

PUBLIC EMPLOYEES HEALTH PROGRAM  
**ELECTRONIC TRADING PARTNER AGREEMENT  
(ETPA)**

The provisions of this Agreement are intended to govern the rules of conduct and methods of operation between the Public Employees Health Program (hereinafter referred to as PEHP) and PROVIDER who has entered into an independent contractor arrangement with PEHP, in relation to the interchange of data by use of the PEHP Provider website.

The PEHP Provider website provides a means by which PROVIDERS may inquire about Plan coverage; Member eligibility, claims inquiry, Payment status, and other information or services that may be added or deleted from time to time (hereinafter referred to as services).

This agreement also takes into account that PEHP, a health plan, and said PROVIDERS are “covered entities” as defined by 45 CFR parts 160 and 164, Standards of Privacy of Individually Identifiable Health Information, and as such, are individually responsible for compliance with the provisions therein.

Therefore, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is acknowledged, the parties agree as follows:

**1. SERVICES**

1.1 Availability. This Agreement applies to the services described, as modified and supplemented from time to time.

Unless otherwise indicated in the related description, the PEHP Provider website is available to PROVIDERS twenty-four (24) hours a day, seven (7) days a week. PEHP may temporarily suspend access and services at its discretion.

2.1 PROVIDER Responsibility for Use. PROVIDER will use the PEHP Provider website in a manner consistent with applicable laws. PROVIDER is solely responsible for all use of PROVIDER’s PEHP Provider website account and for any violation of the terms of this Agreement by anyone using PROVIDER’s account. For purposes of this Agreement, PROVIDER’s “use” (a) means (i) use by PROVIDER’s employees, agents or contractors who have obtained PROVIDER’s signature in their employment or engagement, (ii) use by PROVIDER’s employees, agents or contractors, who following their separation from employment or engagement from PROVIDER were enabled by the use of PROVIDER’s signature obtained in their employment or engagement, (iii) use by any person who obtains PROVIDER’s signature because of PROVIDER’s negligence, and (iv) use by any person who obtains PROVIDER’s signature from any person described in (i), (ii) or (iii) above and (b) specifically excludes the unauthorized use of PROVIDER’s PEHP Provider website account by any person who is not described in (i) – (iv) above or who accesses or uses PROVIDER’s signature without authorization from same.

**3. CONFIDENTIALITY, PRIVACY AND SECURITY**

3.1 Use and Disclosure of Protected Health Information. The following provisions apply specifically to the possession, use and disclosure of Protected Health Information obtained by means of a transaction and is intended to document each party’s assurances that it will appropriately use and safeguard such data.

(a) Definition. “**Protected Health Information**” or “**PHI**” shall have the broadest meaning given under applicable laws and generally refers to individually identifiable health information transmitted or maintained in any form or medium.

(b) Standard. PEHP will not (and will require that its directors, officers, employees, contractors and agents do not) use or disclose PHI obtained from PROVIDER in any manner that would constitute a violation of law if so used or disclosed by PROVIDER. PEHP may use PHI (i) for PEHP’s proper management and administrative services or (ii) to carry out PEHP’s legal responsibilities.

(c) Obligations Regarding PHI. PEHP and PROVIDER each agree, for the benefit of each other and additionally for the benefit of the providers to whom PEHP or PROVIDER may be a "business associate" under the Health Insurance Portability and Accountability Act ("HIPAA") of 1996 and rules or regulations promulgated therein that:

(i) both parties will not use or further disclose PHI in a manner that would violate the requirements of applicable laws, if so used or disclosed by the originator of the transaction;

(ii) both parties will not use or further disclose PHI other than (A) as permitted or required by this Agreement or supplemental agreements now or hereafter existing which govern either party's business relationship or arrangement with other providers or (B) as required by law;

(iii) both parties will implement appropriate safeguards to prevent use or disclosure of PHI, other than as provided by this Agreement (including the security procedures specified in the 45 CFR Parts 160 and 164);

(iv) both parties will have a written policy to prevent the improper use or disclosure of PHI, including a procedure for notifying appropriate persons of the improper use or disclosure of PHI of which either party becomes aware;

(v) PROVIDER will promptly report to PEHP (or, in the case of PEHP, to the affected PROVIDER) any instances of which either party becomes aware that the confidentiality of PHI has been breached;

(vi) PROVIDER will promptly report to PEHP (or, in the case of PEHP, to the affected PROVIDER) any use or disclosure of PHI received or sent in a transaction of which either party becomes aware and which is not provided for by this Agreement;

(vii) both parties will require that any third party, including agents and contractors agree to the same restrictions and conditions that apply to the PROVIDER with respect to such information, including those in this Section 3.1(c);

(viii) both parties will make PHI available for amendment, to provide an accounting of disclosures or to comply with other requirements of applicable laws;

(ix) both parties will make their internal practices, books and records relating to the use and disclosure of PHI available for purposes of determining their compliance with applicable laws pertaining to PHI; and

(x) at termination of this Agreement, PROVIDER will return or destroy all PHI received in a transaction that is still maintained in any form and will retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Agreement and this Section 3.1 to the information and limit further use and disclosure to those purposes that make the return or destruction of the information not feasible.

