



TRADING PARTNER AGREEMENT

Section 1. Introduction

Excellus Health Plan, Inc., (hereinafter “**Health Plan**”) Hospitals and Physicians and others engaged in delivering health care services (hereinafter “**Trading Partner**”) mutually acknowledge the benefits to both parties of submitting claims and related inquires electronically. In order to obtain the cost savings and administrative convenience of such electronic exchanges, this Agreement establishes the manner in which such exchanges will occur. On each and every occasion when Trading Partner initiates one or more electronic communications with Health Plan, this Agreement shall apply. This Agreement supersedes any prior electronic agreement that may exist between the parties.

Section 2. Services To Be Provided

2.1 Electronic Services. Health Plan shall make available a variety of services that Trading Partner may utilize via electronic media. The services, which Health Plan shall offer via electronic media, will include but not be limited to, the receipt of claims for payment, reports from Health Plan regarding the status of those claims (claims functions), payment/remittance advice, as well as a variety of group related transactions. Health Plan will offer an electronic service referred to as “Quicklink” whereby Trading Partner may perform inquiry functions regarding the status of a claim(s) or an individual’s eligibility for benefits under a health insurance policy issued by Health Plan. Health Plan may change the scope of electronic services offered by Health Plan from time to time without advanced notice and without consent of Trading Partner.

If an electronic transaction, conducted between Health Plan and Trading Partner or Trading Partner’s agent/Business Associate, is a Standard Transaction as defined by Section 1173(a) of the Social Security Act, the Parties must use the code sets, data elements, formats and instructions specified in the applicable ANSI X12N Implementation Guide. Health Plan will supply Trading Partner with any Companion Guide or other document developed by Health Plan to communicate business requirements not specifically addressed in the ANSI X12N Implementation Guides. Health Plan will reject any Standard Transaction that does not satisfy the current formats, specifications, and technical and edit requirements set forth in the applicable ANSI X12N Guide.

If an electronic transaction conducted between Health Plan and Trading Partner or Trading Partner’s agent/Business Associate is not a Standard Transaction, Health Plan shall notify Trading Partner of the formats, specifications, technical and edit requirements, and any related conditions (including those of any subcontractor), that apply to the particular transaction at issue. Trading Partner is responsible for retrieving transaction response reports which will provide information about transaction denials and other file format issues. Health Plan will not monitor validation errors.

In addition to the fees set forth in Schedule A (if any), Health Plan can bill Trading Partner for fees or penalties imposed upon Health Plan as a result of inappropriate transactions submitted by Trading Partner to Health Plan. All security codes, instruction manuals and other materials which Health Plan provides to Trading Partner, including those of any Health Plan subcontractor, shall remain the property of Health Plan and shall be returned to Health Plan upon demand, together with copies of the foregoing and any backup files and data.

2.2 Lost Or Destroyed Data. In the event any data submitted electronically by Trading Partner is lost, destroyed, indecipherable, or for any other reason is not in usable form by Health Plan, regardless of reason or fault, Trading Partner and Health Plan pledge their prompt and mutual cooperation to reconstruct and resubmit such data. Upon request, Trading Partner must be prepared to provide proof of the original data submission at issue. Trading Partner agrees to maintain adequate back up tapes, source documents and files necessary to recreate any such transactions. Neither Trading Partner nor Health Plan shall have any



financial or other liability to the other in the event of lost, destroyed, changed or indecipherable data transferred during the use of the electronic services. Each party's sole remedy and responsibility shall be to use prompt and reasonable efforts to reconstruct and retransmit the data. Trading Partner agrees to locate, trace or resubmit any such transmissions at Trading Partner's own expense.

