



**BLUE CROSS BLUE SHIELD OF MICHIGAN  
BLUE CARE NETWORK OF MICHIGAN**

**AGENT AGREEMENT**

THIS AGENT AGREEMENT ("Agreement") is made by and between the undersigned agent ("Agent") and Blue Cross Blue Shield of Michigan ("BCBSM"), located at 600 East Lafayette, Detroit, Michigan 48226, and/or Blue Care Network of Michigan ("BCN"), located at 20500 Civic Center Drive, Southfield, Michigan 48076, and is effective on the later of the date ("Effective Date") (i) indicated on Agent's electronic signature or reflected with Agent's manual signature on this Agreement or (ii) that this Agreement is accepted by BCBSM and/or BCN, as evidenced by BCBSM's confirmation to Agent electronically or manually. BCBSM and BCN are both independent licensees of the Blue Cross and Blue Shield Association, and each are hereinafter referred to separately as the "Company" to the extent it has signed this Agreement unless expressly indicated otherwise.

In consideration of the mutual covenants herein contained, the parties agree as follows:

**1. AGENT'S AUTHORITY AND OBLIGATIONS.**

**1.1. Authority.** Agent is authorized on behalf of Company during the term of this Agreement to solicit, sell and service "Products," as defined in this Agreement. If Agent solicits, sells, or services any Product listed on an Affordable Insurance Exchange, the Agent shall be deemed a "Delegated Entity," as defined in 45 CFR §156.20. Any sale by Agent shall be binding on Company only when accepted in writing by Company. Company reserves the right, in accordance with applicable law, to reject any and all sales submitted by Agent to Company. Agent only has the authority expressly stated in this Agreement. The authority of Agent under this Agreement shall not extend to or affect the general practices and policies of Company.

Agent is **without** authority to do or perform, and expressly agrees not to perform, the following on behalf of Company:

- a. Incur any debt or liability;
- b. Make, alter, or discharge Company contracts;
- c. Waive defaults by customers or any other party under contract with Company;
- d. Quote rates other than those provided by Company;
- e. Extend the time for or method of payment by customers;
- f. Withhold monies or property of Company; and
- g. Settle or adjust claims against Company involving any third party, including Company's customers.

**1.2. Licensing; Notification of Certain Actions.** Agent shall secure and maintain such licenses as required by Michigan law to solicit, sell, and service Products on behalf of Company. Agent shall immediately notify Company of any expiration, termination, suspension, revocation or other action by the Michigan Department of Insurance and Financial Services, its successors, or any other government agency affecting said licenses. Agent shall immediately notify Company upon receiving notice of any misdemeanor or felony charges with respect to Agent's actions, including, but not limited to, fraud, dishonesty, breach of trust, theft, misappropriation of money, or breach of any fiduciary duty.

**1.3. Expenses.** Company shall not be responsible for Agent's expenses other than those which may be negotiated and mutually agreed upon between Company and Agent in writing.

**1.4. Use of Promotional Materials.** Agent shall obtain prior written approval from Company for use of all logos, brands, trademarks, literature, sales aids, and promotional materials or promotional efforts used in conjunction with the marketing of Products.

**1.5. Errors and Omissions Insurance.** Agent shall maintain errors and omissions insurance satisfactory to Company as indicated on the application. Company reserves the right to change its requirements regarding such insurance by giving Agent written notice of its revised requirements.

**1.6. Office.** Agent shall maintain an office for reasonable service to customers and the public.

**1.7. Compliance with Law and Company Rules.** Agent shall comply with all state and federal laws and regulations applicable to Agent's representation of Company, including, but not limited to, all applicable laws, rules, and regulations relating to

the standards specified under 45 CFR §156.340 or similar regulations. Agent shall also comply with all rules and instructions issued by Company, including, but not limited to, underwriting rules regarding the solicitation, sale and servicing of any Products offered through Company. Agent shall provide an attestation or attestations to the Company in accordance with instructions issued by the Company on at least an annual basis confirming, among other things, compliance with this Agreement as well as security standards applicable under the law or under the Company's rules to protected health information.

**1.8. Indemnification.** During and after the term of this Agreement, Agent shall indemnify, defend, and hold Company harmless from and against any claim, loss, damage, or expense, including reasonable attorneys' fees, caused by or arising from the negligence, misconduct or breach (i) of this Agreement by Agent or Agent's employees or (ii) of any Agent Agreements between BCBSM and/or BCN and producing agents that have assigned commissions to Agent if Agent is an insurance agency ("Subproducers").

**1.9. Communications to Customers.** When required by Company, Agent shall inform and/or distribute any Company communications or materials to Company's customers in a timely manner.

