

Appointment Application

Blue Cross and Blue Shields of Kansas and Affiliates



BlueCross BlueShield
Kansas

Please Print or Type: All fields must be complete and legible.

| Individual Information (All Individual Information fields required for all Appointment Applications). | | | | |
|--|-------------------------|-----------------------|--|------------|
| Legal Name (As name appears on Individual Resident State Insurance License) | | | | |
| Last: | | Middle | | First: |
| Social Security Number | Birth Date (MM/DD/YYYY) | Alias/Other Names: | | |
| Resident Address | | | | |
| City | | State | County (FL Only) | Zip Code |
| Resident Phone Number | | Business Phone Number | | Fax Number |
| Email Address | | | | |
| Appointment Type: <input type="checkbox"/> Individual OR <input type="checkbox"/> Corporation | | | This must match information provided on the Agreement and W-9. | |
| Mailing Preference: <input type="checkbox"/> Residential OR <input type="checkbox"/> Business | | | If applying as an individual, but prefer mail be delivered to your business, fill in the Business Address section below. | |
| If Applying as a Corporation, the following information is also required. (You must be a Principal of the Corporation to Apply). | | | | |
| Corporation Name | | | Principal | |
| Corporate Tax ID | | | Business Phone | |
| Business Address | | | | |
| City | | State | County | Zip |
| Errors and Omissions Attestation of Coverage (\$1,000,000 per occurrence or 1,000,000 annual aggregate required) | | | | |
| Name of Carrier | | | Policy # | |

By signing this attestation, I am agreeing that I have met, and will maintain, the required Errors and Omissions coverage during my contract with BCBSKS. I understand that failure to have met and maintained the Errors and Omissions coverage requirements will result in immediate termination.

Applicant's Signature: _____

SIGNATURE

NOTE: Failure to accurately and honestly answer any of the following questions may result in a declination of your application and appointment with BCBSKS
If you answer "Yes" to any of these questions, please provide supporting documentation and a brief explanation on the next page of this form.

Criminal Background Information

1. Have you ever been convicted of a felony? Yes No
2. Have you ever been convicted of a misdemeanor (other than traffic) including an alcohol or drug-related offense? Yes No
3. Have you had your driver's license revoked within the past three years? Yes No

Department of Insurance and CMS

4. Have you ever had your insurance or securities license revoked and/or suspended by any department of insurance (even if later reinstated) for any reason?..... Yes No
5. Have you ever had a complaint reported against you (even if dismissed) by a consumer and/or insurance company for any reason with any department of insurance, FINRA, or other regulatory reporting agency including CMS?..... Yes No
6. Have you ever paid a fine related to a consumer complaint, failure to renew your license or continuing education credit in excess of \$500?..... Yes No
7. Have you ever been excluded, or are you aware of actions that could result in an exclusion, by the Office of Inspector General from participation in a government health care program, including Medicare and Medicaid?..... Yes No

Credit History

8. Have you filed for bankruptcy and/or had a bankruptcy discharged within the last five years? Yes No
9. Are you, at the present time, or have you been within the past five years, involved in any civil litigation, judgements, liens or foreclosures?..... Yes No
10. Are you, at the present time, or have you been within the past five years, reported as delinquent on state or federal taxes?..... Yes No

Other Companies

11. Do you owe any insurance company, marketing organization or individual for any premiums collected or monies advanced?..... Yes No
12. Have you ever been denied an appointment with any insurance company? Yes No
13. Have you ever been terminated for cause by any insurance carrier? Yes No
14. Have you been denied a bond or application for errors and omissions (E&O) coverage with any company Yes No

Other

15. Do you have other information related to criminal, insurance-related complaints, credit, etc., that was not covered by these questions that you wish to disclose?.....

Yes No

Please provide an explanation for any "Yes" answers on the previous page in the corresponding sections below.

Criminal Background Information

Department of Insurance and CMS

Credit History

Other Companies

Other

Conditions and Agreements

I have thoroughly reviewed this application and have answered all questions to the best of my knowledge. By signing below, I hereby attest to all matters set forth above and agree to all matters set forth below.

I hereby agree that if and when any or all of the companies issue to me any Agreement(s) for which I hereby apply, I will be bound by such Agreement(s). I understand that my supervising office has specimen forms of the Agreement(s) on file and I have had the opportunity to review such Agreement(s). Submitting to the Company any application for insurance products, including but not limited to Medicare Advantage and Prescription Drug Plan, shall constitute my agreement to such Agreement(s) and all the terms, conditions and provisions set for therein.

I Acknowledge that by signing this Appointment Application and submitting any such insurance application for Insured Product, I have so agreed to the Agreement(s) and no future signature by me shall be necessary.

Disclosure

I have executed this Appointment Application as evidence of the understanding and acceptance of, and consent to its terms, and I agree that I will not solicit business until I receive notification from the Company that this acknowledgement has been approved and I have satisfied all the of certification requirements of the products I intend to sell.

I understand that as part of its approval process and throughout the term of my appointment with the Company, the Company may obtain an investigation consumer report to confirm information regarding my character, general reputation, credit history, personal characteristics, mode of living, criminal history, insurance licensing history, Office or Inspector General records and General Service Administrator excluded party records. I hereby authorize the Company to obtain such a report at any time after receipt of this Appointment Application and throughout the term of my appointment with the Company. The scope of this authorization is all-encompassing, allowing the Company to obtain from any outside organization all manner of investigative consumer reports now and throughout my appointment to the extent permitted by law.

I understand that failure to accurately and honestly respond to any of the questions or attestations may result in a declination of my application and appointment with BCBSKS.

Applicant's Signature

Date (MM/DD/YYYY)



**Please return all documents to your Recruiter
for submission to Blue Cross and Blue
Shield of Kansas.**

**BLUE CROSS AND BLUE SHIELD OF KANSAS
INC. AGENT AGREEMENT**

This AGENT AGREEMENT (this “Agreement”) is made and entered into this __ day of _____, 20__, by and between Blue Cross and Blue Shield of Kansas, Inc. (“BCBSKS”), on behalf of itself and its Affiliates (collectively, the “Company”) and _____ (“Agent”).

- A. BCBSKS and certain of its Affiliates offer Medicare Advantage Plans (“MA Plans”), stand-alone prescription drug plans (“PDP Plans”), Medicare supplement insurance plans (“Med Supp Plans”) and other health plans and products as may be designated by the Company (collectively, “Products”).
- B. FMO or General Agent has recommended Agent for appointment by the Company to market and promote the Products.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, it is agreed as follows:

**ARTICLE ONE
DEFINITIONS**

As used herein, capitalized terms shall have the meanings set forth below:

- 1.1 **Affiliate** is any entity which directly or indirectly, through one or more intermediaries, owns or controls, is controlled or owned by or is under common ownership or control with the Company, and offers one or more of the Products. Affiliates offering the Products are specifically set forth in the Agent Compensation attached hereto and incorporated herein as **Exhibit A**.
- 1.2 **Agent** is an appropriately licensed, independent contractor, appointed by the Company, free to exercise his or its own judgment as to the time and manner of performing services pursuant to an agreement between the Agent and the Company.
- 1.3 **CMS** is the Centers for Medicare & Medicaid Services.
- 1.4 **CMS Contract** is the contract entered into by CMS and the Company pursuant to which the Company offers one or more MA Plans and/or one or more PDP Plans in a specified service area or region.
- 1.5 **FMO** is a Field Marketing Organization that has contracted with the Company to promote the Products and has directly or indirectly through a General Agent recommended Agent for appointment by the Company to market and promote the Products.
- 1.6 **General Agent** is an appropriately licensed, independent contractor, appointed by the Company, free to exercise his or its own judgment as to the time and manner of performing services pursuant to an agreement between the General Agent and the Company and authorized to recommend Agent for appointment by the Company to market and promote the Products. A General Agent can be categorized in any one of three levels, General Agent (GA), Super General Agent (SGA) or Master General Agent (MGA).
- 1.7 **MA Organization** is an entity that has entered into a contract with CMS to operate an MA Plan.
- 1.8 **MA Plan** is any Medicare Advantage Plan that may now or in the future be offered to individual Medicare beneficiaries by the Company including, but not limited to, Local HMO and PPO Plans (“Local MA Plans”), Special Needs Plans (“SNPs”), Regional Preferred Provider Plans (“Regional PPO Plans”) and Private Fee for Service Plans (“PFFS Plans”). The definition of an MA Plan includes an MA Plan which includes prescription drug plan benefits (“MA-PD Plans”).

- 1.9 **Med Supp Plan** is a Medicare supplement insurance product authorized under applicable federal and state laws and regulations that may now or in the future be offered to individual beneficiaries by the Company.
- 1.10 **Medicare Laws and Regulations** are (i) Part C and Part D of Title XVIII of the Social Security Act and all rules and regulations related thereto that are from time to time adopted by CMS, including regulations set forth in 42 CFR Part 422 (Medicare Advantage Program) and 42 CFR Part 423 (Medicare Program; Medicare Prescription Drug Program) ; (ii) all administrative guidelines (including “Marketing Guidelines,” as defined in Section 2.4 of this Agreement), bulletins, manuals, instructions, requirements, policies, standards or directives from time to time adopted or issued by CMS or the Department of Health and Human Services (“HHS”) relating to any of the foregoing; and (iii) any laws and regulations enacted, adopted, promulgated, applied, followed or imposed by any governmental authority or court in respect of Medicare or any successor federal governmental program, as any of the preceding Medicare Laws and Regulations from time to time may be amended, modified, revised or replaced, or interpreted by any governmental authority or court. Without limiting the foregoing, Medicare Laws and Regulations include the provisions of (i) the Balanced Budget Act of 1997 (“BBA”), (ii) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”), (iii) the Medicare Improvement for Patients and Providers Act (“MIPPA”), and (iv) the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act, collectively referred to as the Affordable Care Act (“ACA”).
- 1.11 **Member** is an eligible individual who has been enrolled by the Company in an MA Plan, PDP Plan, Med Supp Plan or other plan designated by the Company.
- 1.12 **PDP Plan** is any stand-alone Medicare Part D Prescription Drug Plan that may now or in the future be offered to individual Medicare beneficiaries by the Company.
- 1.13 **PDP Plan Sponsor** is an entity that has entered into a contract with CMS to sponsor a PDP Plan.
- 1.14 **Product** means MA Plan, PDP Plan, Med Supp Plan and any other health plans and products as may be designated by the Company. Products are specifically set forth in the Agent Compensation attached hereto and incorporated herein as **Exhibit A**.
- 1.15 **Representatives** mean appropriately licensed and appointed Solicitor Agents with whom Agent has direct relationships to promote and market the Products.
- 1.16 **Solicitor Agent** is an appropriately licensed captive agent employed by or independently contracted with Agent, appointed by the Company, and free to exercise his or its own judgment as to the time and manner of performing services pursuant to a direct agreement between the Solicitor Agent and the Agent. Company shall under no circumstance be responsible for compensating Solicitor Agents.

