

ANCILLARY ADMINISTRATIVE SERVICES CONTRACT

This Ancillary Administrative Services Contract (the "Agreement") is made and entered into as of _____ (the "Effective Date") by and between Blue Cross & Blue Shield of Rhode Island, a nonprofit hospital and medical services corporation located at 500 Exchange Street, Providence, Rhode Island, 02903 (hereinafter referred to as "BCBSRI") and _____, an employer located at _____, _____ (hereinafter referred to as "Employer").

Employer has chosen to offer its employees the BCBSRI Consumer Driven Healthcare solution. This single-source, end-to-end solution includes a high-deductible health plan administered [and underwritten, for fully insured plans] by BCBSRI, and ancillary services, including administration and customer support for a Consumer Spending Account for the high-deductible health plan, which support is arranged for by BCBSRI and provided by a qualified third party administrator ("TPA").

This Agreement, including the attached Appendix, which is incorporated herein by reference, sets forth the terms and conditions under which BCBSRI and TPA will provide administrative services for the ancillary services selected by Employer, as indicated below.

Please choose all that apply OR check NONE if no ancillary services are requested: When selecting Consumer Spending Account, please identify the health plan that will accompany the account.	
<input type="checkbox"/> Flexible Spending Account ("FSA") Apply FSA to the following selected health plan(s): _____ _____	<input type="checkbox"/> Health Reimbursement Arrangement ("HRA") Apply HRA to the following selected health plan(s): _____ _____
<input type="checkbox"/> Health Savings Account ("HSA") Apply HSA to the following selected health plan(s): _____ _____	<input type="checkbox"/> NONE

Employer, through its authorized representatives, employees, and/or agents, has read and accepts the Agreement and any Appendices. The Agreement may be executed and delivered by facsimile or e-mail, and such facsimile or e-mail execution and delivery, if accepted by BCBSRI shall constitute the final Agreement and conclusive proof of the Agreement.

IN WITNESS WHEREOF, the Parties hereto by their respective duly authorized officers have executed the Agreement to be effective as of the Effective Date:

BLUE CROSS & BLUE SHIELD OF RHODE ISLAND

EMPLOYER

By: _____
 Authorized Signature

By: _____
 Authorized Signature

Print Name: Melissa B. Cummings

Print Name: _____

Title: Senior Vice President & Chief Marketing and Sales Officer

Title: _____

Group Name: _____
 Group Numbers: _____

Address: Blue Cross & Blue Shield of Rhode Island
 500 Exchange Street
 Providence, RI 02903

Address: _____

Date: ____ / ____ / ____

Date: ____ / ____ / ____

APPENDIX A-1

CONSUMER SPENDING ACCOUNTS

Effective Date: _____

Service Charges:

Set-up Fee	\$300.00 [a one-time fee]
HRA Monthly Fees	\$4.25 per Employee per month (PEPM)*
HSA Monthly Fees	\$3.75 per Employee per month (PEPM)*
FSA Monthly Fees	\$4.25 per Employee per month (PEPM)*
Annual Renewal Fee	\$200.00
Discount for Bundled Services	20% per Employee enrolled in 2 or more Consumer Spending Accounts

* Since Employer will be doing a gradual rollout of the Plans across its employee population, per employee fees shall only be due and payable for those Covered Individuals who are actually enrolled in the Plans in any given month.

CONSUMER SPENDING ACCOUNT ADMINISTRATIVE SERVICES.

In exchange for the full performance by Employer of its responsibilities under this Agreement, BCBSRI agrees to perform, or to engage TPA to perform, the Services set forth in this Section during the term of the Agreement.

ARTICLE I. ADMINISTRATIVE SERVICES

1.1 Covered Benefits Administration. On behalf of Employer, and in accordance with the terms of the Plans, TPA shall provide the services necessary and appropriate to administer the specific type of Consumer Spending Account(s) chosen by the Employer, such as setting up financial accounts, setting up payroll deductions and funding mechanisms, enrolling Covered Individuals, maintaining separate notional bookkeeping accounts for each Covered Individual, managing financial balances, and recovering amounts paid out in excess of Claim Reimbursement Liability.

1.2 TPA will process initial requests for reimbursements in accordance with its standard claims review procedures and applicable law; provided, however, that TPA only will review requests for reimbursement following receipt of all necessary information; and provided, further, that Employer must review and determine any appeal. If a request for reimbursement is approved, TPA will disburse Covered Benefits as soon as reasonably possible after such determination is made but no more frequently than weekly, provided that sufficient funds have been made available by the Employer to pay such benefit payments in accordance with the applicable Claims Funding Method. If a request for reimbursement is denied, TPA will notify the claimant that they may appeal to Employer for subsequent review in accordance with the terms of the Plans.