**1.10. Code of Business Conduct; Agent Portal.** Agent shall abide by Company's Code of Business Conduct. At least once a year, Agent shall review the Company's Code of Business Conduct, which may be found on BCBSM's Agent Portal. Within ninety (90) days of the Effective Date, Agent will register on the Agent Portal and provide Company with a current email address for Agent, which Agent shall update promptly upon any change, and Agent agrees to access, or have Agent's representative access, the Agent Portal periodically to view any notices or other communications made available to Agent on the Agent Portal.

**1.11. Subcontractors.** In the event that Agent uses a subcontractor to perform any of Agent's obligations as a Delegated Entity, Agent shall enter into an agreement with such subcontractor that includes a provision that the subcontractor agrees to be bound by the same terms and conditions that apply to Agent under this Agreement with respect to such delegated obligations.

**2. PRODUCTS.** As used in this Agreement, the term "Products" means only (i) those health care coverages or services which Company has specifically authorized Agent to solicit, sell and service and (ii) the contracts with customers which describe those coverages or services.

### **3. COMMISSIONS.**

**3.1. Schedule of Commissions.** As full compensation on business placed through Company pursuant to the authority granted in Section 1.1 above, Agent will receive commissions from Company in accordance with the Schedule of Commissions furnished by Company. Notwithstanding the previous sentence, if Agent is an insurance agency, Agent shall not be entitled to commissions from Company other than those assigned to Agent by Subproducers. Company may revise the Schedule of Commissions after providing thirty (30) days prior electronic or written notice to Agent; in the event any revised Schedule of Commissions is not acceptable to Agent, notice of such non-acceptance shall constitute a notice of termination of this Agreement to become effective on the date the revised Schedule is to take effect.

**3.2. Accounts.** Commissions and any other accounts of money due Agent on the business shall be payable monthly and shall be paid by Company not later than sixty (60) days after the end of the month in which the amount became due. Company may deduct the entire amount of any funds Agent owes to Company for any reason from the compensation paid to Agent.

**3.3. Agent's Account Statement.** Agent's commission accounting statements produced by Company shall be conclusive evidence of the statement of accounts between Agent and Company unless Agent notifies Company of the basis for a dispute within thirty (30) days following the receipt of the accounting statement. The notice identifying the alleged error must be in writing.

**3.4. Refunds.** Agent shall refund ratably to Company, within sixty (60) days of notification to Agent, commissions on cancelled Products and on reductions in premiums at the same rate at which such commissions were originally paid by Company.

**3.5. Renewals.** With respect to Products containing renewal agreements or Products continued by order of governmental authority, Agent, for so long as this Agreement remains in effect, shall be entitled to receive commissions on all renewals unless Company is furnished with a written designation of another Agent signed by the customer.

## TERM AND TERMINATION.

**4.1.** This Agreement and all agreements regarding commissions for a particular Product shall be effective until terminated at the earlier of:

- a. Written agreement of the parties;
- b. Written notice by either party to the other party to be effective thirty (30) days from the date of notice;
- c. The death or dissolution of either party;
- d. Failure of Agent to pay Agent's Company accounts;
- e. Agent's violation of Sections 1.1 or 1.7 of this Agreement;
- f. Suspension or revocation of Agent's license;
- g. Operation of Section 3.1 of this Agreement; or
- h. Determination by Company or the US Department of Health and Human Services that Agent has failed to satisfactorily perform in accordance with any term or condition of this Agreement.

**4.2. Agent's Post Termination Responsibilities.** When Agent's authority to represent Company is terminated, with or without notice, the responsibility of Agent shall continue as the Agent of Record until the Products sold by Agent are cancelled, replaced, or have expired. During the period following notice of termination, Agent shall continue to represent Company in servicing existing Products, but Agent shall not:

- a. bind a new risk;
- b. renew a Product; or
- c. increase the obligations of Company without the approval of Company.

**4.3. Commissions on Termination of Agreement.** Notwithstanding anything to the contrary stated herein, Company shall pay Agent commissions that are earned prior to termination of this Agreement but that have not been paid. All other commissions payable hereunder cease upon termination of this Agreement.

## 5. RIGHT TO AUDIT.

**5.1. Audit by Company.** With reasonable notice and during usual business hours, Agent agrees to allow Company, or its designated third party (under confidentiality provisions no less stringent than those set forth in this Agreement), at no additional cost to audit Agent Books and Records and personnel as necessary to ensure compliance with this Agreement and any applicable federal and state laws.

For purposes of this Section 5.1, "Agent Books and Records" shall mean all relevant facilities, systems, business records, policies, procedures, internal practices, books, system procedures and records, and/or data logs of Agent and/or its subcontractors for all matters and services relating to this Agreement. Agent shall maintain and shall require its subcontractors to maintain their books and records in a manner that permits audits or inspections as required by this Agreement.

Ensuring compliance with this Agreement includes, but is not limited to, ensuring that adequate Health Insurance Portability and Accountability Act ("HIPAA") related privacy and security standards, including appropriate administrative, technical, and physical safeguards have been identified, and are implemented by Agent to prevent the unauthorized disclosure of Protected Health and Personally Identifiable Information. Agent shall cooperate with Company in all reasonable respects in connection with such audits. Additionally, upon Company's reasonable request, Agent shall provide Company with policy and procedure documentation to support compliance with HIPAA.