ARTICLE TWO

APPOINTMENT, DUTIES AND LIMITATIONS ON AUTHORITY

- 2.1 **Appointment**. Subject to the terms and conditions of this Agreement, the Company hereby appoints Agent for all new business sales to solicit applications for Products either directly or, if applicable, through its Solicitor Agent(s) who are designated to the Company in writing by Agent and appointed by the Company. Agent hereby accepts such appointment. Agent acknowledges and agrees that the authorization and appointment as set forth in this Agreement is limited to the service areas as the Company may designate in writing from time to time or may otherwise make such list of service areas available to, and accessible by, Agent. The service area is specifically set forth in the Agent Compensation attached hereto and incorporated herein as **Exhibit A**. The Company may add, modify or delete any such service areas in the Company’s sole discretion upon thirty (30) days prior written notice to Agent, or such shorter period as may be required under applicable law.

2.2 **Duties of Agent.** Agent shall:

Before promoting or marketing the Products and on an annual basis thereafter, attend all training required by the Company and be certified by the Company as having completed all training required by the Company, it being specifically acknowledged and agreed by Agent that no compensation shall be paid under this Agreement unless such training has been completed and such certification is received prior to the policy being written. Agent shall promote to each prospective Member only those Products for which the prospective Member is qualified to enroll and which Agent in good faith believes meets the needs of the prospective Member.

Upon recommendation of FMO or General Agent, be appointed by the Company with the applicable state regulatory agency before promoting and marketing the Products in the state(s) covered by this Agreement.

Notify the Company, and upon recommendation of FMO or General Agent, be appointed by the Company with the applicable state regulatory agency before promoting and marketing the Products in any additional state(s) covered by this Agreement.

a. Hold and maintain in good standing, any license, certification or registration (collectively, “license”) required to perform Agent’s duties under this Agreement in each state where Agent promotes and markets the Products, and immediately notify the Company of (i) any expiration, termination, suspension, or other action affecting such license, and (ii) any disciplinary proceedings against Agent against any of Agent’s principals, partners, shareholders, directors, officers or employees relating to any license issued to any such person by a regulatory authority. Without limiting the foregoing, upon discovery by Company of any expiration, termination, or suspension of such license, Company shall terminate Agent, and Agent shall immediately provide to the Company a list of any beneficiaries enrolled by Agent after the expiration, termination or suspension of such license, so that each such beneficiary may be informed of his or her option to confirm enrollment or make a plan change. All state licensures and state license fees are the responsibility of Agent and/or Representatives and not the Company. “We do not offer every plan available in your area. Please contact Medicare.gov, 1-800-MEDICARE, or your local State Health Insurance Program (SHIP) to get information on all of your options.”

b. In coordination with FMO or General Agent, promote the Products and solicit and procure applications from interested and eligible beneficiaries using the Company’s designated marketing materials and application forms, including, without limitation, the collection of information designated by the Company and CMS to process enrollments and the transmission of enrollment information to the Company in a manner specified by the Company (for example, utilizing an Internet-based enrollment facility, via electronic file transmission or via facsimile transmission) and in compliance with standards and requirements that may be established by the Company.

c. Maintain proper records and accounts of all transactions pertaining to this Agreement; make such records and accounts available to the Company or its representatives during normal business hours upon seven (7) business days prior notice and turn such records over to the Company immediately upon termination of this Agreement, provided that Agent may retain copies of such records for its files;

d. Generally endeavor to promote the interests of the Company as contemplated by this Agreement; and conduct itself so as not to affect adversely the business or reputation of itself or the Company, and without limiting the foregoing, Agent agrees that it shall not intentionally disparage the Company or any of the Products, nor shall it act, nor neglect to act, in a manner that would injure or harm the reputation of the Company or the Products or the goodwill associated with the Company or the Products;

- e. As applicable, inform all prospective Members how premium payments for the Products are to be made, as prescribed by the Company and consistent with CMS requirements and applicable state and federal laws;
- f. As applicable, hold any check or monies received by Agent for or on behalf of the Company in a fiduciary capacity and keep such funds segregated from Agent's assets, it being specifically agreed that any such funds shall be deposited to a trust account in a state or federal bank authorized to do business in the state where the deposit is made and insured by an appropriate federal insuring agency no later than one (1) business day after receipt of such funds, and shall be transmitted to the Company within five (5) business days; provided, that to the extent applicable laws and regulations provide for more stringent requirements relating to receipt, handling or transmission of funds, Agent shall comply with the more stringent requirements;
- g. Timely pay to the Company all monies which may be or become due to it by reason of advances or loans or overpayments to Agent or otherwise.
- h. Follow and be governed and take appropriate steps to require Representatives to follow and be governed, by the terms and conditions of this Agreement and by the policies, procedures, rules and regulations of the Company now or hereafter to become in force, which policies, procedures, rules and regulations shall constitute a part of this Agreement.
- i. Use best efforts to keep Members enrolled in the Products by providing prompt service to Representatives and to Members.
- j. Promptly report to the Company any complaints or inquiries of which it becomes aware (and the facts relevant thereto) to or from any governmental authority regarding Agent, any Representatives or the Company; and fully cooperate with, promptly respond to any requests for information from, and provide assistance to the Company and the Company's designees, as reasonably requested by the Company, on any complaints or inquiries received relating to Agent, any Representatives or the Company;
- k. Comply with and meet the performance requirements which the Company may establish from time to time; it being acknowledged and agreed by Agent that failure to comply with and meet such performance requirements may result in termination of this Agreement by the Company.
- l. Use only the individually identifiable writing number assigned to Agent by the Company on applicable documents.
- m. Adhere to the Relationship Hierarchy Addendum incorporated herein by reference.
- n. Comply with the Medicare Regulatory Addendum attached hereto as **Exhibit B** and incorporated herein.
- o. Comply with the HIPAA Business Associate Addendum attached hereto as **Exhibit C** and incorporated herein.
- p. Comply with any and all requests made by FMO or General Agent on behalf of the Company.
- q. To the extent that Agent or its Representatives, directly or indirectly, have any arrangements with any subcontractors to perform any services in connection with this Agreement, ensure that any such subcontractors perform in compliance with the terms and conditions of this Agreement. If a subcontractor is

performing services in a manner which is not in compliance with the terms and conditions of this Agreement, or upon the Company's request, Agent shall terminate or require that its Representatives terminate any relationship with any such subcontractor;

r. To the extent Agent is owned or controlled by a licensed individual agent or agents who promote and market the Products to eligible beneficiaries, ensure that such individual or individuals comply with all of the requirements applicable to Agent as set forth in this Agreement and with Company's policies and procedures relating to promoting and marketing the Products to eligible beneficiaries, or;

s. Maintain and make available for inspection complete books and records of all transactions pertaining to this Agreement, as required by Medicare Laws and Regulations and as set forth in the Medicare Regulatory Addendum attached to this Agreement as **Exhibit B** and incorporated herein, and as may otherwise be required under state insurance laws and regulations or by any governmental entity or regulatory agency.

2.3 **Limitations on Authority.** Notwithstanding any other provision in this Agreement, Agent has no authority to, nor shall it represent itself as having such authority to, nor shall it do, any of the following:

a. Hold itself out as an employee, partner, joint venture or associate of the Company.

b. Hold itself out as an agent of the Company in any manner, or for any purpose, except as specified in this Agreement.

c. Alter, modify, waive or change any of the terms, rates or conditions of any advertisements or other promotional literature, receipts, policies or contracts of the Company in any respect.

d. Insert any advertising in respect to the Company or any of the Products in any publication whatsoever, distribute any promotional literature or other information in any media, or use the logo/service marks of the Company without prior written authority of the Company.

e. Collect, or authorize any other person to collect, any premiums or payments on behalf of the Company whatsoever, except the initial premium if authorized by the Company.

f. Bind the Company on any application for any Product, it being expressly understood that all applications must be approved by the Company and/or CMS.

g. Incur any indebtedness or liability, make, alter, or discharge contracts, waive or forfeit any of the Company's rights, requirements or conditions under any Product, extend the time of payment of any premium, or waive payment in cash on behalf of the Company.

h. Transfer or sell the business of the Agent created by this Agreement without the Company's prior written consent which shall not be unreasonably withheld, it being acknowledged and agreed by Agent that such business belongs exclusively to the Company.

i. Except as may be otherwise permitted by prior approval of the Company, deduct any payments due Agent from premiums or payments collected on behalf of the Company.

j. Except with prior approval of the Company, be contracted or otherwise affiliated with more than one FMO or General Agent, as the case may be, at any given time in the service area designated by the Company to such FMO or General Agent. In the event that Agent wishes to contract or otherwise affiliate with a different FMO or General Agent, Agent may do so only in accordance with Company rules and regulations and such additional terms and conditions as the Company may specify; or;

k. Knowingly permit any party to inappropriately use the individually identifiable writing number issued to Agent by the Company on applications solicited by such party.

