West Virginia Public Employees Insurance Agency

Limited Data Use Agreement

This Data Usage Agreement ("DUA") is hereby entered into by and between the West Virginia Public Employees Insurance Agency (PEIA), an agency of and for the State of West Virginia, and _____, a prospective Pharmacy Benefits Manager vendor and is effective as of _____, 2021.

Whereas PEIA is a Covered Entity under 45 CFR §160.103 and is a political subdivisions of the State of West Virginia; and

Whereas the VENDOR is seeking to manage PEIA's Pharmacy Benefits Management program as a Business Associate of PEIA as defined in 45 CFR 164.504(e), and

Whereas "meaningful use" issues such Pharmacy Benefits Management is critical to the operation(s) of the Plan(s); and

Whereas PEIA would need to share certain with certain real and potential Business Associates limited data sets under the terms and conditions of a Request for Proposals in order to allow vendors to make and prepare accurate proposals; and

Whereas it is desirable, in order to further the continued efficient operations and legal compliance of PEIA, it is necessary to exchange, release and disclose between PEIA and prospective vendors certain information which may contain confidential individually identifiable health information (hereafter, "Protected Health Information" or "PHI") for the meaningful use of managing preparing a response to a Request for Proposals for a Pharmacy Benefits Manager to assist with healthcare operations; and

Whereas, it is the desire of PEIA that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy Rule, and the PEIA do agree to at all times treat the PHI and interpret this DUA consistent with that desire.

NOW THEREFORE, VENDOR and PEIA agree that in consideration of the mutual promises herein; and of the exchange(s) of PII/PHI hereunder that:

1. **Definitions.**

Terms used, but not otherwise defined, in this DUA shall have the same meaning as those terms in the Privacy Rule

a) **BAA** means a HIPAA-compliant Business Associate Agreement meeting the standards set forth in 45 CFR 164.504(e).
b) **Covered Entity** has the meaning given that term under 45 CFR 160.103 of the Privacy Rule.
c) **Healthcare Operations** are certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and

payment. These activities, which are limited to the activities listed in the definition of "health care operations" at 45 CFR 164.501.

d) **HIPAA** refers to the Health Insurance Portability and Accountability Act, as amended, along with all federal regulations implementing that statute, and federal guidance interpreting that statute and/or its implementing regulations.
e) **NIST – National Institute of Standards and Technology**
f) **PHI – Protected Health Information** – as defined in 45 CFR 160.103
g) **Privacy Rule.** Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended.
h) **Required by Law.** Required by Law shall have the meaning set forth in 45 CFR 164.103.
i) **Security Rule.** Security Rule means the standards for the security of electronic protected health information found at 45 CFR Part 164, subpart C, as amended.
j) **PHI – Protected Health Information** – as defined in 45 CFR 160.103
k) **Vendor** - the party intending to respond to the Request for Proposals for a Pharmacy Benefits Manager

2. **PHI Disclosed; Permitted Uses.**

(a). **PHI Described.** Protected Health Information ("PHI") (as defined in 45 CFR 160.103) disclosed by and between PEIA and the VENDOR is disclosable, in both identified and de-identified formats, under this DUA, for the uses permitted by the parties and with their respective vendor(s) and associated contracts for the preparation of a response to the Request for Proposals for Pharmacy Benefits Management services. The disclosable PHI is limited to the minimum necessary to complete the tasks, or to provide the services, associated with the terms of the PEIA solicitation.

(b). **Purposes.** Except as otherwise limited in this DUA, VENDOR may use or disclose the PHI supplied to it by PEIA for the sole purpose(s) of preparing a response to the Request for Proposals solicitation for Pharmacy Benefits Management services. No other use(s), either expressed or implied, shall be permitted under this DUA.

3. **Obligations of Parties.**

(a) **Stated Purposes Only.** The PHI may not be used by VENDOR for any purpose other than the preparation of a response to the Request for Proposals for a Pharmacy Benefits Manger program by the VENDOR for PEIA and its programs and/or Plan(s), or for projection of benefit cost(s) between VENDOR and PEIA and/or the Pharmacy program, or as otherwise stated in this DUA, or as Required by Law.