Except as otherwise stated in this Agreement or otherwise required under the law (including a six (6) year retention period for HIPAA related transactions), Agent shall maintain adequate Agent Books and Records for a period of three (3) years after the expiration of this Agreement in a manner that permits review. Except for: (i) audits in connection with incidents relating to notification obligations attendant to security incidents and unauthorized access or distribution of personally identifiable information, or (ii) audits otherwise required under the law, Company's right to audit under this Section 5.1 will be retained by Company for a period of three (3) years from the date of final payment under this Agreement or any sub-agreement hereto to which the records relate. This Section 5.1 shall survive the term of this Agreement.

Company's failure to detect, failure to notify Agent of detection, or failure to require Agent's remediation of any unsatisfactory practices, does not relieve Agent of its responsibility to comply with this Agreement, does not constitute acceptance of such practice, and does not constitute a waiver of Company's enforcement rights under this Agreement.

**5.2. Audit by Government.** Agent shall permit access by government authorities, including the Secretary of the Department of Health and Human Services and the Office of the Inspector General or their designees in connection with their right to evaluate through audit, inspection, or other means, to Agent's books, contracts, computers, or other electronic systems, including medical records and documentation relating to Company's obligations in accordance with applicable Federal standards under 45 CFR §156.340(a) until 10 years from the final date of this Agreement.

**6. PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION.** Company and Agent agree and acknowledge that Agent is a business associate of Company, as evidenced by the Business Associate Agreement ("BAA") attached and incorporated herein as Addendum A. The terms and conditions of the BAA shall not be reduced, disclaimed, or otherwise limited by any terms or conditions of this Agreement. If a term or condition in the BAA conflicts with a term or condition in this Agreement, the term or condition of the BAA shall control.

**7. CONFIDENTIALITY.**

**7.1 Protection of Confidential Information.** Agent shall restrict the use or disclosure of confidential information of Company or affiliates ("Confidential Information") obtained in connection with the performance of this Agreement to purposes directly connected with the performance of the responsibilities specified in this Agreement, and shall use its best efforts to prevent the unauthorized disclosure, use, or duplication of such information except as is necessary for Agent to perform its obligations to Company. Any other disclosure made hereunder by Agent shall be deemed unauthorized unless Agent obtains the prior written consent of Company. No Confidential Information shall be released to any third party without such party having first executed a confidentiality and indemnification agreement in a form acceptable to Company. In releasing any Confidential Information, Company does not waive any protection it may have regarding trade secrets and other proprietary information pursuant to either the State or Federal Freedom of Information Acts.

**7.2 Confidential Information.** Confidential Information under this Agreement includes, but is not limited to:

- a. All communication of information between the parties in any form whatsoever, including oral, written, and machine readable form, pertaining to the Agreement.
- b. All data, records, trade secrets or know-how;
- c. Materials, product plans, products, specifications, manuals, business plans, underwriting policies;
- d. Database information services, inventions, developments, processes, technology, designs, engineering, hardware configuration information;
- e. Marketing plans, financial information, customer lists, rate renewals, documentation, legal contracts, statements of work;
- f. Protected health information ("PHI") and personally identifiable information ("PII") which must be safeguarded in accordance with the terms set forth by HIPAA and other applicable federal and state laws, including PHI that may be provided in a Limited Data Set as that term is defined in HIPAA;
- g. Hospital, physician, and other health care provider financial data, including provider tax identification numbers and claims utilization and payment data with respect to the services these providers have rendered to BCBSM members;
- h. Other business information disclosed or submitted, orally, in writing, or by any other media; and
- i. Materials produced by Agent containing any information specified herein.

**7.3 Return of Confidential Information.** At the conclusion of this Agreement or upon written request, all files containing Confidential Information shall be promptly returned to Company, or, at Company's sole discretion, erased or rendered permanently inaccessible. Upon Company's request, Agent shall deliver a written statement that a diligent search and inquiry has been made for any Confidential Information, and that all such Confidential Information was returned, erased, or rendered permanently inaccessible. Agent may not keep or use any Confidential Information after the engagement is completed, except to the extent required by law.

**7.4 Exceptions.** Notwithstanding anything to the contrary contained herein, the provisions of Section 7 shall not apply to any information which: (i) at the time disclosed to, or obtained is in the public domain; (ii) becomes part of the public domain through no fault of Agent; (iii) was communicated by a third party who is not, to Agent's knowledge, subject to any

confidentiality obligations with respect thereto; (iv) is independently developed by the Agent; or (v) is required to be disclosed by operation of law.