2.3 Authenticity, Record requirements, Certifications. Trading Partner and Health Plan agree that the fact that claims for payment are submitted via electronic methods does not change any of the conditions under which Health Plan is obligated to pay claims. Trading Partner agrees to maintain all the same records documenting that care was in fact rendered, which services were rendered, and at what appropriate price, cost, or reimbursement from Health Plan, as if the claims for those services were submitted on the paper forms otherwise required by Health Plan. Trading Partner shall assure that every claim submission is capable of being associated with original copies of source documents pertaining to any particular claim, including any Medicare claims, (such as patient medical records, billing records, attestation forms, Certificates of Medical Necessity (CMNs) for certain DME or other claim types, physician or patient signatures, etc.) in such form as may be required by Health Plan or any government agency. Trading Partner agrees to retain such information, documents and records in their original format for at least six years after it was first submitted to Health Plan.

On each and every occasion when Trading Partner submits claims via electronic methods, Trading Partner shall be deemed to certify that the services were indeed rendered in the manner and amount as set forth on the claims which Trading Partner has caused to be submitted to Health Plan in electronic media and shall be deemed to have signed or attested to the same clauses which Health Plan requires for similar claims submitted on paper. Trading Partner will not assert at any time, in any form, that Trading Partner is not bound by the accuracy or authenticity of claims data submitted via electronic means on the basis that Trading Partner (or its agent) has not signed a certification of attestation form as ordinarily set forth on paper claim otherwise required by Health Plan or by any applicable law or regulation

Section 3. Provisions Relating to Other Insurers, HMOs and Third-party Payors

3.1 Multiple Payors And Health Plan As Agent For Trading Partner. At Trading Partner's option and to the extent Trading Partner desires, Trading Partner may submit claims and initiate related transactions regarding other payors by using the electronic services that Health Plan offers. Health Plan will not accept electronic claims or related transactions from Trading Partner for any payor with whom Health Plan does not have a separate written agreement settings forth the terms and conditions for transmitting electronic data.

On each and every occasion, Trading Partner shall be deemed to have designated Health Plan to act as Trading Partner's billing agent in submitting claims and related transactions to the other payors. Health Plan's sole responsibility shall be to relay such information between Trading Partner and the other payor. Health Plan shall have no responsibility to Trading Partner regarding payment of such claims or the authenticity or accuracy of responses to related transactions from the other payors. As the billing agent of Trading Partner, Health Plan shall treat all such claims for reimbursement from such third parties, and related transactions, as confidential with the necessary (and legally permitted) exceptions for submitting claims to third-party payors acting as Trading Partner's billing agent.

Health Plan may enter into agreements with one or more subcontractors to provide services under this Agreement, such as distributing data or communications to the other payors. Health Plan shall utilize reasonable care in selecting such subcontractors and such subcontractors shall be bound to all the same obligations as Health Plan to Trading Partner. Trading Partner agrees to pay charges and fees imposed by subcontractors that perform services on Trading Partner's behalf. Reasonable training and instructions necessary to carry out the electronic services offered by Health Plan shall be provided to Trading Partner by Health Plan.

3.2 Trading Partner Obligations To Other Payors. All of the obligations which Trading Partner owes to Health Plan pursuant to the terms of this Agreement, Trading Partner shall also owe to other payors



whenever Trading Partner elects to utilize the electronic services provided by Excellus to communicate with other payors pursuant to this Agreement. Health Plan shall enter into written agreements with the other payors which obligate the other payors to Trading Partner in the same fashion as Health Plan is obligated to Trading Partner under this Agreement.

3.3 Use of System Only To Submit Claims Or For Related Transactions. Health Plan and other payors signing agreements with Health Plan assure Trading Partner that Health Plan and/or the other payors shall only use the information, which Trading Partner initiates or submits through the electronic services, for the purposes of making claims payments or responding to related transactions, as initiated by Trading Partner. Neither Health Plan nor other payors shall collect or review any information submitted by Trading Partner for any other reason, such as collection of health care statistics, monitoring the activities of Trading Partner, or any other purpose not related to payment of claims submitted by Trading Partner and responses to related transactions.

