

**BLUE CROSS AND BLUE SHIELD OF MICHIGAN
BLUE CARE NETWORK OF MICHIGAN
AGENT AGREEMENT**

THIS AGENT AGREEMENT ("Agreement") is made this ____, day of _____, 20____, by and between _____, hereinafter referred to as the "Agent," located at _____ and Blue Cross and Blue Shield of Michigan, a Michigan corporation, located at 600 East Lafayette, Detroit, Michigan 48226, or Blue Care Network of Michigan, a Michigan health maintenance organization, located at 20500 Civic Center Drive, Southfield, Michigan 48076. Blue Cross and Blue Shield of Michigan and Blue Care Network of Michigan 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.

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

- 1. AGENT'S AUTHORITY:** Agent is authorized on behalf of Company during the term of this Agreement to market, sell and service "Products," as defined in this Agreement. Any sale by Agent shall be binding on Company and its principals only when accepted in writing by Company or an authorized agent or employee of Company's principals. Agent may collect premiums on Products sold only as authorized in this Agreement, Agent has no other authority except as stated in this Agreement. No other authority is implied from the authority expressly granted herein. 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 or its principals:
 - a. Incur any debt or liability;
 - b. Make, alter, or discharge contracts;
 - c. Waive defaults by customers;
 - d. Quote rates other than those provided by Company or its principals;
 - e. Extend the time for or method of payment by customers;
 - f. Withhold monies or property of Company or its principals;
 - g. Settle or adjust claims against Company or its principals.
- 2. PRODUCTS:** As used in this Agreement, the term "Products" means only those health care coverages or services which Company has specifically authorized Agent to market, sell and service and the contracts with customers which describe those coverages or services.
- 3. AGENT IS AN INDEPENDENT CONTRACTOR:** Agent is an independent contractor and neither this Agreement nor the rules and regulations promulgated by Company or its principals 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.
- 4. COMPLIANCE:** Agent shall comply with all state and federal laws and regulations applicable to Agent's representation of Company. Agent shall also comply with all rules and instructions issued by Company, including but not limited to underwriting rules, regarding the marketing, sale and servicing of any Products offered through Company.
- 5. COLLECTION OF PREMIUMS:** Agent shall have authority to collect premiums only if authorized in a separate addendum to this Agreement. With respect to any premiums Agent is authorized to collect, he or she shall assume full responsibility for collection and prompt payment of such premiums to Company without deduction or set-off unless otherwise specifically authorized in the premium collection addendum.
- 6. ADDITIONAL PREMIUMS:** If authorized by separate addendum to this Agreement, Agent shall assume full responsibility for collection of additional premiums resulting from all audits, or otherwise; payment to Company shall be made in the same manner as regular premiums as provided in this Agreement. Agent will be relieved of responsibility for collection and payment of additional premiums only upon written notice to Company within 60 days of the billing date of such additional premiums that collection cannot be made by Agent. Failure of Agent to provide such written notice shall constitute Agent's acceptance of responsibility to pay such premiums to Company. If Agent fails to collect such additional premiums or if Agent has been relieved of responsibility to pay such premiums to Company, Company shall have the right to collect such premiums in any manner it sees fit. No commission shall be payable to Agent on any sum so collected by Company. Any such collection undertaken by Company shall not relieve Agent of responsibility for payment of additional premiums which Company is unable to collect unless Agent has been relieved of responsibility in the manner provided above.
- 7. ACCOUNTS PAYABLE:** Accounts of money due Company on the business placed by Agent with Company shall be rendered monthly, and the balance therein shown to be due to Company shall be paid not later than thirty (30) days after the end of the month for which the account is rendered. 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. Failure of Agent to pay his or her Company accounts shall, upon written notice, immediately relieve Company of further obligation under this Agreement. Company shall be entitled to deduct the entire amount of such funds due from any compensation owing to Agent and this Agreement shall terminate in accordance with Paragraph 22(d).
- 8. 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 (30) days following receipt of the accounting statement. The notice identifying the alleged error must be in writing.
- 9. AGENT RECEIVING MONIES AS FIDUCIARY:** All monies or other settlements received by Agent for or on behalf of Company shall be received by Agent in a fiduciary capacity and immediately paid over in cash to Company, except as otherwise directed by Company.
- 10. COMMISSIONS:** As full compensation on business placed through Company pursuant to the authority granted in Paragraph 1, Agent will receive commissions from Company in accordance with the Schedule of Commissions furnished by Company and accepted by Agent. Company may revise the Schedule of Commissions not more frequently than annually; in the event any revised Schedule of Commissions is not acceptable to Agent, notice of such nonacceptance shall constitute a notice of termination of this Agreement to become effective on the date the revised Schedule is to take effect.