**7.5 Survival.** Agent's obligations under Section 7 shall survive this Agreement.

**8. GENERAL TERMS**

**8.1 Independent Contractor.** Agent is an independent contractor and neither this Agreement nor the rules and regulations promulgated by Company shall be construed to abridge Agent's independent judgment as to the time, place, and manner of soliciting accounts or to create the relationship of master and servant or employer and employee between Agent and Company.

**8.2 Merger Clause.** This Agreement and the application to which it is attached and any addenda, schedules, rules or other agreements provided for in this Agreement or incorporated hereunder, shall be the entire agreement of the parties and supersedes all previous agreements whether oral or written, between Company and Agent.

**8.3 Assignment.** No assignment of commissions payable pursuant to this Agreement shall be valid unless approved in writing by Company.

**8.4 Waiver of Class Action.** Any dispute resolution proceedings in court will be conducted only on an individual basis and not in a class or representative action or as a named or unnamed member in a class, consolidated representative, or private attorney general action, unless both Agent and Company specifically agree to do so in writing.

**8.5 Governing Law.** This Agreement shall be governed by and construed according to Michigan law and federal law as applicable.

**8.6 Amendment; Notice.** BCBSM may amend this Agreement at any time upon thirty (30) days' notice. Notice, including written notice, shall be deemed given upon publication on the Agent Portal, transmission of an email to the last email address for Agent provided to Company by Agent, or mailing to the last known address of Agent.

**8.7 Waiver.** The failure of Company at any time to require performance by Agent of any provision of this Agreement shall not affect in any way Company's full right to require such performance at any time thereafter. The waiver by Company of a breach of any provision of this Agreement does not constitute a waiver of the provision itself.

**8.8 Severability.** If any particular provision of this Agreement is found to be illegal or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain fully enforceable.

**8.9 Enforcement.** BCBSM and BCN are separate entities and each shall be permitted to independently enforce the terms and conditions of this Agreement.

**8.10 Nondiscrimination.** BCBSM does not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, sexual orientation, or health status in the administration of its Products listed on the Affordable Insurance Exchange, including enrollment and benefit determinations.

Executed by the parties effective on the Effective Date.

\_\_\_\_\_  
(Print Agent's Name)

BLUE CROSS BLUE SHIELD  
OF MICHIGAN

BLUE CARE NETWORK  
OF MICHIGAN

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

NPN: \_\_\_\_\_

## ADDENDUM A

### Business Associate Agreement

This Business Associate Agreement ("Agreement") is entered into by and between the undersigned agent ("Agent") Blue Cross Blue Shield of Michigan and/or Blue Care Network of Michigan, and is effective on the later of the date ("Effective Date") (i) indicated on Agent's electronic signature or reflected with Agent's manual signature on this Agreement or (ii) that this Agreement is accepted by BCBSM and/or BCN, as evidenced by BCBSM's confirmation to Agent electronically or manually. BCBSM and BCN are both independent licensees of the Blue Cross and Blue Shield Association, and each are hereinafter referred to separately as the "Company" to the extent it has signed this Agreement unless expressly indicated otherwise.

#### RECITALS

Whereas, the Office for Civil Rights, Department of Health and Human Services, recently published final regulations fully implementing the Health Information Technology for Economic and Clinical Health (HITECH) Act ("HITECH Act") (42 U.S.C. §17934 et. seq.), and also making various technical, conforming and other amendments to the HIPAA rules, being entitled "Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Non-Discrimination Act; Other Modifications to the HIPAA Rules" (the "Final Rule") (published at 78 F.R. 5566 (January 25, 2013));

WHEREAS, the parties to this Agreement agree that the obligations herein govern the exchange of all PHI and PII as set forth below. Anytime PHI or PII is exchanged, this Agreement shall be automatically incorporated into the agreement(s) entered into between Company and Agent governing such services; and

Whereas, both parties to this Agreement desire to continue conducting business with each other, to remain fully compliant with the law and to amend the Agreements as otherwise stated below;

Therefore, in consideration of their mutual promises and other valuable consideration, the sufficiency of which is acknowledged by the parties, the parties hereby agree to amend the Agreements, effective upon execution of this amendment, as follows:

#### AGREEMENT

##### **1. Applicable Law and Policy.**

- a. Agent acknowledges that if it performs services or assists the Company in the performance of a function or service that involves the use or disclosure of Protected Health Information ("PHI"), then the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and stricter state and federal laws, as applicable, require that the PHI be protected from inappropriate uses or disclosures.
- b. Agent acknowledges that pursuant to HIPAA, its use and disclosure of PHI must be in compliance with the terms of this Addendum and, specifically, 45 C.F.R. §164.504(e).
- c. Capitalized terms not otherwise defined shall have the meaning as set forth in HIPAA