Trading Partner agrees that it shall only make use of the electronic services offered by Health Plan and the other payors in order for Trading Partner to submit claims for payment to Health Plan or the other payors or to obtain responses to related transactions (such as eligibility verification) in relation to anticipated efforts to obtain claim payments from Health Plan or other payors for rendering services. Trading Partner agrees that it shall not use the electronic services to collect or review information regarding Health Plan and/or the other payors for other reasons such as collection of health care statistics, information about customers of Health Plan or other payors, or their employees or dependents.

However, nothing in this agreement will prevent Health Plan from submitting data from the electronic services to a State agency or other party pursuant to the explicit terms of any existing or future Federal or State laws, rules and regulations.

Section 4. Trading Partner's Agents/Business Associates

4.1 Agent Authorization. In the event Trading Partner designates one or more agents to submit claims to Health Plan on Trading Partner's behalf, Trading Partner must sign and submit to Health Plan an Agent's Addendum. Both Trading Partner and the designated agent shall be responsible under this Agreement as if they were one party. The "Agent's Addendum" to this Agreement is attached as Schedule C.

Section 5. Trading Partner Obligations

5.1 Trading Partner agrees that it will not change any definition, data condition or use of a data element or segment in an ANSI ASC X12N Transaction Standard's implementation guide specifications.

5.2 Trading Partner agrees that it will not add any data elements or segments to an ANSI ASC X12N Transaction Standard's implementation guide specifications.

5.3 Trading Partner agrees that it will not use any code or data elements that are marked "not used" in an ANSI ASC X12N Transaction Standard's implementation guide specifications, or any codes or data elements that are not in an ANSI ASC X12N Transaction Standard's implementation guide specifications.

5.4 Trading Partner agrees that it will not change the meaning or intent of any ANSI ASC X12N Transaction Standard's implementation guide specifications.

5.5 Trading Partner agrees and understands that there exists the possibility new HIPAA transactions may be adopted in the future and thus agrees to test all new transaction sets.

5.6 Trading Partner agrees and understands that from time-to-time, the Department of Health and Human Services may modify and set compliance dates for the HIPAA Transaction Standards. Trading Partner agrees to implement any such modifications or changes on or before Health Plan's compliance date for such changes.



5.7 Trading Partner shall be responsible for the accuracy, truthfulness and completeness of all information submitted by itself, its employees or its agents or Business Associates.

Section 6. Mutual Obligations of the Parties

6.1 Transmission Format. As set forth in Section 2.1, all data transmissions of Standard Transactions as defined by Social Security Act § 1173(a) conducted between Health Plan and Trading Partner or Trading Partner's Business Associate will use the code sets, data elements, formats and instructions as specified in the applicable ANSI X12N Implementation Guide.

6.2 Testing. Prior to the initial production data transmission, each Party will test and cooperate with the other Party in testing each Party's operating system to ensure the accuracy, timeliness, completeness and confidentiality of data transmissions.

6.3 Equipment Cost. Each Party will obtain and maintain, at its own expense, its own operating system necessary for timely, complete, accurate and secure data transmission pursuant to this Agreement. Except as described in Schedule A, each Party will pay its own costs related to data transmission under this Agreement, including, without limitation, charges for the Party's own operating system equipment, software and services, maintaining an electronic mailbox, connection time, terminals, connections, telephones, modems and applicable minimum use charges. Each Party will be responsible for its own expenses incurred for translating, formatting and sending or receiving communications over the electronic network to any electronic mailbox of the other Party.

6.4 Data and Data Transmission Security. Health Plan and Trading Partner will employ security measures necessary to protect data and data transmissions between them, which may include authentication, encryption, password use, or other security measures in compliance with Social Security Act § 1173(d) and any Department of Health and Human Services implementing regulations or guidelines.

6.5 National Standard Identifiers. Health Plan and Trading Partner will use national standard identifiers in all data and data transmissions conducted between the Parties no later than Health Plan's compliance date with any national standard identifier adopted by the Department of Health and Human Services through regulations implementing the Health Insurance Portability and Accountability Act of 1996.