1.3 Enrollment and Eligibility Assistance Services. With respect to HSA and HRA Plans, BCBSRI will review and evaluate information collected from its internal systems, and provide an eligibility feed based on that data to TPA in order to enroll Covered Individuals in the Plans. With regard to FSA Plans, initial eligibility information, and any changes in eligibility, will be transmitted directly by the Employer or employee to the TPA. With regard to any eligibility determinations made by BCBSRI or TPA, BCBSRI and TPA shall be acting only in a ministerial fashion on behalf of Employer, implementing its directions and policies.

1.4 Benefit Plan Documents and Forms. To the extent elected and paid for in this Agreement, BCBSRI and/or TPA may provide Employer with sample documents and forms related to administration of the Plans; provided, however, that it is the Employer's responsibility to ensure that all Plan documents and forms, including any template or sample documents and forms provided to Employer by BCBSRI in accordance with this Agreement, comply with all applicable laws and regulations.

1.5 Identification Cards and Debit Cards. Based upon information provided by Employer to BCBSRI or TPA, and subject to standard BCBSRI and Blue Cross and Blue Shield Association practices, TPA shall issue identification cards and, if purchased, debit cards to each Covered Individual ("Cards"); provided, however, that FSA Plan participants may not have Cards unless specifically elected and purchased by Employer. Possession of a Card does not confer any right to services or benefits under the Plans unless the Card holder is, in fact, a Covered Individual. Neither TPA nor BCBSRI is responsible for any damages or costs arising from use of such Card by an ineligible individual prior to being notified. The Card must be used in accordance with the terms of the Plans, any cardholder agreement, and the substantiation rules of the Code. TPA has no responsibility to monitor the use of such Card, but may deactivate the Card if used other than in accordance with this Section. TPA will make reasonable attempts to collect repayment of claims paid through the Card for ineligible expenses or offset the ineligible payment against any claims for future eligible expenses; if

repayment or offset is not made, Employer will be informed and will be responsible for taking any necessary action required by law (e.g., including such amounts in income). TPA reserves the right to deactivate the Card at any time that it deems appropriate, including, but not limited to: (a) failure by the Employer to fund the Consumer Spending Accounts; (b) failure by the Covered Individual to provide required substantiation; (c) notice from the Employer that the participant is no longer eligible for the Consumer Spending Account; or (d) the Agreement is terminated. If the Card has been deactivated (other than for failure to properly fund) TPA will not reactivate the Card until the reason for deactivation has been resolved.

1.6 Customer Service. BCBSRI and TPA will provide standard customer service offerings for the applicable Consumer Spending Account and Plan, including access to customer service professionals by telephone, online, in person, and by mail, in accordance with then-current policies and procedures. These will include, at minimum, a welcome kit to each employee who enrolls in one or more of the Consumer Spending Accounts on or after the Effective Date, a website for Covered Individuals to utilize in order to obtain forms, account balance, claim status, and summary activity for their Consumer Spending Accounts, and a toll free customer call center for Covered Individuals. Hours in the call center may vary with notice; standard hours are 8:30-5:00 EST; TPA reserves the right to change the hours of operation without prior notice. Additional customer service offerings, including dedicated customer service line, designated customer service team, and customized interactive voice response systems, shall be provided only as the parties mutually agree, and BCBSRI reserves the right to charge additional fees for such services in accordance with its then-current policies.

1.7 Online Services. BCBSRI and/or TPA shall maintain a password-protected website for use as a financial administration portal to access funds in a Plan that includes the content, features, and functionality determined by BCBSRI, in its sole discretion (the "Web Site"). Online services will be available 24 hours a day, 7 days a week except during periods of maintenance and as otherwise set forth herein. BCBSRI has sole discretion to make, or authorize TPA or another vendor to make, reasonable adjustments and improvements to the Web Site at any time with reasonable prior notice. Employer and Covered Individuals are solely responsible for maintaining the hardware and/or software necessary to access the Web Site, and to preserve and maintain the confidentiality of their identification number(s) and password(s), including by adopting and enforcing any necessary controls. BCBSRI and TPA may regard as accurate and authorize each data transaction made through the use of such identification number(s) and/or password(s). BCBSRI reserves the right to modify, withdraw, or terminate access to the Web Site with reasonable prior notice. Employer may obtain reports summarizing Consumer Spending Account activities from the previous month via the TPA website. The reports will include only the aggregate claims payment from each of the Consumer Spending Accounts and, except as mutually agreed upon and subject to the Business Associate Agreement Appendix, the reports will not contain any data that identifies Covered Individuals. Employer is responsible for reviewing the reports and notifying TPA of any discrepancies of which it is aware in accordance with the timing and methods provided in the Agreement.