Blue Cross Blue Shield of Michigan and Blue Care Network are nonprofit corporations and independent licensees of the Blue Cross and Blue Shield Association.

- 11. COMMISSION 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.
- 12. COMMISSIONS AND 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.
- 13. ASSIGNMENT:** No assignment of commissions payable pursuant to this Agreement shall be valid unless approved in writing by Company.
- 14. COMMISSIONS ON TERMINATION OF AGREEMENT:** Company shall pay Agent commissions which are earned prior to termination of this Agreement but which have not been paid. All other commissions payable hereunder cease upon termination of this Agreement.
- 15. AGENT'S 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.
- 16. AGENT'S USE OF PROMOTIONAL MATERIALS:** Agent shall obtain prior written approval from Company and its principals for use of all literature, sales aids, and promotional materials or promotional efforts used in conjunction with the marketing of Products.
- 17. AGENT'S ERRORS AND OMISSIONS INSURANCE:** Agent shall maintain errors and omissions insurance satisfactory to Company so long as Agent is marketing Products which would entitle Agent to commissions from Company. Company agrees that the insurance indicated on the application satisfies Company's current requirements. Company reserves the right to change its requirements regarding such insurance by giving Agent written notice of its revised requirements.
- 18. WRITTEN COMMUNICATIONS BETWEEN COMPANY AND CUSTOMERS:** A copy of any written communication between Company and a customer other than billing information shall be sent to Agent unless either of the following applies:
 - a. The information is confidential under Section 406 of the Nonprofit Health Care Corporation Reform Act, Act No. 350 of the Public Acts of 1980, being Section 550.1406 of the Michigan Compiled Laws; or
 - b. Company and Agent otherwise agree in writing.
- 19. AGENT'S OFFICE:** Agent shall maintain an office for reasonable service to customers and the public.
- 20. AUTOMATIC TERMINATION:** This Agreement and all agreements regarding commissions for a particular Product shall automatically terminate at the earlier of:
 - a. Written agreement of the parties;
 - b. Termination of Company's right to represent a principal for a Product;
 - c. The death or dissolution of either party;
 - d. Failure of Agent to pay his or her Company accounts;
 - e. Agent's violation of Paragraph 1;
 - f. Suspension or revocation of Agent's license;
 - g. Operation of Paragraph 10.
- 21. TERMINATION BY AGENT WITH NOTICE:** This Agreement may be terminated by Agent upon written notice to Company to be effective sixty (60) days from the date of notice.
- 22. TERMINATION BY COMPANY WITH NOTICE:** This Agreement may be terminated by Company upon written notice to Agent to be effective sixty (60) days from the date of notice for one or more of the following reasons:
 - a. Malfeasance.
 - b. Breach of fiduciary duty or trust.
 - c. A violation of law.
 - d. Failure to perform in accordance with any term or condition of this Agreement.
- 23. COMPANY'S FORBEARANCE:** Company's forbearance or neglect to insist upon the performance of any of the terms of this Agreement shall not constitute a waiver of any of Company's rights hereunder.
- 24. AGENT'S POST TERMINATION RESPONSIBILITIES:** When Agent's authority to represent Company is terminated, with or without notice, the responsibility of Agent shall continue until Products are cancelled, replaced, or have renewed. 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.
- 25. AGENT'S RECORDS UPON TERMINATION:** If this Agreement is terminated, Agent's records, use, and control of the names of customers and the expiration dates of Products shall remain the property of Agent and be left to his or her undisputed possession, unless Agent's authority is terminated pursuant to Paragraph 22, a, b or c.
- 26. COMPANY'S RECORDS:** Company's records and knowledge of names of customers and expiration dates of Products purchased by Customers from Agent shall not be referred nor communicated by Company to any other agent or person nor used by Company for the purpose of solicitation, unless this Agreement has been terminated pursuant to Paragraph 22, a, b or c.
- 27. UNENFORCEABILITY OF PROVISIONS:** 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.
- 28. 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.
- 29. PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION:**