2.4 **Promoting the Products in Compliance with Medicare Marketing Guidelines and Applicable Laws and Regulations.**

a. Notwithstanding any other provision in this Agreement, Agent agrees, on behalf of itself and its employees, agents, contractors and Representatives, to strictly comply with the Company's policies and procedures and all applicable federal and state laws, rules and regulations (including, but not limited, to anti-kickback statutes, false claims acts and fraud and abuse statutes) relating to promoting the Products to Members.

b. Agent and Representatives will complete the training and testing required by the Company for the promotion and marketing of the Products and read all Marketing Guidelines (as defined below), and will comply with all policies therein.

c. Agent and Representatives shall not make representations with respect to the nature or scope of the benefits of enrollment in the Products except in conformity with the written guidelines and marketing materials furnished by the Company to Agent and Representatives for that purpose. These written guidelines specifically include, but are not limited to, (i) CMS's Medicare Marketing Guidelines For Medicare Advantage Plans, Prescription Drug Plans and 1876 Cost Plans and any and all updates, revisions and additions thereto and (ii) such other written guidelines and marketing materials that may be issued by CMS or other applicable regulatory agencies or otherwise be established by the Company and furnished to Agent (collectively, the "Marketing Guidelines"). By entering into this Agreement, Agent is acknowledging it has received, read and understands the Marketing Guidelines and that it will ensure that Representatives will receive, read and understand the Marketing Guidelines, including the current version of CMS's Medicare Marketing Guidelines for Medicare Advantage Plans, Prescription Drug Plans and 1876 Cost Plans as of the date Agent enters into this Agreement;

d. Agent and Representatives shall have no authority to, and will not purport to, make any oral or written alteration, modification, or waiver of any of the terms or conditions applicable to enrollment in the Products.

e. Agent and Representatives shall make all disclosures to eligible Medicare beneficiaries in accordance with the Marketing Guidelines, including the following: (i) if Agent or Representative is meeting with a Medicare beneficiary, Agent or Representative shall clearly identify to the Medicare beneficiary that Agent or Representative will be discussing the Company's MA Plans and/or PDP Plans before Agent or Representative markets to the Medicare beneficiary, (ii) Agent or Representative shall, prior to the enrollment or at the time of enrollment, make the following disclosure in writing to the Medicare beneficiary: "The person that is discussing plan options with you is contracted with Blue Cross and Blue Shield of Kansas. The person is compensated based upon your enrollment in a plan" and (iii) if Agent or Representative makes any presentation regarding the Company's PFFS Plans, Agent or Representative shall strictly comply with the Company and CMS requirements specifically relating to PFFS Plans. Agent and Representatives shall make no payments or gifts of any kind to any eligible Medicare beneficiaries or any Members. Agent or Representatives shall be subject to, and cooperate with, the "Sales Training Incident" program established by the Company.

f. Agent and Representatives shall follow Medicare Laws and Regulations and Company policies and procedures regarding contacts with Medicare beneficiaries and use of the Company's Sales Appointment Confirmation Form in connection with marketing appointments.

g. The Company may from time-to-time contact Members and/or leads for the purpose of setting up an appointment between the Member and/or lead and Agent or one of its Representatives to discuss and market the Company's Plans. In such event, the Company authorizes Agent or its Representative to act on behalf of the Company for the sole and limited purpose of meeting with the Member or lead, as applicable, during the scheduled appointment, to discuss and market the Company's Plans and for no other purpose. Agent or its Representative shall discontinue all discussions and marketing of the Company's Plans and end the scheduled appointment if Agent or its Representative determines that the Company's Plans are not the best Plans to meet the Member's or lead's needs. Agent and its Representatives shall comply with the provisions of this Agreement and Medicare Laws and Regulations and any additional directions or guidance issued by the Company when meeting with any Member or lead identified by the Company and discussing or marketing the Company's Plans to any Member or lead identified by the Company. All information regarding Members or leads furnished by the Company to Agent or its Representatives shall be subject to the confidentiality provisions of the Agreement, including but not limited to the provisions of the Business Associate Addendum, and all Medicare Laws and Regulations, and Agent and its Representatives shall treat all such information in compliance with such confidentiality provisions and Medicare Laws and Regulations; or;

h. Agent and his/her Representatives shall be subject to background checks pursuant to Company policies and procedures.

2.5 **Rapid Disenrollment.** Agent and Representatives shall maintain a "Rapid Disenrollment" rate of no more than ten percent (10%) for each calendar year throughout the term of this Agreement. For purposes of this provision, "Rapid Disenrollment" means the voluntary disenrollment of a Member from an MA Plan or PDP Plan on or before three (3) calendar months after the Member's initial enrollment effective date; provided, however, when a Member enrolls in an MA Plan or PDP Plan effective October 1, November 1, or December 1, and subsequently changes plans effective January 1 of the following year, this is not considered a Rapid Disenrollment. Disenrollments for all MA Plans and PDP Plans marketed and promoted by Agent and Representatives are reported to the Company by CMS on the "Monthly Membership Reconciliation" (MMR) file. If the Rapid Disenrollment rate exceeds ten percent (10%) for any calendar year, Agent shall, at the request of Company, remove any Representative(s) determined by the Company or Agent to be responsible.

2.6 **Duties of the Company.** The Company shall furnish to Agent the marketing and enrollment materials for marketing and promotion of the Products. Agent specifically acknowledges that marketing and enrollment materials must be approved by CMS and the Company and that the enrollment of Members into MA Plans and PDP Plans is governed by Medicare Laws and Regulations. Agent further acknowledges that marketing and enrollment materials for Med Supp Plans and other health plans and products which are subject to state regulations must be approved by applicable state regulatory agencies and are governed by state laws and regulations.

2.7 **Company's Right to Modify Products and Service Area.** Subject to Medicare Laws and Regulations and applicable federal and state laws and regulations, the Company may, in its discretion, discontinue or modify any of the Products. Company may, in its sole discretion, limit which Products Agent and Representatives are authorized to solicit applications for on the Company's behalf. Company may, in its sole discretion, add, discontinue or modify any of the service areas in which Agent is authorized to solicit applications for any Products upon thirty (30) days prior written notice to Agent, or such shorter period as may be required under applicable law.

2.8 **Relationship of Parties.** Agent is an independent contractor, and nothing contained in this Agreement shall be construed to create an employer and employee relationship between the Company and Agent. The Company shall not be bound or liable for any actions taken or representations made by Agent beyond the scope or in violation of this Agreement. Agent shall be responsible for all taxes on compensation earned by it under this Agreement. Agent shall be responsible for providing any and all insurance coverages it is

required to provide for itself, or for any of its employees, by law. Except as provided in this Agreement, Company does not control the time, place or manner of Agent's activities. Each party shall be solely responsible for and shall hold the other party harmless against any obligation for payment of wages, salaries, or other compensation (including all state, federal, and local taxes and mandatory employee benefits), and insurance and voluntary employment-related or other contractual or fringe benefits as may be due and payable by the party to or on behalf of such party's employees and other contractors. Neither party shall use the trademarks or tradenames of the other party except as specifically contemplated by this Agreement. Agent shall not advertise using the name of Company without the express written approval of Company.

- 2.9 **Litigation.** Agent shall not initiate litigation in any dispute between Agent and any Representatives, or between Agent and any prospective or existing Member, without the prior written consent of the Company, which consent may be withheld by the Company for any or no reason. If any legal action is brought against either party hereto, or against both parties jointly, by reason of any alleged act, fault or failure of Agent in connection with its activities hereunder, the Company may require Agent to defend such action, or at its sole option, the Company may defend such action and expend such sums as may be reasonable therefor, including reasonable attorneys' fees, and Agent shall be chargeable therewith as well as with any amounts which may be recovered against the Company by judgment, settlement or otherwise, in any such action, which amount Agent shall pay to the Company on demand.
- 2.10 **Indemnification.** Agent shall defend, indemnify and hold the Company harmless from and against any and all injuries, claims, demands, liabilities, including reasonable attorneys' fees, suits at law or in equity, or judgments of any nature whatsoever, which the Company, its employees, representatives or third parties may sustain or incur by reason of any act, neglect or default of Agent or any Representatives in connection with its activities under this Agreement or the timely and accurate payment of commissions, fees, or other compensation to Representatives, including payments to Solicitor Agents for sales of or enrollments in the Products. Agent shall indemnify and hold the Company harmless from and against any and all damages, claims, demands or liabilities which Agent, any Representative or a third party may incur as a result of the installation and use of any software provided by the Company to Agent or any Representative in connection with its activities under this Agreement.
- 2.11 **Audits.** Agent shall permit the Company to inspect and audit all information and records related to services Agent performs under this Agreement. The Company must give Agent reasonable notice and conduct the inspection and audit during regular business hours. Agent shall also comply with the audit requirements set forth in the Medicare Regulatory Addendum. The Company may conduct, or arrange for a third party to conduct, a pre-contracting audit and subsequent periodic audits of Agent's operations relating to the performance of its duties hereunder, and compliance with this Agreement. Agent agrees to permit the Company, or a third party arranged by the Company, to conduct a security audit in accordance with Company and industry standards (such as HIPAA and ISO27002) to examine the facilities, policies, procedures, plans, and other records and documentation to verify Agent's compliance with data, physical and operational security standards. Agent shall promptly take corrective action to address any issues identified by the Company in connection with its audit and oversight activities. All corrective actions must be communicated to the Company and approved by the Company. The Company has the right to alter or request the necessary corrective action to be taken.
- 2.12 **Non-Solicitation.** During the term of this Agreement and for a period of one year following the later of (a) the effective date of termination of this Agreement; or (b) the last day in the month in which the Company pays any renewal fees, Agent shall not, and shall require that all Representatives shall not, directly or indirectly, other than in performance of its or their obligations hereunder, (i) solicit any business from a Member of the Company in a manner that is in violation of Medicare Laws and Regulations, including the prohibition on steerage and "cherry picking", or in violation of any other applicable state or federal laws and regulations; or (ii) knowingly employ or engage or offer to employ or engage any person who is then (or was at any time within one year prior to the time of such employment, engagement or offer) an employee, sales representative or agent of the Company, unless mutually agreed to by the parties.

**ARTICLE THREE
NETWORK OF REPRESENTATIVES**

- 3.1 **Recommended Appointment; Reimbursement of Appointment Fees.** Agent may solicit business for the Company through a network of Representatives (also referred to herein as “Solicitor Agents”). The Company, in its sole discretion, shall have the right to appoint Representatives and retains the right, in its sole discretion, to terminate such appointments. Agent and each Representative must be appointed by the Company before engaging in any marketing activities under this Agreement. As directed by the Company, Agent shall provide the Company with the information required by the Company for the appointment of Agent and each Representative with each applicable state regulatory agency. If the Company expands Agent’s designated service area to include any additional state(s), Agent shall provide the Company with the information required by the Company for the appointment of Agent and Representatives in the additional state(s). Agent acknowledges and agrees that neither Agent nor any Representatives may market the Products in any additional state(s) until such time as the Company makes the appointments in such additional state(s). Agent agrees that all appointment fees for Agent and Representatives shall be the responsibility of Agent and not the Company (except where otherwise provided by state law). Upon the Company’s request, and in the manner requested by the Company, Agent shall promptly reimburse the Company for all appointment fees paid by the Company for Agent and Representatives. Notwithstanding the foregoing or any other contract language to the contrary, Agent is not authorized to recommend new Solicitor Agents for appointment by the Company, and the Company will not make any appointments of new Solicitor Agents within Agent’s hierarchy.
- 3.2 **Agreements with Solicitor Agents/Representatives.** Agreements with Solicitor Agents are entered into between Agent and the Solicitor Agent. Agent, and not the Company, is responsible for compensating the Solicitor Agent. The Company is not a party to any agreement between Agent and the Solicitor Agent. However, the Company may direct Agent to take action with respect to any of its contracted Solicitor Agents’ promotion and marketing of the Products and any obligation under this Agreement or Company’s policies, procedures, rules, and regulations, and Agent shall take such action immediately upon the Company’s direction.
- 3.3 **Oversight and Responsibility for Representatives.** Agent shall actively supervise all Representatives, and shall be responsible for the conduct, acts and performance of each Representative. Agent shall take all necessary steps to communicate to all Representatives the Company’s requirements for the marketing and promotion of the Products and shall assure that each Representative complies with such requirements, Medicare Laws and Regulations, and other applicable federal and state laws and regulations. Agent acknowledges and agrees that FMO and/or General Agent is responsible to the Company to actively supervise the conduct, acts and performance of Agent and its Representatives under this Agreement. Agent agrees to cooperate with FMO and General Agent and follow all instructions and guidance from FMO and General Agent regarding compliance with the Company’s requirements for the marketing and promotion of the Products, Medicare Laws and Regulations, other applicable federal and state laws and regulations, as well as Company’s applicable policies and procedures. Agent shall not pay, and shall not allow its Representatives to pay, any form of rebate to Members or potential enrollees in order to obtain business. Agent shall immediately inform the Company of any actual or suspected rebate to Members or potential enrollees by any person acting on behalf of Agent or any Representative.