(d) Breach. If PEHP or PROVIDER breaches a material obligation under this Section 3.1, or is in violation of the requirements of applicable laws respecting PHI, the non-breaching party in its sole discretion may take, but is not obligated to take, reasonable steps to cure the breach or terminate this Agreement or, if termination is not feasible, report the breach or violation to the Utah state and federal governmental authorities having jurisdiction.

(e) Incorporation of Additional Requirements; Construction. The requirements of applicable law pertaining to PHI, to the extent not adequately provided for in this Section 3.1 or elsewhere in this Agreement, are hereby incorporated by reference and shall become a part of this Agreement. This Agreement and Section 3.1 shall be construed as broadly as necessary to implement and comply with applicable privacy laws, including HIPAA. Section 3.1 is intended to document the assurances and other requirements respecting the use and disclosure of PHI that must be obtained by "covered entities" from contracting parties who are "business associates" under HIPAA and it will be modified as appropriate from time to time to comply with HIPAA.

3.2 Interception of Transactions. To the maximum extent permitted by law, PEHP is not liable for the interception by improper means or the theft by persons (other than PEHP employees, agents or contractors) of transactions carried on the PEHP Provider website.

3.3 Signatures. Access to the PEHP Provider website and use of services require an electronic identification, which may consist of user names, passwords, symbols or codes (“**signatures**”). PROVIDER SHALL MAINTAIN THE CONFIDENTIALITY AND CONTROL THE USE OF PROVIDER’S SIGNATURE. SUCH SIGNATURES SHALL BE DEEMED “CONFIDENTIAL INFORMATION” UNDER SECTION 3.1 OF THIS AGREEMENT.

Recipients of transactions will maintain the confidentiality of the signatures of other Providers affixed to or contained in such transactions.

3.4 Governmental Entities. PROVIDERS that are Utah governmental entities may be subject to the Government Records Access and Management Act (Utah Code Annot. (1953), §§ 63-2-101 *et seq.*, as amended, “**GRAMA**”). Under GRAMA, certain records within a governmental entity’s possession or control may be subject to public disclosure. Notwithstanding anything to the contrary in this Agreement, a PROVIDER that is a Utah governmental entity subject to GRAMA may disclose information to the extent required by GRAMA or as otherwise required by law.

#### **4. AUDIT**

4.1 PEHP will make its practices, books and records (excluding stored transactions, confidential information and PHI) relating to the safeguarding, protection, use and disclosure of PHI and confidential information available on reasonable advance notice for inspection by PROVIDER for purposes of determining compliance with Section 3.1. PEHP will, at the request of PROVIDER, make available an accounting of PEHP’s further disclosures of PHI and confidential information disclosed by PROVIDER. In addition, if PEHP has reasonable cause to believe that PROVIDER use of the PEHP Provider website is not in compliance with this Agreement or 45 CFR Parts 160 & 164, PEHP may audit stored transactions for compliance, *provided that* PEHP first notifies PROVIDER of the audit and gives PROVIDER the opportunity to have a representative present. Any audit shall be conducted so as not to cause the improper disclosure or use of transactions or their content.

#### **5. CONTRACTORS**

5.1 PEHP may perform their obligations under this Agreement directly or through contractors. PEHP shall cause its contractors to comply with the obligations, restrictions and conditions applicable to PEHP regarding the contents of transactions, confidential information, security and privacy contained in Section 3. Notwithstanding that PEHP may contract certain communication and support services, PEHP shall remain primarily responsible for the performance of such services.

#### **6. INTERNET (ISP) ACCESS AND OTHER PROVIDER RESOURCES**

6.1 PROVIDER, at PROVIDER’s own expense, will provide and maintain the hardware, software, equipment and services necessary to effectively and reliably access the PEHP Provider website. PROVIDER will also format, transmit and receive transactions complying with the standards and use of other services. An Internet service provider and Internet browser that support the use of 128 byte SSL encryption is necessary. The PROVIDER’s web browser must be enabled to accept “cookies”.

#### **7. COMPLIANCE WITH LAW**

7.1 Generally. PEHP and PROVIDER will each comply with laws applicable to this Agreement to the use of the PEHP Provider website, other services and the content of transactions. This Agreement will be interpreted, to the maximum extent possible, so as to be consistent with such laws.

7.2 No Agency. PEHP provides specific PEHP Provider services to PROVIDERS, but does not act for PROVIDERS as a general matter. PEHP is not responsible for the content of transactions.

