a Standard Operating Rule, except where necessary to implement State or Federal law, or to protect against fraud and abuse.
  - 5.1.4.2. Add any Data Elements of Segments to the Maximum Defined Data Set.
  - 5.1.4.3. Use any code or Data Elements that are either marked "not used" in the standard's Implementation Specification or are not in the standard's Implementation Specification(s).
  - 5.1.4.4. Change the meaning or intent of the standard's Implementation Specification(s).
- 5.1.5. Trading Partner will cooperate with AultCare and follow the instructions of AultCare regarding coding and other data entry as appropriate to enable Trading Partner to conduct electronic Transactions in compliance with HIPAA's Transactions Rule and to demonstrate good faith compliance with current guidance from the U.S. Department of Health and Human Services.

5.2. Companion Guide

- 5.2.1 Trading Partner will ensure that each Transaction conforms to the applicable Transaction Specification Addendum, as well as specifications in AultCare's Companion Guide.
- 5.2.2. AultCare may amend the Companion Guide, at any time, without amendment to this Agreement. Trading Partner will not be required to implement changes to AultCare's Companion Guide sooner than 60 days after publication, unless a shorter compliance period is necessary to comply with applicable state or federal law or regulation. The last-issued

Transaction Specification Addendum of each type will be effective on the date specified in the Transaction Specifications Addendum and AultCare Companion Guide. Trading Partner assumes responsibility for obtaining AultCare's current Companion Guide from AultCare's website. AultCare will ensure amendments to its Companion Guide are identified with a revision date and posted on its website.

5.2.3. Trading Partner's failure to comply with the Companion Guide will constitute a material breach of this Agreement.

5.3. Authentication

5.3.1. Any security access codes that AultCare issues to Trading Partner will, when affixed to Transactions, be legally sufficient to verify the identity of the transmitter and to authenticate the Transaction, sufficient to establish the Transaction's validity.

5.3.2. Transactions having a security access code affixed to them will be deemed to have been "written" or "signed" by Trading Partner. Information contained in these Transactions that have been electronically or magnetically recorded and kept in the normal course of business will be considered original business records admissible in any judicial, arbitration, mediation or administrative proceedings to the same extent and under the same conditions as other business records originated and maintained in documentary form.

5.4. Rejection

AultCare is not obligated to respond to and, in its sole discretion, may reject any Transaction that does not conform to the applicable HIPAA Transaction Rules, the Transaction Specification Addendum, AultCare's Companion Guide, and this Agreement.

5.5. Exception

Trading Partner acknowledges that AultCare may request an exception under 45 CFR 162.940 from the Uses of a Standard in the Electronic Data Transaction Standards and Code Sets, in whole or in part. If that occurs, Trading Partner will cooperate with AultCare in requesting an exception and will participate in any test of proposed modifications to the standard in which AultCare is participating.

6. Confidentiality

6.1. Each party is responsible for safeguarding the Privacy and Security of data in its possession, including data in transmissions received from the other party and other persons. If either party receives data from the other not intended for it, the party must immediately notify the sending party and arrange for the return, re-transmission, or destruction of the information, as the sending party directs.

6.2. Each party has a duty to report a Security Incident to the other, so that appropriate remedial action can be taken and any damages mitigation.

- 6.3. Each party has an obligation under the Omnibus Rule to implement Breach Notification protocol if a Breach of unsecured electronic PHI occurs.
- 6.4. The parties consider this Agreement, including its Terms and Conditions, to be confidential.
- 6.5. Either party may designate information, including but not limited to trade secrets, which is not in the public domain, as proprietary. Except as this Agreement requires, neither party may disclose the other's designated proprietary information to a third party without prior written authorization.

7. Trading Partner Restrictions

Trading Partner will protect and maintain the confidentiality of security access codes that AultCare issues to Trading Partner. Trading Partner will not: (a) copy, reverse engineer, disclose, publish, distribute, alter or use data or data Transactions for any purpose other than for which AultCare has specifically authorized Trading Partner under the terms of this Agreement; or (b) obtain access by any means to data, data Transactions, or AultCare's operating system for any purpose other than as AultCare has specifically granted Trading Partner access under this Agreement.

8. Term and Cancellation

- 8.1. This Agreement begins when Trading Partner signs it electronically or when AultCare receives a signed hard copy. It will continue for 12 months and will automatically renew, unless either party notifies the other in writing of its intent not to renew at least 60 days before the expiration of the current term.
- 8.2. Either party may cancel this Agreement at any time, without cause, by notifying the other in writing at least 60 days before the effective date of cancellation.
- 8.3. AultCare may cancel this Agreement at any time, with cause, by notifying Trading Partner in writing of the nature of the material breach and giving Trading Partner the opportunity to cure the breach as soon as practical, but no later than 30 days.
- 8.4. Expiration or cancellation of this Agreement does not end or excuse either party's obligation under federal and Ohio law pertaining to the Privacy and Security of PHI/ePHI, nor does it terminate either party's obligations regarding the confidentiality of proprietary information.

9. General

- 9.1. This Agreement states the entire intent, understanding, and contract between the parties. It supersedes any prior oral or written contract or arrangement.
- 9.2. This Agreement may not be amended, and no Term or Condition may be waived, except in writing and signed by authorized representatives of both parties. No attempt to modify this Agreement by course and conduct will be valid. Any

attempt to modify this Agreement by email will not be valid unless the email is printed and signed by authorized representatives.

9.3. Interpretation and Enforcement

9.3.1. This Agreement will be considered drafted jointly with no presumption of construction against any party or person. The parties agree that the language of all parts of this Agreement will be construed as a whole, according to the fair meaning, and not strictly for or against any party.

9.3.2. Ohio law controls the enforcement of this Agreement. Exclusive jurisdiction and venue are established in Common Pleas Court of Stark County, Ohio. The parties, however, will attempt to resolve any disputes by mediation or other alternative dispute measures before seeking judicial relief.

9.4. Federal Contractor

If any party is considered a federal contractor and, therefore, subject to regulations governing commitments to Equal Employment Opportunity and Affirmative Action, that entity is required to inform any Supplier of this regulatory commitment, and that Supplier is considered a Subcontractor under these regulations. The parties incorporate by reference the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), as well as the posting requirements of 29 C.F.R. Part 471, appendix A to subpart A, if applicable. The federal contractor also is required to inform Supplier that, if the purpose order or subcontract amounts to \$50,000 and Supplier employs 50 or more employees company-wide, Supplier is obligated to develop and maintain an Affirmative Action Program.

**Any federal contractor and subcontractor will abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

**Any federal contractor and subcontractor will abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

10. Savings Provision

If any Term or Condition violates current or future changes in the law, or affects either party's participation in Medicare, Medicaid or any other Federal or State program, or is against public policy, that Term or Condition automatically will be voided, and the parties will promptly meet to amend this Agreement, if practical, consistent with their intent and enforceable to the fullest extent the law permits. If the parties cannot agree to amend, or it is not practicable to amend, this Agreement will end.

Alternative Signatory Lines

**A. Completed Electronically via Electronic Check Box Approval at AultCare website**

Trading Partner Legal Name: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Tax ID Number: \_\_\_\_\_

**B. Snap-in for any Hard Copy agreements**

Authorized representatives of both parties are signing two originals of this Agreement, which may be done in counterparts, that together form one, original, enforceable contract.

AultCare Corporation

Trading Partner

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

Its: \_\_\_\_\_

\_\_\_\_\_  
*Name (Printed)*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City, State, Zip Code*

\_\_\_\_\_  
*Telephone Number*

\_\_\_\_\_  
*Tax Identification Number*

Date \_\_\_\_\_