ARTICLE FOUR
COMPENSATION WHILE AGREEMENT IS IN EFFECT

4.1 **Compensation to Agent.** Except as provided for in Section 4.2 below, the Company shall compensate Agent for the marketing and promotion of the Products, in accordance with the Agent Compensation attached as **Exhibit A**, and Agent agrees that the following terms and conditions shall apply:

a. Agent shall receive compensation only on business written by Agent and (ii) business written by Agent's Representatives. Agent shall accept the compensation set forth on the Agent Compensation as compensation in full for all services performed and for all expenses incurred by Agent under this Agreement for the promotion and sale of the Products in all cases where Agent's claim to compensation is disputed or is otherwise questionable, the Company shall have the right, in its sole and absolute discretion, to decide and settle the dispute. Any decision of the Company shall be final, binding, conclusive and nonappealable;

b. Agent, and not the Company, shall have the sole responsibility to compensate Solicitor Agents for all activities conducted by Solicitor Agents on Agent's behalf. Agent shall ensure that the compensation methodology and the compensation amounts to be paid to Solicitor Agents comply at all times with CMS requirements and applicable Medicare Laws and Regulations, and any other applicable federal and state laws and regulations. Agent agrees to disclose to the Company at any time the compensation structure and amounts payable or paid to Solicitor Agents.

c. In accordance with Medicare Laws and Regulations, the Company shall establish one or more MA Plan compensation structures and one or more PDP Plan compensation structures for new and renewal enrollments effective for each plan year (the "Annual Commission Schedule");

i. For the beneficiary's initial year of enrollment in an MA Plan or PDP Plan, as determined by CMS, Agent and Representatives shall be compensated during the plan year at the Initial Year rate specified in the Annual Commission Schedule for the plan year and thereafter at the Renewal Year rate specified in the Annual Commission Schedule for the plan year for as long as the individual remains enrolled as a Member in a Company MA Plan or a Company PDP Plan, as applicable, throughout each renewal year, and provided that Agent, and for applications written by Representatives, provided that Agent and Representative remain licensed, appointed and certified by the Company as having completed the training and testing required by the Company for each renewal year.

ii. For plan years after the beneficiary's initial year of enrollment in an MA Plan or PDP Plan, as determined by CMS, Agent and Representatives shall be compensated for renewal enrollments during the plan year at the Renewal Year rate specified in the Annual Commission Schedule for as long as the individual remains enrolled as a Member in a Company MA Plan or a Company PDP Plan, as applicable, throughout each renewal year, and provided that Agent, and for applications written by Solicitors, provided that Agent and Solicitor remain licensed, appointed and certified by the Company as having completed the training and testing required by the Company for each renewal year..

The Annual Commission Schedule shall be in place by the beginning of the MA Plan and PDP Plan marketing period for each plan year or such other date as may be established by CMS. The Annual Commission Schedule shall be subject to review by CMS and subject to modification at any time based upon CMS's review. The Company shall furnish Agent with written notice of the Annual Commission Schedule for each plan year in the form of an amendment to the Agent Compensation. The Annual Commission Schedule shall become a part of this Agreement and shall apply to all new enrollments and all renewal enrollments for the plan year.

For all Products, the Company may, at any time, increase or decrease the compensation payable as specified on the Agent Compensation, and may set the compensation payable on any or all additional products which are added to the Agent Compensation by furnishing to Agent written notice. Notwithstanding the foregoing, any change in the compensation payable shall not be retroactive, and shall apply only to Products, as applicable, solicited or arranged by Agent or any Representative on or after the effective date specified in the written notice or revised Compensation, which effective date shall be at least fifteen (15) days after the date on which such written notice or revised Compensation is furnished to Agent.

d. All compensation due to Agent under this Agreement shall be based on the enrollment of Members in a Product, as determined by CMS and/or the Company, as the case may be.

i. Deductions for Non-Enrollment. If the Company, in its sole discretion, elects to pay any compensation to Agent prior to receiving CMS confirmation of the enrollment of a Member in an MA Plan or PDP Plan, and CMS does not, in fact, enroll the individual in the MA Plan or PDP Plan, Agent shall promptly refund such compensation paid to Agent and attributable to such individual or Representative. The Company may deduct such compensation from amounts otherwise owed by the Affiliate to Agent.

ii. Deductions for Rapid Disenrollment. If a Member voluntarily disenrolls from an MA Plan or PDP Plan within three (3) calendar months of enrollment and the Company has paid any compensation to Agent for such Member, Agent shall refund such compensation paid to Agent and attributable to such Member. The Company may deduct such compensation from amounts otherwise owed by the Company to Agent and shall provide Agent with information supporting the amount of any such deductions taken pursuant to this provision.

iii. Deductions for Disenrollment after “Rapid Disenrollment” Period. Agent acknowledges and agrees that compensation for each year of enrollment in an MA Plan or PDP Plan is earned in the fourth (4th) Through eleventh (11th) Calendar months of such year. If a member disenrolls from an MA Plan or PDP Plan during the fourth (4th) through eleventh (11) calendar months of such year, and the Company has paid any compensation to Agent for such Member, Agent shall refund the portion of such compensation which has not been earned by Agent. The Company may deduct the portion of such compensation which has not been earned by Agent from amounts otherwise owed by the Company to Agent and shall provide Agent with information supporting the amount of any such deductions taken pursuant to this provision. In calculating the amount of such refunds or deductions, the Company shall follow CMS requirements and guidance relating to charge backs for disenrollment of Members during the plan year. This provision shall survive termination of the Agreement.

iv. Deductions for Fines and Penalties. Agent acknowledges and agrees that Agent is responsible for any and all regulatory fines or penalties that may be imposed upon the Company as a result of the actions of Agent or any of its Representatives, and if any such fines or penalties are imposed upon the Company, Agent shall reimburse the Company for the full amount of such fines and penalties immediately upon notice from the Company. The Company may deduct the full amount of such fines and penalties from amounts otherwise owed by the Company to Agent and shall provide Agent with information supporting the amount of any such deductions taken pursuant to this provision. This provision shall survive termination of the Agreement.

v. Deductions for Non-Compliant Marketing Practices. Agent acknowledges and agrees that Agent is responsible for the compliance of Agent and its Representatives with all Medicare Laws and Regulations relating to marketing of MA Plans and PDP Plans (including the Marketing Guidelines), and if the Company determines, in its sole discretion, that Agent or any of its Representatives did not comply with such Medicare Laws and Regulations in connection with the sale of an MA Plan or PDP Plan to an individual Member, the Company may, in its sole

discretion, take any and all measures permitted by laws and regulations including termination of this Agreement. This provision shall survive termination of the Agreement.

vi. Deductions for Compliance Costs Resulting from Action or Inaction by Agent or Representatives. Agent acknowledges and agrees that Agent is responsible for any and all costs incurred by the Company resulting from a Representative's or Agent's action or inaction which results in a compliance violation and the Company incurring additional costs in the correction of such compliance violation. Agent shall reimburse Company for the full amount of the additional costs incurred by Company immediately upon notice from the Company. The Company may deduct the full amount of such costs from amounts otherwise owed by the Company to Agent and shall provide Agent with information supporting the amount of any such deductions taken pursuant to this provision. This provision shall survive termination of the Agreement.

e. The Company, in its sole discretion, may from time to time provide additional compensation to Agent and/or Representatives in the form of monetary or non-monetary incentives earned based on performance (e.g., sales contests). The terms and conditions under which such additional compensation can be earned shall be provided to Agent and/or Representatives in writing, and all such incentive programs shall be administered in compliance with Medicare Laws and Regulations and all applicable state and federal laws and regulations.

4.2 Compensation by FMO or General Agent. Agent acknowledges and agrees that certain FMOs and General Agents that contract with the Company may be responsible for compensating Agent, and in such cases, the Company shall have no responsibility to compensate Agent for Products marketed through such FMOs and General Agents. In such cases, Agent shall look solely to the FMO or General Agent for compensation for the marketing and promotion of the Products, and Agent acknowledges and agrees that under no circumstances shall Agent have any claim against BCBSKS or any Affiliates for any compensation or any other payment whatsoever in connection with Agent's activities in connection with the Products marketed through such FMOs and General Agents.

4.3. Responsibility for Indebtedness to Company. Agent shall be responsible for and agrees to reimburse and indemnify the Company for (i) any unearned or improperly or mistakenly paid commissions, (ii) any obligation or any sum which may be due and payable to the Company by Agent under this Agreement (including, but not limited to, appointment fees paid by the Company for Agent and its Representatives) and (iii) to the extent Agent may be responsible for commission payments to a Representative, any obligation or any sum which may be due and payable to the Company by any such Representatives under the agreement between the Company and the Representative or under any agreement between Agent and the Representative (collectively, "Indebtedness Agent grants the Company a first lien in and to all compensation payable under this Agreement and any compensation payable under any other agreement between the Company and Agent, for any debt due from Agent, including sums advanced or loaned by the Company. At any time during the term of this Agreement and at any time following termination of this Agreement, the Company may withhold, deduct and apply all sums due which would otherwise be due and payable to Agent to reduce any Indebtedness. The Company may, in its sole discretion, demand full payment of any Indebtedness that remains outstanding for more than thirty (30) days. Agent agrees to pay the Company any and all Indebtedness immediately upon demand. If such Indebtedness is not paid within thirty (30) days of the Company's written demand for payment, the Company will be entitled to recover, in addition to such Indebtedness, all cost of collection, including, but not limited to, court costs, reasonable attorneys' fees and other expenses. Failure to pay any Indebtedness within thirty (30) days of Company's written demand for payment shall also be the basis for termination of this Agreement with cause. This Section 4.2 shall survive termination of this Agreement.