##### **2. Use and Disclosure of PHI.**

- a. PHI, in electronic form or otherwise, may be used or disclosed only when required by law or as necessary to enable Agent to satisfy the obligations and to perform the functions, activities, services and operations to which Agent is contractually obligated by Company. Agent shall not and shall ensure that its directors, officers, employees, contractors and agents do not use PHI received from the Company in any manner that would constitute a violation of applicable law.
- b. Agent shall not and shall ensure that its directors, officers, employees, contractors, and agents do not use or disclose PHI received from the Company in any manner that would constitute a violation of applicable law if used or disclosed by the Company. Agent may disclose PHI (a) as permitted and pursuant to the requirements of this Addendum or (b) as required by law.
- c. To the extent Agent discloses PHI to a third party, Agent must obtain, prior to making any such disclosure:
  1. Reasonable assurances evidenced by written contract from such third party that PHI will be held confidential and safeguarded consistent with the terms of this Addendum, and only used or further disclosed for the purpose for which Agent disclosed it to the third party or as required by law; and

2. An agreement from such third party to immediately notify Agent (who will in turn notify the Company in accordance with Section 4 of this Addendum A) of any:
  - i. Unauthorized access, use or disclosure of PHI;
  - ii. Security Incident as defined in 45 C.F.R. §164.304 and further explained in Section 4(b) of this Addendum; and
  - iii. Breaches of the confidentiality of the PHI, as “Breach” is defined by 45 C.F.R. §164.402, to the extent such third party has discovered such unauthorized access, use or disclosure of PHI, Security Incident or Breach.
- d. Agent shall utilize a Limited Data Set, if practicable, for all uses, disclosures or requests of PHI. Otherwise, any uses or disclosures of PHI shall be limited to the “Minimum Necessary,” as defined in 45 C.F.R. §514(d) and any further guidance that may be issued by the Department of Health and Human Services. Agent acknowledges its obligation under 45 C.F.R. §164.502(b) to determine what constitutes the minimum necessary to accomplish the intended purposes of any disclosure of PHI.
- e. To the extent that Agent fulfills Company’s obligations under Subpart E of 45 C.F.R. Part 164, Agent will comply with the requirements of this Subpart as such obligations apply to Company.

### **3. Safeguards Against Misuse of Information.**

- a. Agent agrees that it will implement all appropriate safeguards, including at least the minimum provisions set forth in Company’s Vendor Information Security Program Requirements Document, the terms of which are incorporated into this Business Associate Agreement by reference to prevent the access, use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum. Such safeguards include administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Company as required by 45 CFR Part 160 and Subparts A and C of Part 164 (“Security Rule”). In addition, Agent shall implement all Security Rule provisions and requirements as more fully described in the Final Rule and the associated implementing regulations, as may be amended from time to time.
- b. Agent will require any of its subcontractors and agents, to which Agent is permitted by this Addendum or in writing by the Company to disclose PHI, to provide satisfactory assurance as evidenced by written contract in accordance with 45 C.F.R. §164.504(e)(1)(i) that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to PHI that are applicable to Agent under this Addendum, including, but not limited to, the provisions set forth in Section 2(c).

### **4. Reporting of Disclosures of PHI, Breaches & Security Incidents.**

- a. Agent shall, within five (5) business days of becoming aware of: (a) a Security Incident (as defined in 45 C.F.R. §164.304 and further explained below), (b) the Breach of unsecured PHI (as defined in 45 C.F.R. §164.402), or (c) an access, use or disclosure of PHI in violation of this Addendum by Agent, its officers, directors, employees, contractors, or agents, or by a third party to which Agent disclosed PHI pursuant to Section 2 of this Addendum, report any such disclosure to the Company.
- b. The HIPAA Security Rule defines a “Security Incident” as an attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, involving PHI that is created, received, maintained or transmitted by or on behalf of the Company in electronic form (45 C.F.R. §164.304). Agent shall also notify the Company of attempts to bypass Agent’s electronic security mechanisms.
  1. Both parties recognize, however, that the significant number of meaningless attempts to, without authorization, access, use, disclose, modify or destroy PHI in Agent’s information systems could make a real-time reporting requirement formidable for both parties. Both parties believe that the Security Rule notice requirements are met by instituting a process by which:
    - i. Agent discloses to the Company the rate and types of attempted incidents that are occurring at the time this Addendum is signed;
    - ii. Agent monitors the rate and nature of such attempts over time; and
    - iii. Agent reports to the Company any substantive changes to the rate or nature of such attempts that could adversely affect the Company directly or indirectly.
  2. The following are illustrative of unsuccessful security incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:
    - i. Pings on a firewall;
    - ii. Port scans;
    - iii. Attempts to log on to a system or enter a database with an invalid password or username; and
    - iv. Malware (e.g. worms, viruses).