Section 7. Confidentiality and Security

7.1 Data Security. Health Plan and Trading Partner agree to maintain adequate security procedures to prevent unauthorized access to data, data transmission, security access codes, backup files, source documents or any operating system of either party. Security measures adopted by each Party must, at a minimum, conform to the requirements set forth in the final Security Rule, as amended from time to time, adopted by the Department of Health and Human Services. Each Party will immediately notify the other Party of any unauthorized attempt to obtain access to or otherwise tamper with data, data transmissions, security access codes, backup files, source documents or any operating system of either Party.

7.2 Confidential Health Information. Health Plan and Trading Partner agree to comply with all Federal and State laws concerning the confidentiality of medical records and the privacy of personal information contained in those records.

7.3 Proprietary Information. Trading Partner acknowledges that obtaining the information contained in the electronic services offered by Health Plan will permit Trading Partner to have access to certain proprietary information belonging to Health Plan and used in Health Plan's business, or belonging to any subcontractor. Trading Partner agrees to treat all such information obtained from Health Plan or any subcontractor via the electronic services as confidential. All documents or property supplied to Trading Partner in accordance with Section 2.1 of this Agreement are proprietary to Health Plan and shall be confidential. Trading Partner will not disclose any confidential or proprietary information without Health



Plan's written consent. Trading Partner shall not use that information or property for its own commercial or other purposes, other than reconciling Health Plan payments and responses regarding related transactions with amounts demanded by Trading Partner as payment for claims. Trading Partner expressly agrees that it shall not use the electronic services to collect, retain or review Health Plan data regarding the number and names of groups which are customers of BCBS or any other data regarding Health Plans' methods of operation or collect or review any database regarding Health Plan activities or mode of operation. Trading Partner shall not permit any other party, including employees, consultants or other engaged by Trading Partner, to use that information for such other parties' own commercial or other purposes. Upon hearing of an unauthorized use or disclosure of confidential and proprietary information, Trading Partner will cooperate with Health Plan and take all means to correct the situation.

7.4 Confidentiality Agreement. Trading Partner agrees to sign the Confidentiality Agreement attached as Schedule D.

Section 8. Limitation Of Liability

Health Plan makes no warranties, express or implied, including but not limited to the implied warranties of fitness for a particular use of merchantability. Health Plan shall not be liable for any loss or damage including but not limited to damages claimed to have resulted from the maintenance, use or non-use of Health Plan' electronic services, the negligent providing of inaccurate eligibility or other information, equipment or parts thereof comprising or relating to the system whether used separately or in combination with other products, or services provided with the system, regardless of the form of the action. In no event shall Health Plan be liable for loss of use, loss of profits, or direct, indirect, special, incidental, or consequential damages suffered by Trading Partner or its agent, contractors and employees or any third party.

Section 9. Indemnification

Trading Partner will indemnify and hold Health Plan harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and attorney fees ("Costs") incurred in connection with any and all third party claims, suits, investigations or enforcement actions ("Claims") which may be asserted against, imposed upon or incurred by Health Plan and arising as a result of Trading Partner (i) negligent acts or omissions of willful misconduct, or (ii) breach of its confidentiality obligations.

Health Plan will indemnify and hold Trading Partner harmless from and against any Costs for Claims which may be asserted against, imposed upon or incurred by Trading Partner and arising as a result of Health Plan' (i) negligent acts or omissions or willful misconduct, or (ii) Formulary, benefit design and coverage decisions

The indemnified party shall notify the indemnifying party in writing promptly upon learning of any Claim for which indemnification may be sought hereunder, and shall tender the defense of such claim to indemnifying party. No party shall indemnify the other with respect to any claim settled by the indemnified party without the indemnifying party's written consent.

Section 10. Term and Termination

The initial term of this Agreement shall be for one year, beginning on the Commencement Date, and Automatically renews annually. Health Plan and Trading Partner shall have the right to terminate this Agreement without cause upon sixty (60) days' written notice to Health Plan. Trading Partner must promptly notify Health Plan of any changes to the Trading Partner's contact information.