ARTICLE FIVE
TERM, TERMINATION AND SUSPENSION

- 5.1 **Term of Agreement.** The term of this Agreement shall begin on the date first written above (the “Effective Date”) and shall continue until terminated in accordance with the provisions of this Article Five.
- 5.2 **Termination.** This Agreement may be terminated without cause by either Agent or the Company upon thirty (30) days prior written notice or such minimum number of days as required by applicable law, which notice shall be provided in accordance with the notice procedures set forth in this Agreement.
- 5.3 **Automatic Termination.** This Agreement will terminate automatically upon the occurrence of any of the following events:
- a. If Agent is an individual, upon the death of the individual.
 - b. If Agent is a partnership, upon the death of any partner or any change in the partners composing the partnership, or dissolution of the partnership for any reason; provided, however, this Agreement shall continue in full force and effect if (i) the partnership and partners continuing the business of Agent (the “Continuing Partners”) immediately provide written notification to the Company of such death, change or dissolution, which notification specifies the Continuing Partners and documents that the Continuing Partners meet all requirements of Agent under this Agreement, and (ii) the Company consents to the Continuing Partners, which consent shall not be unreasonably withheld, and (iii) the Continuing Partners execute a new agreement or other documentation reasonably required by the Company to continue this Agreement in full force and effect;
 - c. If Agent is a corporation, upon the dissolution of the corporation or disqualification of the corporation to do business under applicable state laws.
 - d. Agent is unable to pay debts as they mature, makes an assignment for the benefit of creditors or becomes the subject of a bankruptcy, insolvency or similar proceedings.
 - e. The loss, restriction, revocation or suspension of Agent’s insurance license, certification or registration by any federal or state regulatory authority having jurisdiction over the parties; or;
 - f. Agent’s business is sold, transferred, or merged and the Company has not consented to such sale, transfer or merger or has not appointed the successor.
- 5.4 **Termination with Cause.** The Company may immediately terminate this Agreement for cause upon written notice to Agent upon the occurrence of any of the following events:
- a. The failure of Agent to comply with (i) the policies, procedures, rules and regulations of the Company, (ii) the Marketing Guidelines, (iii) the Medicare Laws and Regulations or (iv) the laws or regulations of the states in which Agent is licensed to conduct business or any federal or state regulatory authority having jurisdiction over the parties.
 - b. The failure of Agent to perform any material obligations imposed upon Agent under the terms and conditions of this Agreement.
 - c. The conviction of Agent or any of its principals, shareholders, directors or officers of a felony crime or any other crime involving moral turpitude.
 - d. The exclusion of Agent or any of its principals, directors or officers from participation in Medicare, Medicaid or any federal health care program.

e. The failure of Agent to provide the Company with certificates of insurance and to maintain the insurance coverages set forth in this Agreement;

f. If Agent or any principal, partner, shareholder, director or officer of Agent or Representative directly or indirectly and systematically contacts, communicates or meets with Members for the purpose of replacing a Product offered by the Company with a Medicare Advantage Plan or Prescription Drug Plan or other product offered by an MA Organization, PDP Plan Sponsor or other entity that is not affiliated with the Company;

g. The promotion and marketing of the Products by Agent or any of its principals, shareholders, directors or officers or any Representative when a suspension is in effect, as specified in Section 5.5 below; or;

h. Agent is contracted or otherwise affiliated with more than one (1) FMO, or one (1) General Agent, as the case may be, at any given time in the service area designated by the Company to market and promote the Products.

5.5 **Suspension and Corrective Action of Agent or Representative.** In the event that the Company becomes aware of allegations, through Member complaints or otherwise, that Agent or any Representative may have engaged in conduct in violation of this Agreement, the Company may suspend Agent's or the Representative's authority under this Agreement pending the Company's final outcome of an investigation of such allegations. During the time such suspension is in effect, Agent or the Representative, as specified by the Company, may not market or promote the Products on behalf of the Company; provided, however, that the Company shall pay compensation in accordance with the terms and conditions of this Agreement on Agent's existing business submitted prior to the date of the suspension. The Company reserves the right to initiate corrective action against Agent or Representatives where the Company has determined Agent or Representatives have engaged in any conduct in violation of this Agreement.

5.6 **Specific Obligations of Agent to the Company and Members Following Termination of Agreement.** Following termination of this Agreement, Agent shall direct inquiries regarding the Products to the Company. Agent shall continue to act in accordance with applicable Medicare Laws and Regulations and federal and state laws and regulations applicable to marketing representatives and shall refrain from making any negative statements about the Company or the Products to Members or other beneficiaries. Agent shall continue to act in accordance with the provisions of the HIPAA Business Associate Addendum attached to this Agreement. Without limiting the foregoing, Agent shall refrain from using or disclosing Member names and contact information, as well as all other Protected Health Information, as defined in the HIPAA Business Associate Addendum attached to this Agreement. At the request of the Company, Agent shall copy all requested records in its possession relating to applicants for MA Plans, PDP Plans, Med Supp Plans and/or other Products and relating to Members and forward such copies to the Company. The cost of copying such records shall be borne by Agent. Agent shall ensure that Representatives comply with the provisions of this Section 5.6 following termination of this Agreement.

5.7 **Compensation Following Termination of Agreement; Vesting.**

a. In the event this Agreement is automatically terminated under Section 5.3 or is terminated by Company for cause under Section 5.4, Company shall cease paying to Agent any compensation due to Agent under this Agreement and no further payment shall be due. This termination of payment shall be independent of any other rights that Company may have as a result of the breach of this Agreement.

b. Upon termination of this Agreement without cause, any compensation due to Agent as set forth on the Agent Compensation in effect as of the effective termination date of this Agreement shall be vested in Agent and payable to Agent by the Company regardless of whether this Agreement is still in force at the time such compensation become due for as long as each such applicable Member remains enrolled in

the Product with the Company and premiums continue to be paid by CMS and the Member, as applicable, and, for MA and PDP Plans, provided that Agent, (and for applications written by Representatives, provided that Agent and Representative) remain licensed, appointed and certified by the Company as having completed the training and testing required by the Company for each renewal year.. The obligation of the Company to pay such compensation shall cease in the event that (i) Agent, at any time while such payments continue, contacts existing Members for the purpose of replacing any of the Products with a Medicare Advantage Plan, Prescription Drug Plan, Medicare Supplement Plan or other Product offered by another MA Organization, PDP Plan Sponsor, health plan or insurer (notwithstanding anything to the contrary herein above, the parties expressly acknowledge and agree that the occasional or inadvertent replacement of business is practically unavoidable and that unless such conduct is part of an intentional effort to migrate the Company's business to a competitor of the Company, it shall not give rise to the cessation of payments provided for hereunder and furthermore, the parties hereto acknowledge and agree that the foregoing shall not apply in any instance where the Company's services or coverage are no longer generally accepted in such Member's geographic area), (ii) Agent, at any time while payments continue, engages in any of the conduct set forth in Section 5.4 which would have given rise to a termination for breach, or (iii) the Company's payments to Agent as required by this Agreement are less than Two Thousand Dollars (\$2000.00) per year. This Section 5.7 shall survive termination of this Agreement.

- 5.8 **Termination of Representatives.** If Agent engages or employs any Solicitor Agents, Agent must immediately notify the Company of the termination of the engagement or employment of any such Solicitor Agents. Termination of Agent shall result in the termination of Agent's Representatives. The Company may, in its sole and absolute discretion, terminate the participation of any Representative by providing advance written notice of such termination to Agent. Upon receiving such notice from the Company, Agent shall cause any terminated Representative(s) to cease marketing the Products and to cease soliciting applications on behalf of the Company. The Company shall have no obligation to pay any further compensation to Agent with respect to any enrollments which are originated after the termination date by any Representative who or which has been terminated. The termination of participation of any one or more Representatives by the Company shall not affect the performance of this Agreement by Agent and the remaining Representatives that have not been terminated by the Company. The termination of any Representative's participation hereunder shall not prevent the subsequent termination of this Agreement in its entirety by the Company in accordance with the provisions of this Article Five or as otherwise permitted by this Agreement.

ARTICLE SIX GENERAL PROVISIONS

- 6.1 **Intellectual Property Rights; Confidential Information.** Agent agrees that all marketing and promotional materials, advertisements, circulars, brochures or similar material concerning the Products, rate and benefit schedules, contracts, records files, software, manuals, forms, and other materials and information furnished by the Company, whether furnished in paper form, electronic format or through the Internet, is and shall remain confidential and proprietary to the Company. Agent agrees that such proprietary and confidential information shall only be used by Agent in connection with performance under this Agreement and only in the manner provided by this Agreement. Agent shall not use any of the Company's proprietary and confidential information to directly or indirectly compete with the Company, or to assist any competitor of the Company to compete with the Company, during the term of this Agreement or at any time thereafter. Upon expiration or termination of this Agreement, Agent shall immediately return all proprietary and confidential information. Agent agrees that this Agreement is and shall remain confidential, and Agent agrees not to disclose this Agreement, or any term of it, to any third party without the prior written consent of the Company, except as required by law. Agent acknowledges and agrees that the Company owns all tangible property, including, but not limited to, goods, equipment, documents, spreadsheets, notes, disks, text, artwork, computer software, and similar property provided to Agent by the Company or produced by Agent at the Company's expense or based on the Company's proprietary and

confidential information. Agent agrees to deliver this tangible property to the Company promptly upon the Company's request, but in any event, after Agent is finished using such tangible property in performing the services under this Agreement.

6.2 **Assignment.** Neither this Agreement nor any of the duties or benefits of this Agreement shall be assigned or transferred, either in whole or in part, without the prior written consent of the Company.