3. If Agent observes through ongoing monitoring unsuccessful Security Incidents that extend beyond these routine, successful attempts in such a way that they could impact the Confidentiality, Integrity or Availability of PHI, Agent agrees to promptly notify the Company.
  - c. If Agent is required to report (a) a Security Incident, (b) a data Breach, or (c) any other non-permitted access, use or disclosure of PHI, such report must be sent to the Company HIPAA Privacy and Security Official and include at a minimum:
    1. The date and time the event occurred and the date it was discovered;
    2. A complete description of the PHI accessed, used or disclosed;
    3. A complete description of the event, its cause, and the effect it had on our systems and data. This should include the names of the affected systems, servers, programs, etc.;
    4. Contact information for communications regarding the event;
    5. A description of the initial mitigation steps taken to contain the event and an assessment of the level of compromise to our data incurred by Agent;
    6. A description of the plan to correct the compromises to our data and to prevent reoccurrences of the event in the future; and
    7. Such other information, including a written report, as the Company may reasonably request.
  - d. Agent shall comply with applicable laws that require notification to individuals in the event of an unauthorized access to or release of personally-identifiable information ("PII") or PHI, as defined by applicable state or federal law, or other event requiring notification ("Notification Event"), whether such Notification Event was the responsibility of Agent or a third party to which Agent disclosed PII or PHI. When notification to individuals is required by law or determined by the Company, in its sole discretion, to be necessary under this Addendum, whether such Notification Event was the responsibility of Agent or a third party to which Agent disclosed PII or PHI, Agent shall coordinate with the Company to (a) investigate the Notification Event, (b) inform all affected individuals and (c) mitigate the Notification Event. At the Company's sole discretion, mitigation includes but is not limited to securing credit monitoring or protection services for affected individuals. Agent shall be responsible for any and all costs associated with responding to and mitigating such Notification Events, including but not limited to mailing costs, personnel costs, attorney's fees, credit monitoring costs, and other related expenses or costs. Notwithstanding any limitation of liability provided in this or any other agreements, including statements of work, between the parties, Agent agrees to indemnify, hold harmless, and defend the Company from and against any and all claims, damages, fines, costs or other related harm associated with Notification Events.
  - e. Agent agrees to indemnify and hold the Company harmless from any and all liability, damages, costs (including reasonable attorney fees and costs) and expenses imposed upon or asserted against the Company arising out of any claims, demands, awards, settlements, fines or judgments relating to Agent's access, use or disclosure of PHI contrary to the provisions of this Addendum.
- 5. Agreements by Third Parties.** Agent shall enter into an agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by Agent on behalf of, Company pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to Agent pursuant to this Business Associate Agreement with respect to such PHI, including those safeguards described in Section 3 above..
- 6. Access to Information.**
- a. Within five (5) business days of a request by the Company for access to PHI about a member, Agent shall make available to the Company such PHI for so long as such information is maintained by Agent.
  - b. In the event any individual requests access to PHI directly from Agent, Agent shall within two (2) business days forward such request to the Company. Any denials of access to the PHI requested shall be the responsibility of the Company. Agent will make available to Company or at Company's direction, to the individual, such PHI in a manner consistent with 45 C.F.R. §164.524, so that Company may meet its access obligations under 45 C.F.R. §164.524.
  - c. To the extent Agent maintains electronic PHI in a Designated Record Set, with respect to such electronic PHI of an individual, Agent agrees that the individual, and Company on behalf of the individual, shall have a right to obtain an electronic copy of such information in the form and format requested by the Individual or Company, if such electronic PHI is readily reproducible in the form and format so requested. If the information is not readily reproducible in the form or format requested by either the individual or Company, Agent shall make the information available in a readable electronic format as mutually agreed to by the individual, Agent and Company. Agent also agrees to transmit an electronic copy of electronic PHI directly to a person or entity designated by the individual, or designated by Company on behalf of the individual, provided the direction is in writing, and is clear, conspicuous and specific. Agent shall provide a copy of any request by an individual for access to electronic PHI to Company within two (2) business days of its receipt of the request.