Section 11. Miscellaneous



Section 11.1 Authorization. Schedule A and/or Schedule C shall be resubmitted annually to Trading Partner Support or upon change in Trading Partner's agent, or representative, if that occurs prior to annual resubmission.

Section 11.2 Independent Nature. Trading Partner hereby expressly acknowledges its understanding that this Agreement constitutes a contract between Trading Partner and Health Plan, that Health Plan is a corporation operating under license from the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans, (the "Association") permitted Health Plan to use the Blue Cross and Blue Shield Service mark in Broome, Cayuga, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario, Otsego, Oswego, St. Lawrence, Tioga, Tompkins, Schuyler, Seneca, Steuben, Wayne, and Yates counties of New York State and that Health Plan 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 Health Plan and that no person, entity, or organization other than Health Plan shall be held accountable or liable to Trading Partner for any of Health Plan obligations to Trading Partner created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of Health Plan other than those obligations created under other provisions of this Agreement.

Section 11.3 Notice. Any notice or document required or permitted to be delivered pursuant to this Agreement must be in writing and shall be deemed to be effective upon mailing and must be either (a) deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, or (b) sent by recognized overnight delivery service, in either case properly addressed to the other Party at the address set forth below, or at such other address as such Party shall specify from time to time by written notice delivered in accordance herewith:

Excellus Health Plan, Inc.
EDI Solutions
P.O. Box 22999
Rochester, NY 14692

Section 11.4 Successors And Assigns. This Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective permitted assigns of the Parties hereto; provided, however, that this Agreement may not be assigned by either Party without prior written consent of the other Party.

Section 11.5 Integration; Amendments. This Agreement constitutes the entire understanding of the Parties and supersedes any prior oral or written communication between the Parties with the respect to the subject matter hereof. No modification, alteration, or waiver of any term, covenant, or condition of this Agreement shall be valid unless in writing and signed by both Parties and the agents of the Parties who are authorized in writing.

Section 11.6 Choice Of Law; Value. This Agreement shall be constructed and governed in all respects according to the laws in the State of New York, without regard to the rules of conflict of laws. Any legal action regarding this Agreement shall be brought in the County of Monroe, State of New York.

Section 11.7 Waiver. The failure of either Party to insist upon the strict observation or performance of this Agreement or to exercise any right or remedy shall not be constructed as a waiver of any subsequent breach of this Agreement or impair or waive any available right or remedy.

Section 11.8 Severability. In the event that any provision of this Agreement is invalid or unenforceable, such invalid or unenforceable provision shall not invalidate or affect the other provisions of this Agreement which shall remain in effect and be constructed as if such provision were not a part hereof; provided that if the invalidation or unenforceability of such provision shall, in the opinion of either Party to the Agreement,



have a material effect on such Party's rights or obligations under this Agreement, then the Agreement may be terminated by such Party upon thirty (30) days' written notice by such Party to the other Party.

Section 11.9 Force Majeure. Noncompliance with the obligations of this Agreement due to force majeure, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the applicable Party, shall not constitute breach of contract.

Section 11.10 Authority. Each Party has full power and authority to execute this Agreement, and the execution and performance of this Agreement is a valid and binding obligation which does not conflict with the Parties' respective articles of incorporation, bylaws, or any other agreements to which such Party is bound.

Mail To:

Excellus Health Plan, Inc.
EDI Solutions
P.O. Box 22999
Rochester, NY 14692

Practice Information

Practice Name: _____

Practice Address: _____

City: _____

State: _____ Zip: _____

Practice Contact

Name: _____

Phone: _____ Fax: _____

Email: _____

Practice NPI: _____

Practice Tax Id Number: _____

Billing Service: Yes () No ()
*If using a 3rd party to connect to us, please be sure to complete Schedule C

ANSI 835's: Yes() No ()
*if using a 3rd party-please print and complete the Schedule CR

Software Vendor

Name: _____

Phone: _____

Submitter ID: _____

Effective Date: _____

Signature: _____

**Signature required by physician or authorized person to sign on behalf of practice



**SCHEDULE A
TO
CONSENT TO SUBMIT CLAIMS ELECTRONICALLY**

Health Plan shall provide the following :

Communication Instructions containing the information necessary to bring Trading Partner to the Clearinghouse.