6.3 **Amendments; Other Agreements.**

a. **Unilateral Amendments.** The Company may amend this Agreement by providing written notice of the amendment and its effective date to Agent thirty (30) or more days before the proposed effective date of such amendment, or fifteen (15) or more days before a compensation amendment pursuant to section 4.1 of this Agreement. The amendment will automatically become effective without Agent's written agreement unless Agent notifies the Company that Agent is terminating this Agreement before the effective date of the amendment.

b. **Amendments to Comply with Laws and Regulations.** The Company may amend, revise or supplement this Agreement with written notice to Agent in order to maintain compliance with Medicare Laws and Regulations and any applicable state, federal or local statutes, ordinances, codes, rules, regulations, restrictions, orders, procedures, directives, guidelines, policies or requirements enacted, adopted, applied or imposed by any governmental authority or court. The written notice shall specify the effective date of the amendment, revision or supplement to the provisions of this Agreement. Such amendment shall be binding upon Agent and shall not require the consent of Agent.

c. **Agreements for Sale of Other Products.** Nothing in this Agreement shall preclude Agent from entering into agreements with the Company for the sale of any Company products other than the Products, and no provision of this Agreement shall be construed to supplant or modify any provision of any such agreements.

d. **Prior Agreements.** The Company and Agent agree that this Agreement, including all exhibits, appendices and addenda attached hereto or incorporated into this Agreement by reference, constitutes the entire agreement between the Company Agent and will, upon execution by the parties, supersede any prior agreement, oral or written, between the parties concerning the subject matter of this Agreement. If any such agreements are in existence, they are, upon execution of this Agreement by the parties, hereby cancelled, except with respect to any compensation or commissions payable thereunder, which compensation or commissions shall continue to be paid in accordance with the terms thereof.

6.4 **Insurance.** Agent shall maintain the following insurance coverage:

a. Agent's Errors and Omissions Insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) annual aggregate.

b. If Agent has a claims-made based policy (or policies) and such policy (or policies) are cancelled or not renewed, Agent agrees to exercise any option contained in said policy (or policies) to extend the reporting period to the maximum period permitted; provided, however, that Agent need not exercise such option if the superseding insurer will accept all prior claims.

c. None of the foregoing requirements as to the type and limits of insurance to be maintained by Agent are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Agent under this Agreement. Each of the Agent insurance policies shall:

- i. be issued by companies that are admitted insurers in the jurisdiction in which the services or products are being provided;
- ii. be issued by companies that have an A. M. Best rating of not less than "A-", and are in a size category which is not lower than "VIII;"
- iii. be primary and noncontributory with any of the Company's insurance;
- iv. name the Company as an additional insured; (except workers compensation, employers liability and professional liability coverages); and
- v. provide the Company with thirty (30) days prior written notice of cancellation, non-renewal or material change in the form or limits of coverage.

Agent shall cause its insurance carriers, brokers or agents to issue certificates of insurance to the Company evidencing all insurance coverages required by this Section. Notwithstanding any other provision of this Agreement, failure to provide the certificates of insurance following a request by the Company shall be grounds for immediate termination of this Agreement.

6.5 **Waiver.** Failure of the Company to enforce compliance with the terms and conditions of this Agreement shall not be construed as a waiver of the right to exercise the same at any time.

6.6 **Notice.** Any and all notices required or permitted to be given hereunder shall be in writing and may be sent by (i) personal delivery, (ii) commercial messenger service overnight delivery, (iii) United States Postal Service, or (iv) facsimile transmission with electronic confirmation of successful transmission. Irrespective of the manner of delivery or transmission used, all such notices shall be properly addressed and directed with postage or delivery charges prepaid (if any) to the party at its respective address or facsimile number set forth below or to such other address which any party may designate in writing in accordance with the provisions of this Section 6.6.

If to Company: Blue Cross and Blue Shield of Kansas

with a copy to: Blue Cross and Blue Shield of Kansas
1133 SW Topeka Blvd.
Topeka, KS 66629
Attention: General Counsel

If to Agent: Agent's address last known by the Company

Notices sent by either personal delivery or facsimile transmission shall be deemed given upon independent written verification of receipt. Notices sent via overnight delivery shall be deemed given on the next business day. All other notices sent by either registered or certified mail shall be deemed given three (3) business days from mailing.

Notwithstanding the above, notice of any Amendment to this Agreement may be provided to Agent by the Company by e-mail of a pdf file containing a copy of such Amendment executed by the Company, as provided in Section 6.11 below. Notice of Amendments provided by e-mail of a pdf shall be deemed given on the date of the email.

- 6.7 **Compliance with Applicable Law; Severability.** In the event any provision of this Agreement conflicts with laws applicable hereto or under which this Agreement is construed, or if any provision of this Agreement shall be held illegal or unenforceable or partially illegal or unenforceable by a court or governmental authority with jurisdiction over the parties to this Agreement, then this Agreement shall be modified to conform with said laws or judicial determination and such provision shall be construed and enforced only to such extent as it may be a legal and enforceable provision and all other provisions of this Agreement shall be given full effect separately therefrom and shall not be affected thereby.
- 6.8 **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Kansas, but without regard to conflict of law principles.
- 6.9 **Incorporation of Other Legal Requirements.** Any provisions now or hereafter required to be included in the Agreement by any federal or state governmental authority with competent jurisdiction over the subject matter hereof, including, but not limited to, CMS, shall be binding upon and enforceable against the parties hereto and deemed incorporated herein, irrespective of whether or not such provisions are expressly set forth in this Agreement.
- 6.10 **Survival of Terms.** The parties' respective rights and obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive. This includes, by way of example but is not limited to, the obligations provided in the following Sections, Appendices and Addenda: Insurance and Indemnification, **Exhibit A**, the Medicare Regulatory Addendum, and the HIPAA Business Associate Addendum.
- 6.11 **Signatures Delivered by Facsimile or E-Mail.** This Agreement, any amendments to this Agreement, and any other documents related to this Agreement (such as notices, etc.) to the extent bearing a signature, including electronic signatures secured through the Company's designated e-signature system, by the person authorized by the respective party, but delivered by means of a facsimile machine or e-mail of a pdf file containing a copy of such executed document, shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of the Company, Agent shall re-execute original forms thereof and deliver them to the Company. No party hereto shall raise the use of a facsimile machine to deliver a signed document or the fact that any signed document or agreement or instrument was transmitted or communicated through the use of a facsimile machine or e-mail of a pdf file containing a copy of an executed agreement as a defense to the formation or enforceability of this agreement or any such agreement or instrument, and each such party forever waives any such defense.
- 6.12 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.

Signature page follows.

The following exhibits and attachments are incorporated by reference into this Agreement:

- **Exhibit A** Agent Compensation
- **Exhibit B** Medicare Regulatory Addendum
- **Exhibit C** HIPAA Business Associate Addendum

Executed this _____ day of _____, 20____.

AGENT CONTRACTING AS

BCBSKS, on behalf of itself and its Affiliates

(Check one)

- INDIVIDUAL**
- PARTNERSHIP**
- CORPORATION**

Print Name on License

By: _____
Authorized Signature

By: _____
Company Officer

Title: _____

Title: _____

Address

City State Zip Code

National Producer Number (required): _____

EXHIBIT A

Agent Compensation

BCBSKS, on behalf of itself and Affiliates (collectively referred to as the “Company”) that operate Medicare Advantage Plans (MA Plans), Prescription Drug Plans (PDP Plans), Medicare supplement insurance plans (Med Supp Plans) and other health plans and products identified herein (the “Products”) will rely on your upline to compensate Agent as defined in the FMO contract for agent compensation.

The Company will compensate your upline, as defined in the FMO contract, for each individual properly enrolled in those Products offered by the Company (a complete listing of which is available to Agent and its Representatives by the Company) which Agent and its Representatives are approved and authorized to market and promote by the Company in the jurisdiction(s) in which Agent and its Representatives are approved and authorized to operate in by the Company for the time periods set forth herein.

All compensation payable to Agent is subject to cancellation or reduction, pursuant to Company guidelines and in compliance with state and federal laws and regulations, if such compensation is for the sale of a Product where Agent or its Representatives have enrolled a Member in a Product that replaces an existing in-force Company Product (or under some circumstances, as required by state laws and regulations, non-Company health insurance plan products) in which such Member was already enrolled.

EXHIBIT B

Medicare Regulatory Addendum

This Addendum shall apply to the services provided by Agent pursuant to the Agreement related to the Company's MA Plans and PDP Plans. With respect to the rendering of such services, the provisions of this Addendum shall prevail over any provision in the Agreement, which may conflict or appear inconsistent with any provision in this Addendum. Unless otherwise defined in this Addendum, all capitalized terms contained in the Addendum shall be defined as set forth in the Agreement.

1. Delegated Activities. The following shall apply with respect to any activities for which the Company is responsible under the CMS Contract, and that have been delegated to Agent under the Agreement:
 - a. Agent shall provide or arrange for the provision of the services set forth in the Agreement.
 - b. Agent shall comply with any existing reporting responsibilities as are set forth in the Agreement.
 - c. Agent shall comply with all applicable Medicare laws, regulations and CMS instructions, and cooperate with the Company in its efforts to comply with the laws, regulations and other requirements of applicable regulatory authorities. Agent shall perform the services set forth in the Agreement in a manner consistent with and in compliance with the Company's contractual obligations under the CMS Contract.
 - d. Agent acknowledges that the Company oversees on an on-going basis, and is ultimately accountable to CMS for, any functions or responsibilities that are contained in the CMS Contract, including those that Agent has agreed to perform in accordance with the Agreement. In instances where CMS or the Company determines that Agent has not performed satisfactorily or has failed to meet all reporting and disclosure requirements in a timely manner, the Company has the right to revoke and assume the delegated activities or reporting and disclosure requirements upon written notice to Agent, or the Company may terminate the Agreement upon 30 days advance written notice to Agent. Agent shall cooperate with the Company regarding any delegated activities or reporting and disclosure requirements which have been revoked and assumed by the Company.
 - e. If Agent has any arrangements with affiliates, subsidiaries or any other sub-contractors (collectively, "subcontractors"), directly or through another person or entity, to perform any of the services Agent is obligated to perform under the Agreement that is the subject of this Addendum, Agent shall ensure that all such arrangements are in writing and duly executed. Agent shall also ensure that all such agreements are duly amended to incorporate the terms contained in this Addendum and shall provide notice to the Company of such amendment. Agent shall

ensure that the terms of this Addendum are included in all future and pending agreements with subcontractors that relate to the same subject matter. Agent shall ensure that any such delegation or subcontract shall be performed by the subcontractor in accordance with the Company's contractual obligations to CMS, Agent's contractual obligation under this Agreement, and in compliance with all applicable Medicare Laws and Regulations and the requirements of this Addendum. Agent further agrees to promptly amend the agreements with subcontractors, in the manner requested by the Company, to meet any additional CMS requirements. In the event that any sub-contractor fails or is unable (for any reason whatsoever) to perform in a satisfactory manner any services Agent is obligated to perform under the Agreement, then the Company or CMS shall have the right to suspend, revoke or terminate the arrangement with the sub-contractor effective upon the date set forth in a written notice furnished to Agent. Additionally, the Company or CMS shall have the right to institute corrective action plans or seek other remedies or curative measures respecting the unsatisfactory performance consistent with applicable Medicare Laws and Regulations.

