

## AMENDMENT TO AGENT AGREEMENT

This Amendment to Agent Agreement ("Amendment") is made among Blue Cross and Blue Shield of Michigan ("BCBSM"), the agent identified on the signature page ("Agent"), and, if applicable, Blue Care Network of Michigan ("BCN") (BCBSM and BCN are each hereinafter referred to separately as the "Company" to the extent it has signed this Amendment), and amends and modifies the Agent Agreement ("Standard Agreement") or, to the extent applicable, the Producing Agent Agreement – Individual Medicare Products ("Medicare Agreement") between the Company and Agent presently in force (both the Standard Agreement and the Medicare Agreement are referred to hereinafter as the "Agreement").

### RECITALS

- A. The Health Information Technology for Economic and Clinical Health Act ("HITECH Act") (42 U.S.C. §17934), which was adopted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5), makes certain changes to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA").
- B. The HITECH Act requires that the Company amend its business associate agreements with its business associates such as Agent, thus the Company and Agent desire to amend the Agreement to incorporate provisions that will make the Agreement compliant with the HITECH Act and HIPAA.

THEREFORE, in consideration of their mutual promises, the parties agree to revise the Agreement as follows:

- 1. A new Section 29 in the following form is substituted for (i) Section 29 and Appendix A of the Standard Agreement and (ii) Section 32 and Appendix A of the Medicare Agreement, except that the numbering and all internal references of this Section for the Medicare Agreement shall be appropriately changed to 32:

#### **Section 29.1: 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 under §13404 of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") (42 U.S.C. §17934), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5)), its use and disclosure of PHI must be in compliance with the terms of this Agreement and 45 C.F.R. §164.504(e). Agent agrees that the additional requirements of the HITECH Act relating to privacy that are applicable with respect to covered entities are applicable to Agent and are incorporated into this Agreement.

- c. Capitalized terms not otherwise defined shall have the meaning as set forth in HIPAA or the HITECH Act.

**Section 29.2: 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 required the Agent Agreement entered into by the Company and Agent. 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 disclose PHI received from the Company in any manner that would constitute a violation of applicable law if disclosed by the Company. Agent may disclose PHI (a) as permitted and pursuant to the requirements of this Agreement 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 Agreement, 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 29.4 of this Agreement) of any:
    - a. Unauthorized access, use or disclosure of PHI;
    - b. Security Incident as defined in 45 C.F.R. §164.304 and further explained in Section 29.4.b of this Agreement; and
    - c. Breaches of the confidentiality of the PHI, as Breach is defined by §13400(1)(A) (42 U.S.C. §17921(1)(A)) of the HITECH Act,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 pursuant to the requirements set forth in the HITECH Act at §13405(b). Agent acknowledges its obligation under §13405(b)(2) (42 U.S.C. §17935(b)(2)) of

the HITECH Act to determine what constitutes the minimum necessary to accomplish the intended purposes of any disclosure of PHI.

**Section 29.3: Safeguards Against Misuse of Information.**

- a. Agent agrees that it will implement all appropriate safeguards to prevent the access, use or disclosure of PHI 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 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 the Security Rule requirements set forth in 45 C.F.R. §§164.308, 164.310, 164.312, and 164.316 and acknowledges that these requirements shall apply to Agent in the same manner as they apply to the Company.
- b. Agent will require any of its subcontractors and agents, to which Agent is permitted by this Agreement or in writing by the Company to disclose PHI, to provide reasonable assurance as evidenced by written contract 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 Agreement, including but not limited to the provisions set forth in Section 29.2.c.

**Section 29.4: 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 §13402(h) of the HITECH Act), or (c) an access, use or disclosure of PHI in violation of this Agreement by Agent, its officers, directors, employees, contractors, or agents, or by a third party to which Agent disclosed PHI pursuant to Section 29.2 of this Agreement, 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:
    - a. Agent discloses to the Company the rate and

types of attempted incidents that are occurring at the time this Agreement is signed;

- b. Agent monitors the rate and nature of such attempts over time; and
- c. 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:

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

3. If Agent observes through ongoing monitoring successful Security Incidents that extend beyond these routine, unsuccessful 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 Agreement, 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, attorneys 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 Agreement.

**Section 29.5: Agreements by Third Parties.** Agent shall enter into agreements with each of its agents or subcontractors that will have access to PHI that is received from, or created or received by Agent on behalf of, the 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 PHI, including that such agent or subcontractor implement reasonable and appropriate safeguards to protect it as described in Section 29.3 above.

**Section 29.6: 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.

- c. To the extent Agent maintains an Electronic Health Record, as that term is defined in §13400(5) (42 U.S.C. §17921(5)) of the HITECH Act, with respect to PHI of an individual, Agent agrees that the individual, and the Company on behalf of the individual, shall have a right to obtain a copy of such information in electronic format. Agent also agrees to transmit an electronic copy of Electronic Health Record information directly to a person or entity designated by the individual, or designated by the Company on behalf of the individual, provided the direction is clear, conspicuous and specific.

**Section 29.7: 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.

**Section 29.8: Accounting of Disclosures.**

- 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 the HITECH Act 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.

**Section 29.9: 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.

**Section 29.10: Restriction on Remuneration for EHR, PHI, and Marketing.** Agent shall not directly or indirectly receive remuneration in exchange for any PHI except as permitted by §13405(d) (42 U.S.C. §17935(d)) of the HITECH Act. In addition, Agent shall not directly or indirectly receive remuneration in connection with a communication to purchase or use a product except as permitted by §13406(a) (42 U.S.C. §17936(a)) of the HITECH Act.

**Section 29.11: Fundraising.** Agent shall not make any fundraising communication to a Company member.

**Section 29.12: 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 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").

**Section 29.13: Termination and Return of Records.**

- a. Upon termination of this Agreement, 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 Agreement.
- 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 Agreement will be continuous and survive termination or other conclusion of this Agreement 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 Agreement, the Company may immediately terminate this Agreement and any other agreements, including statements of work, entered into between the parties that require Agent to access, use or disclose PHI.

**Section 29.14: Compliance with Transaction Standards.**

- a. If Agent conducts in whole or part electronic Transactions on behalf of the Company for which Department of Health and Human Services (DHHS) has established Standards, Agent will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Transaction Rule, 45 C.F.R. Part 162.
- b. 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:
  1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
  2. Adds any data element or segment to the maximum defined data set;
  3. 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
  4. Changes the meaning or intent of the Standard Transaction's implementation specification.

**Section 29.15: 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 PHI, this Agreement will automatically be amended so that the obligations they impose on Agent shall remain in compliance with such regulations.

**Section 29.16: Conflicts.** The terms and conditions of this Agreement 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.

**Section 29.17: 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.

2. Except as provided herein, the provisions of the Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment and made it effective as of \_\_\_\_\_, 2010.

BLUE CROSS AND BLUE SHIELD  
OF MICHIGAN

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

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

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

By: \_\_\_\_\_  
(Agent's Signature)

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

BCBSM/BCN ID Number: \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_  
(Agent's Social Security Number)

BLUE CARE NETWORK OF MICHIGAN

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

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

When completed, please Fax to: (877) 295-0049