The following items shall be provided at Trading Partner's expense:

Computer and necessary software to access the network including an approved modem and Vendor.



**SCHEDULE B
TO
CONSENT TO SUBMIT CLAIMS ELECTRONICALLY**

Health Plan will accept electronic claims for Trading Partner for payors which have not agreed with Health Plan to accept, in electronic format, claims which Health Plan forwards to that other payor (i.e., paper claims) upon the following terms and conditions:

1. Claims will be printed to either a HCFA 1500 or UB-92 standard claims form.
2. Claims will be mailed to the appropriate payor within two workdays of receipt.

Please note: Schedule B is no longer applicable due to the new ANSI Format.



**SCHEDULE C
TO
CONSENT TO SUBMIT CLAIMS ELECTRONICALLY**

AGENT ADDENDUM

This Addendum to the attached Agreement of Consent to Submit Claims Electronically (“Agreement”) acknowledges that Trading Partner has entered into an arrangement with _____, with its principal place of business at _____ (“Agent”) to provide third party services to Trading Partner.

1. **APPOINTMENT.**

Trading Partner has appointed an Agent to provide certain services (including submissions of claims to payors for payment) to Trading Partner that necessitate Agent being able to take advantage of the electronic services as described in the attached Agreement is being made available to Trading Partner in accordance.

2. **ACCESS.**

Health Plan shall provide the electronic services to Agent upon the same terms and conditions of the Agreement to be provided to Trading Partner.

3. **OBLIGATION OF AGENT.**

Agent shall have the same duties, rights and obligations as Trading Partner has agreed to under the terms of the Agreement.

4. **NOTICES.**

Any notices required or permitted to be given pursuant to this Addendum shall be in writing and addressed to the following mailing address or such other address as may be provided to the other in writing:

AGENT

Excellus Health Plan, Inc.
EDI Solutions
P.O. Box 22999
Rochester, NY 14692

5. **INCORPORATION.**

All terms and conditions of the Agreement are incorporated by reference into this Addendum. The Parties hereby agree to the provisions of the Addendum.

6. **SIGNATURES (REQUIRED):**

PHYSICIAN (S):

Title: _____

Dated: _____

AGENT’S NAME:

Title: _____

Dated: _____



Mail to:

Excellus Health Plan, Inc.
EDI Solutions
P.O. Box 22999
Rochester, NY 14692

Practice Information

Practice Name: _____

Practice Address: _____

City: _____

State: _____ Zip: _____

Practice Contact
Name: _____

Phone: _____ Fax: _____

Email: _____

Practice NPI: _____

Practice Tax Id Number: _____

Billing Service/Clearinghouse Information

Billing Service:
Name: _____

Phone: _____ Fax: _____

Email: _____

Clearinghouse:
Name: _____

Phone: _____ Fax: _____

Email: _____

Submitter ID: _____

Effective Date: _____

Signature: _____

**Signature required by physician or authorized person to sign on behalf of practice

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement made as of the date set forth below, by and between **Excellus Health Plan, Inc.** (herein, “**Company**”) and **Client** (herein, “**Agent**”).

RECITALS:

Company and Agent are parties to a **Clearinghouse** Agreement (“**Agreement**”) pursuant to which Agent agrees to provide or receive certain Clearinghouse services, and

In order to perform its obligations under the Agreement, certain confidential information relating to Company may be disclosed to or received by Agent, the confidentiality of which information, and its prevention from further disclosure and unauthorized use must be protected.