- f. Agent acknowledges that (i) Agent is a "First Tier Entity" which is defined by CMS as any party that enters into a written arrangement, acceptable to CMS, with an MA Organization or PDP Plan Sponsor to provide administrative services to a Medicare eligible individual under an MA Plan or PDP Plan, and (ii) each Solicitor Agent and other contractor/vendor engaged by Agent is a "Downstream Entity" which is defined by CMS as any party that enters into a written arrangement, acceptable to CMS, below the level of the written arrangement between an MA Organization or PDP Plan Sponsor and a First Tier Entity, continuing down to the ultimate provider of administrative services. Agent agrees that Agent shall comply with all requirements imposed upon a First Tier Entity and a Downstream Entity by CMS or by Medicare Laws and Regulations.
- g. Agent shall: (i) upon request of the Company, provide the Company with a list of all current employees of Agent; (ii) as a First Tier Entity, provide Fraud, Waste and Abuse/Compliance and Code of Conduct training, as specified by the Company and using the Company's training materials or other training materials that meet the Fraud, Waste and Abuse/Compliance training standards established by CMS, to all current employees of Agent and all contractors/vendors engaged by Agent regardless of whether Agent, its employees or contractors/vendors take the Company's annual certification courses to market and sell products that year; (iii) be responsible for ensuring that Agent takes the Company's annual Fraud, Waste, and Abuse/Compliance and Code of Conduct training, regardless of whether Agent takes the Company's annual certification courses to market and sell products that year; (iv) conduct, at minimum, an annual review to determine if any current employees of Agent and contractors/vendors of Agent are listed as debarred, excluded, or otherwise ineligible for participation in federal

health care programs or convicted of a criminal felony, and shall immediately terminate any such employees or contractors/vendors.

1. Agent represents and warrants that Agent, or its principals, have not been (i) listed as debarred, excluded, or otherwise ineligible for participation in federal health care programs or (ii) convicted of a criminal felony. Agent agrees to notify the Company in writing immediately if, at any time during the term of the Agreement, Agent, or its principal, are (i) listed as debarred, excluded, or otherwise ineligible for participation in federal health care programs or (ii) convicted of a criminal felony, in which case the Company may terminate the Agreement pursuant to the applicable provision in this Agreement or take such other corrective or remedial action as warranted under the circumstances.
2. Federal Funds. Agent acknowledges that the Company receives payments in whole or in part from federal funds, and Agent is subject to certain laws that are applicable to individuals and entities receiving federal funds.
3. Records.
 - a. Maintenance and Accuracy of Records. Agent will maintain all pertinent records and information related to the services rendered by Agent under the Agreement in an accurate and timely manner.
 - b. Access to Records.
 - i. The Company, The Secretary of Health and Human Services (the "Secretary"), the Comptroller General or their designees shall have the right to audit, evaluate or inspect any books, contracts, records, documentation and other information that pertains to: (1) the services performed under the Agreement; (2) determination of amounts payable or (3) other relevant matters as such person conducting the audit, evaluation or inspection deems necessary.
 - ii. The right described above shall extend through ten (10) years from the final date of the applicable Medicare Contract period or completion of audit, whichever is later; provided, however, that such access may be required for a longer time period if: (1) CMS determines that there is a special need to retain a particular record or group of records for a longer period and CMS provides notice at least thirty (30) days before the normal disposition date; (2) CMS determines that there has been a termination, dispute, fraud or similar fault, in which case the retention may be extended to ten (10) years from the date of any resulting final resolution of the matter or (3) CMS determines that there is a reasonable possibility of fraud, in which case it may perform the inspection, evaluation or audit at any time.
 - iii. For the purpose of conducting the above activities, Agent shall

make available its premises, physical facilities and equipment, records relating to the services provided under the Agreement, and any additional relevant information that the Company or CMS may require.

- c. Confidentiality. The Company and Agent shall abide by all federal and state laws regarding confidentiality and disclosure of records and information including, but not limited to, the requirements established by the Company and CMS, as applicable.
4. Regulatory Amendment. The Company may amend this Addendum to comply with the requirements of state and federal regulatory authorities and shall give written notice to Agent of such amendment and its effective date. Unless such regulatory authorities direct otherwise, the signature of Agent will not be required.
5. Member Hold Harmless. Agent shall not, in any event (including, without limitation, non-payment of any compensation hereunder, bankruptcy or insolvency of an Affiliate or breach of this Agreement), bill, charge, collect a deposit from, seek compensation or remuneration or reimbursement from, hold responsible, or otherwise have any recourse against any actual or prospective Member for any amounts otherwise payable to Agent pursuant to this Agreement or otherwise.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT WITH BLUE CROSS AND BLUE SHIELD OF KANSAS, INC.

This Business Associate Agreement (“Agreement”) is incorporated into and made part of any and all primary agreements (“Primary Agreements”) in existence as of the effective date of the Agreement or entered into in the future by and between OCI Insurance and Financial Services, Inc. (“Business Associate”) and **Blue Cross and Blue Shield of Kansas, Inc., and its subsidiaries** (“Organization”). This Agreement, effective on the ___ day of _____, 2023, replaces and supersedes any previous Business Associate Agreements entered into between the parties.

This Agreement between the Organization and Business Associate complies with the requirements of the implementing regulations of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as modified by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”). Specifically, the “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. The HIPAA Privacy Rule is the Standards for Privacy of Individually Identifiable Health Information at 45 CFR, part 160 and part 164, subparts A and E. The HIPAA Security Rule is the HIPAA Security Standards (45 C.F.R. Parts 160, 162, and 164). The HIPAA Breach Notification Rule is the Notification in the Case of Breach of Unsecured Protected Health Information, as set forth at 45 CFR Part 164 Subpart D. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HIPAA Rules.

1. Privacy of Protected Health Information.

a) Permitted Uses and Disclosures. Business Associate is permitted to use and disclose Protected Health Information that it creates or receives on Organization’s behalf or receives from Organization (or another business associate of Organization) and to request Protected Health Information on Organization’s behalf (collectively, “Organization’s Protected Health Information”) only as follows:

i) Functions and Activities on Organization’s Behalf. To perform functions, activities, services, and operations on behalf of Organization, consistent with the Privacy Rule as specified in Primary Agreement(s).

ii) Business Associate’s Operations. For Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities, provided that, with respect to disclosure of Organization’s Protected Health Information, either:

A) The disclosure is Required by Law; or

B) Business Associate obtains reasonable assurance evidenced by written contract from any person or entity to which Business Associate will disclose Organization’s Protected Health Information that the person or entity will:

1) Hold Organization’s Protected Health Information in confidence and use or further disclose Organization’s Protected Health Information only for the purpose for which Business Associate disclosed Organization’s Protected Health Information to the person or entity or as Required by Law; and

2) Promptly notify Business Associate (who will in turn notify Organization in accordance with Section 4(a) of this Agreement) of any instance of which the person or entity becomes aware in which the confidentiality of Organization’s Protected Health Information was breached.

b) Minimum Necessary and Limited Data Set. Business Associate’s use, disclosure, or request of Protected Health Information shall utilize a Limited Data Set if practicable. Otherwise, Business

Associate will, in its performance of the functions, activities, services, and operations specified in Section 1(a) above, make reasonable efforts to use, to disclose, and to request of a Covered Entity only the minimum amount of Organization's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure, or request. **In addition, Business Associate also agrees to implement and follow appropriate minimum necessary policies in the performance of its obligations under this Agreement.**

c) Prohibition on Unauthorized Use or Disclosure. Business Associate will neither use nor disclose Organization's Protected Health Information, except as permitted or required by this Agreement or in writing by Organization or as Required by Law. This Agreement does not authorize Business Associate to use or disclose Organization's Protected Health Information in a manner that will violate the 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information" ("Privacy Rule") if done by Organization, except as set forth in Section 1(a)(ii) of this Agreement.

d) Sale of PHI. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI except where permitted by the Agreement and consistent with applicable law.

e) Marketing. Business Associate shall not directly or indirectly receive payment for any use or disclosure of PHI for marketing purposes except where permitted by the Agreement and consistent with applicable law.

f) Information Safeguards.

i) Privacy of Organization's Protected Health Information. Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Organization's Protected Health Information. The safeguards must reasonably protect Organization's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule, 45 C.F.R. Part 164, Subpart E and this Agreement and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.

ii) Security of Organization's Electronic Protected Health Information. Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Organization's behalf as required by the Security Rule, 45 C.F.R. Part 164, Subpart C. Business Associate also shall develop and implement policies and procedures and meet the Security Rule documentation requirements.

iii) Security Polices. Business Associate shall maintain security policies that comply with all applicable laws and regulations. Organization has the right to request copy of Business Associate's security policies.

g) Subcontractors and Agents. Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Agreement or in writing by Organization to disclose Organization's Protected Health Information, to provide reasonable assurance evidenced by written contract that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to Organization's Protected Health Information that are applicable to Business Associate under this Agreement.

h) Workforce Privacy Training. For all members of Business Associate's workforce who will handle or have access to Organization's Protected Health Information, Business Associate shall:

- Within a reasonable time of employees joining the workforce, provide training on Business Associate's privacy policies and procedures as necessary and appropriate for each employee to carry out his or her functions. Such training should address recognition of violations and reporting of violations to appropriate persons within the organization.

- Retrain each member of the workforce whose functions are affected by a material change in Business Associate’s privacy policies or procedures within a reasonable time after the material change becomes effective.
- Provide supplementary training on a regular basis but no less than annually; and
- Document that the above training has been provided.

2. Compliance with Transaction Standards. If Business Associate conducts in whole or part electronic Transactions on behalf of Organization for which DHHS has established Standards, Business Associate 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. Business Associate 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 Organization 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.