(b) **Limited Disclosure.** The PHI is confidential and will not be further released and/or disclosed by VENDOR other than as permitted or required in this DUA, or as required by law or required for the proper management and administration of VENDOR and PEIA, provided that the VENDOR or PEIA obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will be held confidentially, used or further disclosed only as Required by Law or for the purposes for which it was disclosed, and the person notifies VENDOR or PEIA of any instances where the confidentiality of the PHI has been breached.

(c) **Safeguards.** VENDOR and PEIA will use appropriate safeguards to prevent use or disclosure of the PHI except as provided for in this DUA. Both VENDOR and PEIA shall maintain an appropriate level of administrative, physical and technical

safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI it creates, receives, maintains or transmits on behalf of any Covered Entity, pursuant to this DUA. This shall include, but not be limited to:

(i) Limitation of the groups of its employees or agents to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this DUA, and the use and disclosure of the minimum PHI necessary;

(ii) Appropriate notification and training of its employees or agents to whom the PHI will be disclosed in order to protect the PHI from unauthorized disclosure;

(iii) Maintenance of a comprehensive written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the operations of the parties.

(d) **Compliance with Law.** This Limited Data Use Agreement shall be governed by the laws of the State of West Virginia. VENDOR and PEIA will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws to which VENDOR or PEIA are subject relating to confidentiality of PHI, as a Business Associate of a Covered Entity under the Privacy Rule.

(e) **Report of Disclosure.** VENDOR will promptly report to PEIA, in writing, any use or disclosure of the PHI not provided for by this DUA of which it becomes aware.

(f) **Mitigation.** VENDOR and PEIA agree to mitigate, to the extent practicable, any harmful effect that is known to either party of a use or disclosure of the PHI by either party in violation of the requirements of this DUA.

(g) **Documentation.** Both VENDOR and PEIA agree to document disclosures of the PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §§164.528 and 164.316. This should include a process that allows for an accounting to be collected and maintained by VENDOR or PEIA and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such PHI shall include: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of purposes of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

(h) **Accounting Rights.** To the extent that both VENDOR and PEIA retain obligations under 45 CFR 164.128 to provide an accounting of disclosures with respect to the PHI received from or by each other for projection of Plan Management, both VENDOR and PEIA and their agents or subcontractors shall, within ten (10) days of notice of a request for an accounting of disclosures of the PHI, make available to VENDOR and/or PEIA such PHI as is required to provide an accounting of disclosures required by 45 CFR § 164.528.

(i) **Access to PHI.** To the extent that both VENDOR and PEIA retain obligations under 45 CFR 164.524 with respect to the PHI received by the PEIA from VENDOR, or VENDOR from PEIA, for Plan Management, both parties shall make the PHI maintained the other party or its agents or subcontractors in Designated Record Sets available to both parties for inspection and copying within ten (10) days of a request by the other party to enable each to fulfill such obligations.

(j) **Amendment of PHI.** To the extent that both VENDOR and PEIA retain obligations under 45 CFR 164.526 with respect to the PHI received by the other party for Plan Management, within ten (10) days of receipt of a request from the other party for an amendment of the PHI or a record about an individual contained in a Designated Record Set, the other party or its agent[s] or subcontractor[s] shall make such PHI available to the requesting party for amendment and incorporate any such amendment to enable each to fulfill such obligations.

(k) **Retention of PHI.** VENDOR and PEIA, and/or their subcontractors or agents, shall retain all PHI throughout the term of the Agreements permitting or requiring receipt or use of the PHI, and thereafter, as needed for the purposes of either party's coordination of benefits. While the PHI is in the possession of either party, they shall adhere to the requirements of this DUA with respect to the PHI.