IN FURTHERANCE of the foregoing, it is hereby agreed as follows:

1. For purposes of this Confidentiality Agreement, the term “Confidential Information” shall mean any and all information pertaining to Company and/or the conduct of its business, whether written or oral, whether prepared by Company or its advisors, including, without limitation, all of Company’s policies, procedures, programs, and manuals (e.g. utilization management, quality assurance and credentialing policies and procedures), participating physician information and the terms of any contracts with providers and/or networks of providers, fee schedule information, information pertaining to covered persons, including protected health information as that term is defined by 45 Code of Federal Regulations § 164.501, subscriber contracts, premium rates and rate setting methodologies. Confidential Information does not include information which becomes available to Agent on a non-confidential basis from a source other than Company, provided that such information is not known by Agent to be proprietary or such source is not known by Agent to be bound by a confidentiality agreement or other obligation of secrecy to Company or another party.
2. For purposes of this Confidentiality Agreement, the term “Electronic Protected Health Information” shall mean individually identifiable information that is transmitted by electronic media or maintained in electronic media. “Electronic media” includes both storage media and transmission media. “Storage” media includes memory devices in computers (e.g. hard drives), and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk or digital memory card. “Transmission” media is used to exchange



- information already in an electronic storage media. "Transmission" media includes the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media.
3. Agent shall not, in any manner or for any reason whatsoever, directly or indirectly: (a) use all or any portion of the Confidential Information for any purpose other than solely for the performance of its obligations under the Agreement; provided, any such permitted use or disclosure is one which Company is otherwise legally authorized to make; (b) except as set forth herein, disclose or otherwise make available in any manner or form to any person or entity all or any portion of the Confidential Information; or (c) take any action or fail to take or abstain from taking any action the effect of which would cause Confidential Information to be disclosed or otherwise made available in a manner inconsistent with Agent's obligations hereunder.
 4. Agent may disclose Confidential Information to its employees only on a need-to-know basis, provided further that Agent shall: (a) direct such persons to use such information solely for the purpose described in Paragraph 2; (b) inform such persons of the confidential nature of such information; and (c) direct and cause such persons to treat such information confidentially as required of Agent herein. Agent shall provide Company with prompt written notice, upon Company's request, of all such employees to whom such information was disclosed.
 5. Agent may utilize subcontractors in performing its services under the Agreement. Agent shall (a) direct such subcontractors to use Confidential Information solely for the purpose described in Paragraph 3; (b) inform such subcontractor of the confidential nature of such information; (c) direct and cause such subcontractors to treat such information confidentially as required of Agent herein; and (d) direct and cause every subcontractor who receives Electronic Protected Health Information on Company's behalf to implement reasonable and appropriate security safeguards consistent with the standards set forth at 45 CFR Parts 160-164. Agent shall provide Company with advance written notice of all proposed subcontractors. Company shall have the right to reject any subcontractor or to require Agent to cease using a subcontractor.
 6. Agent shall provide Company with immediate notice upon learning of any use or disclosure of Confidential Information in contravention of this Confidentiality Agreement. Such notice shall include to whom or for what purpose the information was used or disclosed, the specific information used or disclosed and the circumstances surrounding the use or disclosure. Agent shall also provide Company with immediate notice upon learning of any security breach or security incident. A "security incident" includes the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with a system operation in an information system.
 7. Agent shall implement and provide Company evidence of appropriate safeguards to ensure that Confidential Information is not used or disclosed in a manner