3. Individual Rights.

a) **Access.** Business Associate will, within 10 business days following Organization’s request, make available to Organization or, at Organization’s direction, to an individual (or the individual’s personal representative) for inspection and obtaining copies of Organization’s Protected Health Information about the individual that is in Business Associate’s custody or control, consistent with the requirements of 45 C.F.R. § 164.524, so that Organization may meet its access obligations under 45 C.F.R. § 164.524. Business Associate shall make such information available in an electronic format where directed by Organization.

b) **Amendment.** Business Associate will, upon receipt of written notice from Organization, promptly amend or permit Organization access to amend any portion of Organization’s Protected Health Information, so that Organization may meet its amendment obligations under 45 C.F.R. § 164.526.

c) **Disclosure Accounting.** So that Organization may meet its disclosure accounting obligations under 45 C.F.R. § 164.528:

i) **Disclosures Subject to Accounting.** Business Associate will record the information specified in Section 3(c)(iii) below (“Disclosure Information”) for each disclosure of Organization’s Protected Health Information, not excepted from disclosure accounting as specified in Section 3(c)(ii) below, that Business Associate makes to Organization or to a third party.

ii) **Disclosures Not Subject to Accounting.** Business Associate will not be obligated to record Disclosure Information or otherwise account for the following disclosures of Organization’s Protected Health Information:

- A) That occurred before April 14, 2003.
- B) For Treatment, Payment or Health Care Operations activities.
- C) To an individual who is the subject of Organization’s Protected Health Information disclosed, or to that individual’s personal representative.
- D) Pursuant to an authorization compliant with 45 C.F.R. § 164.508 that is signed by an individual who is the subject of Organization’s Protected Health Information disclosed, or by that individual’s personal representative.

- E) For notification of and to persons involved in the care or payment related to the health care of an individual who is the subject of Organization's Protected Health Information disclosed and for disaster relief.
- F) To law enforcement officials or correctional institutions in accordance with 45 C.F.R. § 164.512(k)(5);
- G) For national security or intelligence purposes in accordance with 45 C.F.R. § 164.512(k)(2);
- H) In a Limited Data Set;
- I) Incident to a use or disclosure that Business Associate is otherwise permitted to make by this Agreement; and
- J) Otherwise excepted from disclosure accounting as specified in 45 C.F.R. § 164.528.

iii) Disclosure Information. With respect to any disclosure by Business Associate of Organization's Protected Health Information that is not excepted from disclosure accounting by Section 3(c)(ii) above, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

A) **Disclosure Information Generally.** Except for repetitive disclosures of Organization's Protected Health Information as specified in Section 3(c)(iii)(B) below and for disclosures for large Research studies as specified in Section 3(c)(iii)(C) below, the Disclosure Information that Business Associate must record for each accountable disclosure are the requirements set forth in the HIPAA Privacy Rule, including but not limited to: (i) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii) a brief description of Organization's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.

B) **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of Organization's Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Organization), the Disclosure Information that Business Associate must record is either the Disclosure Information specified in Section 3(c)(iii)(A) above for each accountable disclosure, or (i) the Disclosure Information specified in Section 3(c)(iii)(A) above for the first of the repetitive accountable disclosures, (ii) the frequency, periodicity, or number of the repetitive accountable disclosures, and (iii) the date of the last of the repetitive accountable disclosures.

C) **Disclosure Information for Large Research Activities.** For disclosures of Organization's Protected Health Information that Business Associate makes for particular Research involving 50 or more individuals and for which an Institutional Review Board or Privacy Board has waived authorization during the period covered by an individual's disclosure accounting request, the Disclosure Information that Business Associate must record is (i) the name of the Research protocol or activity, (ii) a plain language description of the Research protocol or activity, including its purpose and criteria for selecting particular records, (iii) a brief description of the type of Organization's Protected Health Information disclosed for the Research, (iv) the dates or periods during which Business Associate made or may have made these disclosures, including the date of the last disclosure that Business Associate made during the period covered by an individual's disclosure accounting request, (v) the name, address, and telephone number of the Research sponsor and of the researcher to whom Business Associate made these disclosures, and (vi) a statement that Organization's Protected Health Information relating to an individual requesting the disclosure accounting may or may not have been disclosed for a particular Research protocol or activity. Business Associate

will, upon request of Organization or an individual requesting the disclosure accounting, assist Organization or the individual to contact the Research sponsor and the researcher if it is reasonably likely that Organization's Protected Health Information relating to the individual was disclosed for the particular Research protocol or activity.

iv) Availability of Disclosure Information. Unless otherwise provided by applicable law, Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates.

Business Associate will report the Disclosure Information to Organization within 10 calendar days following the accountable disclosure.

d) Restriction Agreements and Confidential Communications. Business Associate will comply with any agreement that Organization makes that either (i) restricts use or disclosure of Organization's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about Organization's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Organization notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Organization will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of Organization's Protected Health Information will remain subject to the terms of the restriction agreement.

4. Privacy Obligation Breach and Security Incidents.

a) Reporting.

i) Privacy Breach. Business Associate will report to Organization any use or disclosure of Organization's Protected Health Information not permitted by this Agreement or in writing by Organization. In addition, Business Associate will report, following discovery and without unreasonable delay, but in no event later than three business days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the Breach Notification Regulation. Business Associate shall cooperate with Organization in investigating the Breach and in meeting the Organization's obligations under the Breach Notification Regulation and any other security breach notification laws.

ii) Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate will make the report to Organization's Privacy Officer, not more than three days after Business Associate learns of such non-permitted use or disclosure, and such report will include at a minimum:

A) Identify the nature of the non-permitted access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach.

B) Identify Organization's Protected Health Information accessed, used, or disclosed as part of the Breach (e.g., full name, social security number, date of birth, etc.);

C) Identify who made the non-permitted access, use, or disclosure and who received the non-permitted disclosure.

D) A description of what the Business Associate is doing or has done to investigate the Breach and to protect against any further Breaches.

E) A description of what the Business Associate is doing or has done to mitigate any deleterious effect of the Breach; and

F) Provide such other information, including a written report, as Organization may reasonably request.

iii) Security Incidents. Business Associate will report to Organization any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of Organization's Electronic Protected Health Information or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware. Business Associate will make this report upon Organization's request, except if any such security incident resulted in a disclosure of Organization's Protected Health Information not permitted by this Agreement, Business Associate will make the report in accordance with Section 4(a)(i) above.

b) Termination of Agreement.

i) **Right to Terminate for Breach.** Organization may terminate this Agreement and/or the Primary Agreement(s) if it determines, in its sole discretion, that Business Associate has breached any provision thereof and upon written notice to Business Associate of the breach, Business Associate fails to cure the breach within 10 calendar days after receipt of the notice. Organization may exercise this right to terminate this Agreement and/or the Primary Agreement(s) by providing Business Associate written notice of termination, stating the failure to cure the breach of thereof that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in Organization's notice of termination. If for any reason Organization determines that Business Associate has breached the terms of this Agreement and such breach has not been cured, but Organization determines that termination of the Primary Agreement(s) is not feasible, Organization may report such breach to the U.S. Department of Health and Human Services.

ii) Obligations on Termination.

A) **Return or Destruction of Organization's Protected Health Information as Feasible.** Upon termination or other conclusion of this Agreement or the Primary Agreement(s), Business Associate will, if feasible, return to Organization or destroy all of Organization's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of Organization's Protected Health Information. Business Associate will require any subcontractor or agent, to which Business Associate has disclosed Organization's Protected Health Information as permitted by Section 1(g) of this Agreement, to if feasible return to Business Associate (so that Business Associate may return it to Organization) or destroy all of Organization's Protected Health Information in whatever form or medium received from Business Associate, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of Organization's Protected Health Information, and certify on oath to Business Associate that all such information has been returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than 90 calendar days following the effective date of the termination or other conclusion of the Primary Agreement(s).

B) **Procedure When Return or Destruction Is Not Feasible.** Business Associate will identify any of Organization's Protected Health Information, including any that Business Associate has disclosed to subcontractors or agents as permitted by Section 1(g) of this Agreement, that cannot feasibly be returned to Organization or destroyed and explain why return or destruction is infeasible. Where Organization agrees that such return or destruction is infeasible, Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. If Organization does not agree, subparagraph A above shall apply. Business Associate will, by its written contract with any subcontractor or agent to which Business Associate discloses Organization's Protected Health Information as permitted by Section 1(g) of this Agreement, require such subcontractor or agent

to limit its further use or disclosure of Organization's Protected Health Information that such subcontractor or agent cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. Business Associate will complete these obligations as promptly as possible, but not later than 90 calendar days following the effective date of the termination or other conclusion of Primary Agreement(s).

C) **Continuing Privacy and Security Obligation.** Business Associate's obligation to protect the privacy and safeguard the security of Organization's Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement and the Primary Agreement(s).

D) **Other Obligations and Rights.** Business Associate's other obligations and rights and Organization's obligations and rights upon termination or other conclusion of Primary Agreement(s) will be those set out therein.

c) **Indemnity.** Business Associate will indemnify and hold harmless Organization and any Organization affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of Organization's Protected Health Information or other breach of this Agreement by Business Associate or any subcontractor or agent under Business Associate's control.

i) **Right to Tender or Undertake Defense.** If Organization is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted use or disclosure of Organization's Protected Health Information or other breach of this Agreement by Business Associate or any subcontractor or agent under Business Associate's control, Organization will have the option at any time either (A) to tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants, and other appropriate professionals to represent Organization's interests at Business Associate's expense, or (B) to undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.

ii) **Right to Control Resolution.** Organization will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Organization may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Organization under this Section 4(c).

5. **General Provisions.**

a) **Inspection of Internal Practices, Books, and Records.** Business Associate will make its internal practices, books, and records relating to its use and disclosure of Organization's Protected Health Information available to Organization and to DHHS to determine Organization's compliance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E, and the Security Rule.

b) **Definitions.** The terms "Covered Entity," "Electronic Protected Health Information," "Protected Health Information," "Standard," "Trading Partner Agreement," and "Transaction" have the meanings set out in 45 C.F.R. § 160.103. The term "Standard Transaction" has the meaning set out in 45 C.F.R. § 162.103. The term "Required by Law" has the meaning set out in 45 C.F.R. § 164.103. The terms "Health Care Operations," "Payment," "Research," and "Treatment" have the meanings set out in 45 C.F.R. § 164.501. The term "Limited Data Set" has the meaning set out in 45 C.F.R. § 164.514(e). The term "use" means, with respect to Protected Health Information, utilization, employment, examination, analysis or application within Business Associate. The terms "disclose" and "disclosure" mean, with respect to Protected Health Information, release, transfer, providing access to or divulging to a person or entity not within Business Associate. For purposes of this Agreement, Organization's Protected Health Information encompasses Organization's

Electronic Protected Health Information. Any other capitalized terms not identified here shall have the meaning as set forth in the HIPAA Rules.

c) Amendment to Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by DHHS that affects Business Associate's use or disclosure of Organization's Protected Health Information or Standard Transactions, this Agreement will automatically amend such that the obligations imposed on Business Associate remain in compliance with the final regulation or amendment to final regulation.

- 6. Conflicts.** The terms and conditions of this Agreement will override and control any conflicting term or condition of Primary Agreement(s). All nonconflicting terms and conditions of Primary Agreement(s) remain in full force and effect.