(l) **Joint Projects.** VENDOR and PEIA recognize that it may be in the best interest(s) of both parties to enter into joint projects, contracts, agreements, or ventures designed and intended to enhance, improve, or otherwise benefit the PEIA populations served and the State of West Virginia. This DUA shall serve as a mechanism for the sharing of resources, data in both identified and de-identified formats, subject matter expertise, and Plan agreements for purposes of improved healthcare and treatment of the covered populations, improved outcomes measures, plan efficiency(ies), and cost effectiveness for the State of West Virginia.

(m) **Agents, Subcontractors Compliance.** VENDOR will ensure that any of their agents, including any subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which either party creates or receives on behalf of the other party, agree to the restrictions and conditions which apply to PEIA hereunder.

(n) **Amendments.** Both VENDOR and PEIA shall make available to the specific Individual to whom it applies any PHI; make such PHI available for amendment; and make available the PHI required to provide an accounting of disclosures, all to the extent required by 45 CFR §§ 164.524, 164.526, and 164.528 respectively.

(o) **Federal Access.** Both VENDOR and PEIA shall make, as required by law, its internal practices, books, and records relating to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504.

4. **Termination.**

(a) **Termination For Cause.** PEIA may terminate this DUA if at any time it determines that the VENDOR has violated a material term of the DUA. PEIA shall allow the other party a reasonable period of time to cure the material breach before termination.

(b) **Survival.** The respective rights and obligations of VENDOR and PEIA under Section 3(k) of this DUA shall survive the termination of this Agreement.

(c) **Data Disposition.** Within sixty (60) days of the termination of this Agreement the Vendor shall provide to PEIA a detailed data disposition plan compliant with the applicable provisions of the HIPAA Security Rules that renders any and all PEIA data received, created, transmitted, stored, or otherwise maintained by Vendor unreadable, indecipherable, and/or otherwise unusable. This term and condition would also apply to any data held or stored by any subcontractor(s) and/or collaborators. Such plan shall outline the means and modes of data disposition and the means and modes of verifying or validating the proper disposition of the data. For guidance on appropriate data please refer to NIST SP 800-88.

5. **General Provisions**

(a) **Ownership of PHI.** Nothing in this Data Use Agreement shall convey ownership rights to the PHI transferred under the permissions of this document to the VENDOR from PEIA, the sending party, or any subcontractors of same. Any and/or all data disclosed under this Data Use Agreement shall remain the sole property of PEIA.

(b) **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an Individual must be held strictly confidential.

(c) **Electronic Transmission.** Except as permitted by law or this DUA, the PHI or any data generated from the PHI which would permit identification of an Individual must not be transmitted to another party by electronic or other means for additional uses not authorized by this DUA.

(d) **No Sales.** Reports or data containing the PHI shall not be sold.

(e) **No Third-Party Beneficiaries.** Nothing express or implied in this DUA is intended to confer, nor shall anything herein confer, upon any person other than VENDOR, PEIA, and their respective successors or assigns, any rights remedies, obligations or liabilities whatsoever.

(f) **Interpretation.** . The interpretation of this DUA shall be made under the laws of the State of West Virginia.

(g) **Statutory Compliance.** Nothing in this DUA shall relieve either party of their requirements to comply with their statutory mandates under governing provisions of the West Virginia State Code.

(h) **Amendment.** VENDOR and PEIA agree that to the extent necessary to comply with applicable law, they will agree to further amend this DUA.

(i) **Review and Expiration.** This DUA shall be in effect for the life and/or terms of the Request for Proposals process from the date of signing. In the absence of a review this DUA shall remain in effect until such time as it is terminated under Section 4 (a) of this DUA or is rescinded and/or revoked by the VENDOR Director and/or his/her

designee, the PEIA Director and/or his/her designee, the Cabinet Secretary for the West Virginia Department of Administration and/or his/her designee.

AGREED:

PEIA

Signature: _____

Title: DIRECTOR

Date: 4/29/21

VENDOR

Signature: _____

Title: _____

Date: _____