## **8. STORAGE AND RETENTION**

8.1 PROVIDER is solely responsible for providing and maintaining data backup and retention adequate for PROVIDER's needs, for maintaining adequate source records (which may be electronic) relating to transactions and for complying with applicable law relating to the storage, maintenance and retention of such records.

## **9. LIMITED WARRANTY; DISCLAIMERS**

9.1 PEHP warrants that it will use its best efforts to correctly provide services of the PEHP Provider website in a timely manner. PEHP MAKES NO OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING THE SERVICES OR RESOURCES PROVIDED BY IT OR THE USE OF SERVICES NOT COMPLYING WITH APPLICABLE LAW. PEHP DISCLAIMS LIABILITY (RELATING TO PEHP'S OR PROVIDER'S CONNECTION TO THE INTERNET OR THE INTERNET SERVICE PROVIDER) FOR THE FAILURE OF PROVIDERS TO COMPLY WITH THIS AGREEMENT (INCLUDING ANY FAILURE TO COMPLY WITH APPLICABLE LAWS, RULES OR REGULATIONS RELATING TO THE SECURITY OR PRIVACY OF PHI OR FOR THE CONTENT AND USE OF SAID SERVICES). PEHP DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION, COMPATIBILITY WITH ANY PARTICULAR HARDWARE OR SOFTWARE, OR INTER-CONNECTIBILITY WITH OTHER NETWORKS OR SERVICES.

## **10. LIMITATION OF LIABILITY**

10.1 Regardless of whether any remedy set forth herein fails in its essential purpose or otherwise, neither PROVIDER nor PEHP will be liable to the other for lost profits or data, or any special, incidental, indirect, exemplary or consequential damages arising from, or as a result of, any delay, omission or error in the transmission or receipt of any transactions or use of other services or other claims arising out of this Agreement, even if advised in advance of the possibility of such damages.

## **11. INDEMNIFICATION**

11.1 By PEHP. PEHP will defend PROVIDER against claims that the use of services by PROVIDER infringes on any patents, copyrights or trademarks or that the use of services is a misappropriation of trade secrets, and will pay (a) all costs, damages and attorney's fees finally awarded against PROVIDER as a result of such claims and (b) any settlement of such claims, provided that PROVIDER notifies PEHP in writing promptly upon discovery of such claims and fully cooperates giving PEHP complete authority and control in the defense and settlement of such claims. PEHP will have no liability or obligation for claims based on (i) use of services not in compliance with applicable standards or (ii) the content of transaction. THIS SECTION 11.1 STATES PEHP'S ENTIRE OBLIGATION FOR BREACH OF THE FOREGOING NON-INFRINGEMENT WARRANTY.

11.2 By PROVIDER. Except for claims arising out of PEHP's breach of this Agreement or PEHP's negligent acts, omissions or willful misconduct, PROVIDER agrees to indemnify, defend and hold harmless PEHP, its employees, directors, agents and contractors for, from, and against all damages and costs, including reasonable attorneys fees, that result from (i) the claims of third parties arising out of (a) PROVIDER's use of the PEHP Provider website and services, including PROVIDER's connection to the Internet or (b) the content and use of the PEHP Provider website by PROVIDER, (ii) the Payment of health insurance claims and (iii) the compliance by PROVIDER with applicable laws (including those relating to the security and privacy of PHI), provided that PEHP notifies PROVIDER in writing promptly upon discovery of any such third party claims and fully cooperates giving PROVIDER complete authority and control in the defense and settlement of such claims. For purposes of this Section 11.2, PROVIDER's "use of the PEHP Provider website and services (a) means (i) use by PROVIDER's employees, agents or contractors who have obtained PROVIDER's signature in their employment or engagement, (ii) use by PROVIDER's employees, agents and contractors who following their separation from employment or engagement by PROVIDER were enabled by the use of PROVIDER's signature obtained in their employment or engagement, (iii) use by any person who obtains PROVIDER's signature because of PROVIDER's negligence, and (iv) use by any person who obtains PROVIDER's signature from any person described in (i), (ii) or (iii) above and (b) specifically excludes the unauthorized use of

PROVIDER's website account by any person who is not described in (i) - (iv) above or who accesses or uses PROVIDER's signature without authorization from same.

## **12. LIMITATION OF ACTION**

12.1 No action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has arisen, or in the area of nonpayment, more than two years from the date of last Payment.

## **13. TERMINATION**

13.1 By Either Party. This Agreement will remain in effect until terminated by either party with not less than thirty (30) days prior notice to the other party.