- inconsistent with this Confidentiality Agreement. Such safeguards shall include, at a minimum, written standards and procedures, satisfactory to Company, pertaining to the storage, access and transmission of Confidential Information to/by persons otherwise authorized to have access to it under the terms hereof. Agent shall also implement and provide Company with evidence of the implementation of administrative, physical and technical security safeguards that reasonably and appropriately protect the integrity and availability of Electronic Protected Health Information that the Agent creates, receives, maintains or transmits on behalf of Company. Such safeguards must, at a minimum, meet or exceed every security standard and implementation specification set forth at 45 CFR Parts 160-164. Company shall have the right at any time and from time to time to audit Agent's books and records and to conduct on-site inspections of Agent's operations as necessary for Company to assure Agent's compliance with the foregoing. Agent shall fully cooperate with Company in the conduct of such audits and inspections.
8. Agent shall make its internal practices, books and records, relating to its treatment of Electronic Protected Health Information and its use and disclosure of the Confidential Information it creates or receives for or from Company available to the U.S. Department of Health and Human Services to determine compliance with 45 Code of Federal Regulation Parts 160-64 or this Confidentiality Agreement.
 9. Within 15 days of receipt of Company's request, Agent shall promptly amend, or permit Company access to amend, any portion of the Confidential Information which Agent created or received for or from Company so that Company may meet its amendment obligation under 45 Code of Federal Regulations §164.526.
 10. Agent will permit an individual (or the individual's personal representative) to inspect and obtain copies of any Confidential Information about the individual which Agent created or received, and which Company does not maintain. Agent will promptly forward to its Company contact person, any Confidential Information it creates or receives regarding an individual.
 11. Agent will document each disclosure it makes of Confidential Information it creates or receives for or from Company and will forward notice of such disclosure, including what information was disclosed, to whom it was disclosed, and for what purpose the information was disclosed, to the attention of Company's Privacy Officer at 205 Park Club Lane, Buffalo, New York 14221-5239. In addition, Agent will make available to Company, within 30 days of Company's request, its books, records, and other documents relating to such disclosures for inspection during regular business hours at its place of business so that Company may meet its disclosure accounting obligations under 45 Code of Federal Regulations §164.528.
 12. Unless disclosure is permitted under this Confidentiality Agreement, if Agent is requested or required (by deposition, interrogatories, requests for information or



- documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, Agent shall provide Company with notice (by telephone, fax or any other reasonable form of communication) within twenty-four (24) hours of such request and before responding thereto so that Company may seek an appropriate protective order or other appropriate remedy. Agent shall furnish only that portion of the Confidential Information which it is legally required to disclose.
13. Upon Company's request, or in the event the Agreement is terminated, Agent shall promptly return to Company all written material containing or reflecting any Confidential Information. The return of such material shall not relieve Agent of its obligations hereunder. In any event, Agent shall not retain any copies, extracts or other reproductions in whole or in part of such written material or any other Confidential Information. All documents, memoranda, notes and other writings whatsoever prepared by Agent or its agents based on the information in the Confidential Information shall be destroyed, and such destruction shall be certified in writing to Company by an authorized officer supervising such destruction. In the event that return or destruction of any material containing or reflecting any Confidential Information is infeasible, Agent will limit its further use or disclosure of that Confidential Information to those purposes that make return or destruction infeasible and will certify in writing to Company that it will only use or disclose such Confidential Information for those purposes that make return or destruction infeasible.
 14. Agent agrees that in the event of any breach or threatened breach of this Agreement, Company shall be entitled to all legal and equitable remedies afforded to it by law or in equity, including any declaratory or injunctive relief, and relief of specific performance without requirement of proof of actual damages or threat of actual damages. Agent agrees to indemnify, defend and hold Company harmless for any loss, damages, costs (including, without limitation, reasonable attorneys' fees) or liabilities resulting from the use or disclosure of Confidential Information in contravention of this Confidentiality Agreement, and for any breach of this Confidentiality Agreement.
 15. In the event that Company determines, at its sole discretion, that Agent has violated a material term of this Agreement, Company shall be entitled to immediately terminate the Agreement to which this Confidentiality Agreement applies.
 16. The rights and obligations of the parties set forth in this Agreement shall survive the termination of the Agreement in any event.
 17. Company and Agent agree that there are no intended third party beneficiaries or other parties other than Company and Agent to this Confidentiality Agreement.



18. This Confidentiality Agreement may be modified or waived only by a separate writing executed by the parties expressly so modifying or waiving such Confidentiality Agreement. Agent agrees to abide by any modifications made to this Confidentiality Agreement to maintain compliance with any statutory, regulatory or other legal requirement.

19. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the State of New York. Company and Agent agree that any action brought under this Confidentiality Agreement shall be exclusively brought in the courts of the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year above mentioned.

EXCELLUS HEALTH PLAN, INC.

AGENT

By: _____

By: _____

Date: _____

Date: _____