- a. **Applicable Law and Policy.** Agent acknowledges that if, pursuant to this Agreement, he or she performs services or assists Company in the performance of a function or service that involves the use or disclosure of a Member's individually identifiable health information ("IIHI"), then the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and stricter state laws, as applicable, require that the IIHI be protected from inappropriate uses or disclosures.
 - b. **Use or Disclosure of IIHI.** IIHI, in electronic form or otherwise may be used or disclosed only when required by law or as otherwise provided in this Agreement, unless the prior and specific informed written consent of the person to whom the data or information pertains has been obtained. Agent shall not, and shall ensure that its directors, officers, employees, contractors and agents, do not, use or disclose IIHI received from Company in any manner that would constitute a violation of applicable law. Agent shall not, and shall ensure that its directors, officers, employees, contractors, and agents do not, disclose IIHI received from Company in any manner that would constitute a violation of applicable law if disclosed by Company, except that Agent may disclose IIHI in a manner permitted pursuant to this Agreement or as required by law. To the extent Agent discloses IIHI to a third party, Agent must obtain, prior to making any such disclosure: (i) reasonable assurances from such third party that such IIHI will be held confidential as provided pursuant to this Agreement, and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement from such third party to immediately notify Agent of any breaches of the confidentiality of the IIHI, to the extent it has obtained knowledge of such breach. Agent agrees to indemnify and hold Company harmless from any and all liability, damages, costs (including reasonable attorney fees and costs) and expenses imposed upon or asserted against Company arising out of any claims, demands, awards, settlements or judgments relating to Agent's use or disclosure of IIHI contrary to the provisions of this Agreement.
 - c. **Safeguards Against Misuse of Information.** Agent agrees that he or she will implement all appropriate safeguards to prevent the use or disclosure of IIHI other than pursuant to the terms and conditions of this Agreement. Such safeguards include administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability (as those terms are defined in 45 C.F.R. §164.304) of the electronic IIHI that it creates, receives, maintains, or transmits on behalf of BCBSM as required by 45 CFR Part 160 and Subparts A and C of Part 164 ("Security Rule").
 - d. **Reporting of Disclosures of IIHI.** Agent shall, within five (5) days of becoming aware of a Security Incident (as defined in 45 C.F.R. §164.304 and further explained in Appendix A) or of a disclosure of IIHI in violation of this Agreement by Agent, its officers, directors, employees, contractors, or agents, or by a third party to which Agent disclosed IIHI pursuant to Paragraph 29b. of this Agreement, report any such disclosure to Company.
 - e. **Agreements by Third Parties.** Agent shall enter into an agreement with any agent or subcontractor that will have access to IIHI 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 Agreement with respect to such IIHI, including that such agent or subcontractor implement reasonable and appropriate safeguards to protect it as described in Paragraph 29.c above.
 - f. **Access to Information.** Within five (5) days of a request by Company for access to IIHI about a Member, Agent shall make available to Company such IIHI for so long as such information is maintained by Agent. In the event any individual requests access to IIHI directly from Agent, Agent shall within two (2) days forward such request to Company. Any denials of access to the IIHI requested shall be the responsibility of Company.
 - g. **Availability of IIHI for Amendment.** Within ten (10) days of receipt of a request from Company for the amendment of an individual's IIHI, Agent shall provide such information to Company for amendment and incorporate any such amendments in the IIHI as required by 45 C.F.R. § 164.526.
 - h. **Accounting of Disclosures.** Within ten (10) days of notice by Company to Agent that it has received a request for an accounting of disclosures of IIHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Agent shall make available to Company such information as is in Agent's possession and is required for Company to make the accounting required by 45 C.F.R. § 164.528. At a minimum, Agent shall provide Company with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the IIHI, and if known, the address of such entity or person; (iii) a brief description of the IIHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Agent, Agent shall within two (2) days forward such request to Company. It shall be Company's responsibility to prepare and deliver any such accounting requested. Agent hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Paragraph.
 - i. **Availability of Books and Records.** Agent hereby agrees to make its internal practices, books, and records relating to the use and disclosure of IIHI received from, or created or received by Agent on behalf of, Company available to the Secretary of the Department of Health and Human Services for purposes of determining Company's and Agent's compliance with the Standard for Privacy of Individually identifiable Health Information, 45 C.F.R. Parts 160 and 164 ("Privacy Standards")
 - j. **Termination and Return of Records.** Upon termination of this Agreement, Agent shall, if feasible, return or destroy all IIHI received from or created or received by Agent on behalf of Company that Agent still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, the protections of this Paragraph 29 shall continue indefinitely.
- If Company determines that Agent has violated the provisions of this Paragraph 29 or another material provision of this Agreement, Company may immediately terminate this Agreement.
- k. **Amendment to Agreement.** 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 IIHI, this Paragraph 29 and the Agreement of which it is part will automatically be amended so that the obligations they impose on Agent shall remain in compliance with such regulations.