- 7. Availability of PHI for Amendment.** Within ten (10) business days of receipt of a request from the Company for the amendment of an individual's PHI, Agent shall provide such information to the Company for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. § 164.526.
- 8. Availability of PHI for Amendment.**
- a. Within ten (10) business days of notice by the Company to Agent that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Agent shall make available to the Company such information as is in Agent's possession and is required for the Company to make the accounting required by 45 C.F.R. §164.528.
  - b. To the extent Agent maintains PHI as an Electronic Health Record, Agent acknowledges that the exception at 45 C.F.R. §164.528(a)(1)(i) not requiring disclosures for the purpose of carrying out Treatment, Payment, and Healthcare Operations is inapplicable and that these disclosures must be tracked for three years.
  - c. For disclosures that it is required to track, at a minimum, Agent shall provide the Company with the following information:
    1. the date of the disclosure;
    2. the name of the entity or person who received the PHI, and if known, the address of such entity or person;
    3. a brief description of the PHI disclosed;
    4. a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure; and
    5. Agent further shall provide any additional information to the extent required by HIPAA or the Final Rule, and any accompanying regulations.
  - d. In the event the request for an accounting is delivered directly to Agent, Agent shall within two (2) business days forward such request to the Company. It shall be the Company's responsibility to prepare and deliver any such accounting requested.
  - e. Agent hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.
- 9. Restriction Agreements and Confidential Communications.** Agent shall comply with any agreement that the Company makes that either (a) restricts use or disclosure of PHI pursuant to 45 C.F.R. §164.522(a) or (b) requires Confidential Communication about PHI pursuant to 45 C.F.R. §164.522(b), provided the Company notifies Agent of the restriction or Confidential Communication obligations. The Company shall promptly notify Agent in writing of the termination of any such restriction agreement or Confidential Communication requirement, and with respect to termination of such restriction agreement, instruct Agent whether any PHI will remain subject to the terms of the restriction agreement.
- 10. Restriction on Remuneration for EHR, PHI, and Marketing.** Agent shall neither directly nor indirectly receive remuneration in exchange for any PHI except as permitted by 45 C.F.R. §164.502(5)(ii)(B). In addition, Agent shall neither directly nor indirectly receive remuneration in connection with a communication to purchase or use a product except as permitted by 45 C.F.R. §164.508(a)(3) and with Company's express prior written permission.
- 11. Fundraising.** Agent shall not make any fundraising communication to a Company member.
- 12. Availability of Books and Records.** Agent hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Agent on behalf of, the Company available to (i) the Secretary of the Department of Health and Human Services for purposes of determining the Company's and Agent's compliance with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 ("Privacy and Security Standards"); and (ii) to Company for its purposes in responding to a formal investigation or enforcement action by the Secretary of Health and Human Services, Office for Civil Right, or, alternatively, the Centers for Medicare and Medicaid Services, or for the purposes of evaluating and/or responding to a compliance review performed, conducted, overseen, or managed, in whole or in part, by the aforementioned governmental agencies
- 13. Termination and Return of Records.**
- a. Upon termination of this Addendum, Agent shall, if feasible, return or destroy all PHI received from, or created or received by the Agent on behalf of, the Company that Agent still maintains in any form and retain no copies of such information.
    1. Agent will require any subcontractor or agent, to which Agent has disclosed PHI, to, if feasible, return such PHI to Agent (so that Agent may return it to the Company) or destroy all PHI in whatever form or medium received from Agent, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of the PHI, and certify to Agent that all such information has been returned or destroyed.

2. Agent will complete these obligations as promptly as possible, but not later than forty-five (45) business days following the effective date of the termination or other conclusion of this Addendum.
- b. If such return or destruction of PHI by Agent or their subcontractor or agent is not feasible, Agent and their subcontractors and agents shall limit their further use or disclosure of such information to the purposes that make return or destruction of the PHI infeasible.
- c. Agent's obligation to protect the privacy and safeguard the security of PHI as specified in this Addendum will be continuous and survive termination or other conclusion of this Addendum or any other agreements, including statements of work, entered into between Agent and the Company.
- d. If the Company determines that Agent has violated the provisions of this Addendum, the Company may immediately terminate this Addendum and any other agreements, including statements of work, entered into between the parties that require Agent to access, use or disclose PHI.