13.2 By PEHP for Cause. PEHP may terminate this Agreement (a) if PROVIDER fails to comply with any of its material terms or conditions, and fails to cure such non-compliance within thirty (30) days of notice, or (b) if PROVIDER uses or attempts to use the PEHP Provider website services for any fraudulent or illegal purpose or (c) fails to comply with the standards of 45 CFR Parts 160 & 164 and fails to cure such non-compliance within thirty (30) days of notice. PEHP may immediately suspend PROVIDER's access to the PEHP Provider website and services, with or without terminating this Agreement, (i) if PROVIDER uses or attempts to use the PEHP Provider website or services for any fraudulent or illegal purpose or (ii) PROVIDER fails to comply with 45 CFR Parts 160 & 164.

13.3 Obligations on Termination. Upon termination for a reason other than stated in Section 13.2 (i) and (ii), PEHP and PROVIDER will agree on a reasonable time, not to exceed thirty (30) days, within which PROVIDER may pursue alternatives to the services. During this time period, PROVIDER may continue to use the PEHP Provider website and services in accordance with this Agreement, and the parties shall be subject to this Agreement for such time period. The effective date of termination will be the date on which PROVIDER ceases to use the PEHP Provider website and services or thirty (30) days following notice of termination, whichever first occurs. PROVIDER will, within thirty (30) days of the effective date of termination, turn over to PEHP or, if agreed by PEHP, certify the destruction of all property belonging to or provided by PEHP.

## **14. MODIFICATION**

14.1 The terms and conditions of this Agreement cannot be modified or waived except (a) by a writing signed by the parties hereto or (b) by PEHP giving PROVIDER thirty (30) days advance written notice of changes, in which case PROVIDER's use of services after the thirty (30) day notice period will constitute PROVIDER's acceptance of the modification or waiver stated in the notice.

## **15. APPEALS**

15.1 Any action arising out of this Agreement shall be a legal right under Title 49 of the Utah Code Annotated and such action shall be subject to the appeals procedure as set forth in Utah Code Annotated Section 49-11-613.

## **16. GENERAL PROVISIONS**

16.1 Assignment. Neither PEHP nor PROVIDER may transfer or assign its rights or obligations under this Agreement without the prior written consent of the other, except for a transfer or assignment to a parent, a subsidiary, an affiliate, an entity with which it is merged or consolidated, or the purchaser of all or substantially all of its assets, provided such transferee assumes all its obligations under this Agreement.

16.2 Attorney's Fees. The prevailing party in any legal action concerning this Agreement is entitled to recover its reasonable attorney's fees and costs following a final judgment.

16.3 Construction; Severability. To the maximum extent possible, this Agreement and its provisions will be interpreted consistently with applicable law. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions. The words "law" or "laws" shall have the broadest meaning in the context used, and will generally refer to Utah state and federal laws, rules and regulations.

16.4 Entire Agreement. This Agreement contains the parties' entire agreement respecting the subject matter hereof, supersedes and replaces all prior agreements between PEHP and PROVIDER pertaining to the provision of services, and may be modified only as provided herein or by a signed written document. THIS AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT. ALL PRIOR ORAL DISCUSSIONS ARE MERGED IN THIS AGREEMENT. No course of dealing or failure or delay in exercising any right, privilege, remedy or option will operate as a waiver of any right, privilege, remedy or option under this Agreement.

16.5 Excusable Delays. No party will be liable for any failure to perform its obligations hereunder, where such failure results from any act of God or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic or communications failure).

16.6 Governing Law. This Agreement is governed by the laws of Utah, excluding laws pertaining to choice of law.

16.7 Headings. Section headings are for convenience and will not affect the construction or interpretation of any provisions of this Agreement.

16.8 Notice. All notices hereunder will be by e-mail (excluding notices under Sections 3.1(c), 3.1(d), 13, 14 and 16) or in writing sent by United States certified mail, postage prepaid, to the address of the other party which is set forth in this Agreement, or to such other addresses as the party will designate in writing. Any notice will be deemed to be effective upon delivery. Notice may be waived by mutual written consent of the parties.

16.9 Ownership. PROVIDER has no rights of ownership or other property rights in any standards, services or other materials furnished by PEHP in connection with this Agreement.

16.10 Survival. The provisions of Sections 3, 7.2, 9, 10, 11, 15 and 16 will survive the termination of this Agreement.

16.11 Third Party Rights. Nothing in this Agreement is intended to confer any rights or remedies on any persons other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to any party to this Agreement, nor will any provision give any third party any right of subrogation or action against any party to this Agreement.

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**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 202\_

**PROVIDER**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Individual Provider, Group or Facility Name (If applicable, attach group roster)

\_\_\_\_\_  
Tax Identification Number(s) (TIN) (If applicable, list multiple TIN's)

\_\_\_\_\_  
NPI

\_\_\_\_\_  
Email

\_\_\_\_\_  
Signature

**PUBLIC EMPLOYEES HEALTH PROGRAM**

\_\_\_\_\_  
Cortney Larson  
Director, Provider Relations

\_\_\_\_\_  
Date