Executed by the parties effective on the date stated above.

AGENT	BLUE CROSS AND BLUE SHIELD OF MICHIGAN	BLUE CARE NETWORK OF MICHIGAN
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By: _____ By: _____ By: _____

Title: _____ Title: _____ Title: _____

Appendix A

Reporting Security Incidents

The 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 Protected Health Information (in this case, IIHI, as defined in the Agent Agreement to which this is attached) that is created, received maintained or transmitted by or on behalf of us in electronic form.

Since the Security Rule includes attempted unauthorized access, use, etc., we need to have notice of attempts to bypass your electronic security mechanisms. We recognize that the significant number of meaningless attempts to, without authorization, access, use, disclose, modify or destroy IIHI in your information systems could make a real-time reporting requirement formidable for you and for us. We believe that we meet compliance with the notice requirement by understanding what types of attempted incidents you experience today, and asking that you notify us only if there are substantive changes to this status that has had or could have an effect on us, directly or indirectly.

We consider the following to be illustrative of unsuccessful security incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of e-PHI or interference with an information system:

- Pings on a firewall,
- Port scans,
- Attempts to log on to a system or enter a database with an invalid password or username, and
- Malware (e.g., worms, viruses)

If you experience successful security incidents that extend beyond these routine, unsuccessful attempts in such a way that they could impact the confidentiality, integrity or availability of our data, we need to be promptly notified.

For example, if your information systems are exposed to malicious code, such as a worm or virus, and such code could be transmitted to our data or systems, we need to be notified.

Also remember that under the HIPAA Privacy Rule, you still have an obligation to notify us in the event that an unauthorized access or disclosure has occurred involving IIHI.

Should a reportable incident occur, we need you to provide us, within five days of the incident, with a description of the event, the steps taken to mitigate the damage incurred, and any measures taken to ensure a similar event does not reoccur. This report should be sent to the Manager of Agent Sales and Consultant Relations and should include at a minimum:

- The date and time when the event was discovered.
- Contact information for communications regarding the incident.
- 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, and data.
- A description of the initial mitigation steps taken to contain the incident and an assessment of the level of compromise to our data incurred by the business associate.
- A description of the plan to correct the compromises to our data and to prevent reoccurrences of the event in the future.

This report should be sent to:

Attention: Director, Corporate Compliance Office
Blue Cross Blue Cross Blue Shield of Michigan
600 E. Lafayette Blvd., Mail Code 1909
Detroit, Michigan 48226

Unless we hear from you to the contrary, we will assume that you agree with this description of a reportable incident. However, if you believe a security incident to be something different, you must notify us as soon as possible.