**14. Compliance with Transaction Standards.**

- a. ICD-10 Code Sets
  1. If Agent's services or products use or require the use of Code Sets, as defined in HIPAA, then Agent shall on or before October 1, 2014 utilize the International Classification of Diseases, 10th Revision, Clinical Modification ("ICD-10-CM") for diagnosis coding, and the International Classification of Diseases, 10th Revision, Procedural Coding System ("ICD-10-PCS") for inpatient hospital procedure coding for all services or products for which Agent is contractually obligated to provide to Company.
  2. Company is not responsible for any additional services, programming, processing, testing, or other implementation costs incurred by Agent to implement ICD-10-CM and ICD-10-PCS, as these are the responsibility of Agent. Company shall have no obligation to reimburse Agent for any costs related to testing, implementation, or remediation associated with Agent's implementation of ICD-10-CM and ICD-10-PCS.
  3. If Company reasonably determines that Agent's products or services have not implemented or addressed the applicable provisions of the HIPAA Code Set Standards or the provisions set forth in this Section, and provided Agent does not remediate such issue within thirty (30) calendar days of notification, or as otherwise agreed to by Company in writing, Company may withhold payments to Agent until such time as the issue is remediated to Company's reasonable satisfaction.
- b. Compliance with HIPAA Standard Transactions
  1. If Agent (or its agent or subcontractor) performs or conducts (in whole or in part) electronic Transactions on behalf of Company for which the Department of Health and Human Services ("DHHS") has established Standards (collectively referred to as "Transactions"), Agent shall comply (and shall require any subcontractor or agent involved in the acceptance or processing of such Transactions to comply) with the requirements of the Transaction Rule, 45 C.F.R. Part 162, including any Implementation Guide specifications incorporated into the Rule by reference.
  2. Agent will not enter into, or permit its subcontractors or agents to enter into, any Trading Partner Agreement in connection with the conduct of Standard Transactions on behalf of the Company that:
    - a. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
    - b. Adds any data element or segment to the maximum defined data set;
    - c. Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
    - d. Changes the meaning or intent of the Standard Transaction's implementation specification.
- c. Agent acknowledges that DHHS published modifications to the HIPAA Standard Transaction Rules on January 16, 2009, replacing current versions of the standards with versions 5010, D.0, and 3.0, effective January 1, 2012.
  1. Version 5010 is the new version of the X12 standards for HIPAA transactions.
  2. Version D.0 is the new version of the National Council for Prescription Drug Program ("NCPDP") standards for pharmacy and supplier transactions; and
  3. Version 3.0 is a new NCPDP standard for Medicaid pharmacy subrogation.
- d. Agent acknowledges that DHHS published modifications to the HIPAA Code Set Rules on January 16, 2009, effective on October 1, 2014. Agent further acknowledges that DHHS modified the standard medical data code sets for coding diagnoses and inpatient hospital procedures by adopting the International Classification of Diseases, 10th Revision, Clinical Modification ("ICD-10-CM") for diagnosis coding, and the International Classification of Diseases, 10th Revision, Procedural Coding System ("ICD-10-PCS") for inpatient hospital procedure coding. These new codes replace the current International Classification of Diseases, 9th Revision, Clinical Modification, Volumes 1 and 2, and the International Classification of Diseases, 9th Revision, Clinical Modification, Volume 3 for diagnosis and procedure codes, respectively.
- e. Company is not responsible for any additional services, programming, processing, testing, or other implementation costs incurred by Agent to attain compliance with the HIPAA Standard Transaction Rules V5010, ICD-10-CM, and ICD-10-PCS, as

these are the responsibility of Agent. Company shall have no obligation to reimburse Agent for any costs related to testing, implementation, or remediation associated with Agent's HIPAA Standard Transaction Rule V4010A1, HIPAA Standard Transaction Rule V5010, ICD-10-CM, or ICD-10-PCS compliance.

- f. Upon Company's request, Agent shall conduct end-to-end or other Transactions and Code Set compliance testing and certify to Company that Agent complies with the applicable laws.
- g. Upon Company's request, Agent shall provide a copy of its compliance certification (for both levels 1 and 2) from an approved third-party certification company. Absent Company's reasonable determination of Transactions or Code Set compliance issues, such requests shall be limited to once per year.
- h. Upon Company's written notice of a Transactions or Code Set compliance issue, Agent and Company, as applicable, shall investigate and remediate such issue within a mutually agreed upon timeframe. Remediation shall include any testing activities that may be required to validate compliance. If Company and Agent disagree on the interpretation of the standard, regulation or rules, the parties agree to submit a request for clarification and / or interpretation to an industry recognized or designated body, including but not limited to, the Accredited Standards Committee (ASC) X12 or Workgroup for Electronic Data Interchange (WEDI).
- i. If Company reasonably determines that Agent is not in compliance with the Transactions or Code Set rules or the provisions set forth in this Section, and provided Agent does not remediate such compliance issue within thirty (30) calendar days of notification, or as otherwise agreed to by Company in writing, Company may withhold payments to Agent until such time as the compliance issue is remediated to Company's reasonable satisfaction. To the extent Company is fined, assessed a penalty, or is otherwise held responsible for any Transactions or Code Set compliance issue and such non-compliance is related to Agent's actions or omissions, Agent shall reimburse Company for all such fines, penalties, or other associated costs imposed on Company.

**15. Amendment to Addendum.** Upon the effective date of any amendment to the Privacy Standards or the Security Rule or the effective date of any other final regulations with respect to PHI, this Addendum will automatically be amended so that the obligations they impose on Agent shall remain in compliance with such regulations.

**16. Conflicts.** The terms and conditions of this Addendum supersede and override any other Health Insurance Portability and Accountability Act of 1996 (HIPAA) terms and conditions contained within any agreements entered into by the Company and Agent, including but not limited to, any agreements with its subsidiaries, affiliates, parent companies, officers, directors, employees, contractors, and/or agents.

**17. Use of Neuter Pronoun.** The use of the neuter pronouns "it" and "its" shall also include the masculine and feminine form of such words, specifically "he," "she," "his," and "hers," as appropriate.

IN WITNESS WHEREOF, the parties have executed this Addendum A and made it effective as of the Effective Date of the Agent Agreement.

BLUE CROSS BLUE SHIELD  
OF MICHIGAN

By: \_\_\_\_\_

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

\_\_\_\_\_  
(Print Agent's Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_

NPN: \_\_\_\_\_

BLUE CARE NETWORK OF MICHIGAN

By: \_\_\_\_\_

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