1.8 Recordkeeping. BCBSRI and TPA will maintain the usual and customary books, records, and documents relating to the Plans, for at least the lesser of the term of this Agreement or 3 years following the date the record was created or received.

1.9 Non-Discretionary Duties; Additional Services. The services performed by BCBSRI or TPA under this Agreement are ministerial in nature and generally performed in accordance with the terms of the Plans and BCBSRI's standard operating procedures. BCBSRI and Employer may agree to additional services by amending this Agreement.

ARTICLE II. FINANCIAL TERMS

2.1 Funding of Covered Benefits. Employer shall make sufficient funds available from its general assets to fund the Plans and pay all Covered Benefits in accordance with the terms of the Plans and in accordance with the applicable Claims Funding Method.

2.2 Payment of Service Charges.

- (a) The Employer agrees to pay BCBSRI the fees set forth above as compensation for the services described in this Agreement ("Service Charges"). Service Charges shall be assessed for any month during which services are performed, and all Service Charges are due within 30 days of receipt of periodic invoice.
- (b) Interest and penalties may be imposed on overdue fees. In addition, BCBSRI shall have the right, but not the obligation, in its sole discretion to immediately take one or more of the following actions without any further notice to Employer in the event of untimely payments: (i) offset the outstanding amount due against any other Employer funds (other than Plans assets, as such term is defined by ERISA, to the extent ERISA is applicable) held by BCBSRI; (ii) stop processing Covered Benefits incurred on or after that date; or (iii) terminate the Agreement in accordance with the provisions of Article V. The Employer agrees to bear full responsibility for any reasonable charges incurred in the collection of unpaid invoices owed to BCBSRI.
- (c) BCBSRI may, in its discretion, accept on Employer's behalf all or part of the applicable Service Charge from a third party upon written instruction from the Employer; but Employer will remain liable for all such Service Charges.

2.3 Modification of Financial Terms. The financial terms of this Agreement may be changed by BCBSRI on each renewal date, with prior written notice. In addition, BCBSRI may change the financial terms of this Agreement at any time during the term of the Agreement if the number of Covered Individuals varies by +/- 10% or if there is a change in applicable law enacted after the Effective Date that would change the way that BCBSRI must provide services and force it to incur unforeseen expenses. The changes shall be communicated to the Employer in writing, and shall be effective as of the date set forth in the communication to the Employer or, if no date is explicitly provided, the effective date of the change.

ARTICLE III. EMPLOYER RESPONSIBILITIES

3.1 Retain Sole Responsibility for the Plans and Legal Compliance. Employer has sole responsibility for establishment and operation of the Plans. Employer shall have sole discretionary authority and responsibility for construing and interpreting the provisions of the Plans and deciding all questions of fact arising under the Plans, including but not limited to establishing standards governing the eligibility of individuals to participate in the Plans, determining whether an individual is eligible to participate in the Plans, and resolving all disputes relating to eligibility. Employer will not represent to Covered Individuals or to any third party that TPA or BCBSRI is the “Plan Administrator” as that term is defined in ERISA Section 3(16) (whether or not ERISA applies). It is Employer’s sole responsibility and duty to ensure compliance with all applicable laws and regulations, including but not limited to ERISA, COBRA, HIPAA, Sections 105, 106, 125, and 223 of the Code, and PPACA. Employer acknowledges that BCBSRI and TPA are not accounting or law firms and no services provided in accordance with this Agreement will be construed as tax or legal advice as a result of providing such services. BCBSRI’s and TPA’s provision of services under this Agreement does not relieve the Employer of its obligation to ensure compliance with applicable laws. It is Employer’s responsibility to pay any fee or penalty arising from the Plans that is assessed by the Internal Revenue Service, the Department of Labor, and/or other federal or state governmental agencies.

3.2 Fund Covered Benefits and Pay Service Charges. Employer shall fund Covered Benefits, and pay Service Charges, in accordance with Article II of this Agreement. If the Employer’s broker has contracted with the Employer to pay certain fees and decides, for any reason at any time, not to continue to pay said fees, Employer is responsible for said fees.

(a) Notwithstanding any provision herein to the contrary, Employer and BCBSRI intend and agree that any funds submitted by Employer to BCBSRI or TPA, to the extent funds received exceed Claim Reimbursement Liability: (i) are and shall remain the general assets of Employer; (ii) are not “Plan assets” within the meaning of ERISA (without regard to whether ERISA applies); (iii) were never held in an account, fund, or trust bearing the name of a Plan or any Covered Individuals or beneficiaries thereof; and (iv) shall remain subject to the claims of Employer’s creditors at all times.

(b) Employer acknowledges that the Consumer Spending Account(s) are not established as a trust as defined under Rhode Island state law. Employer further represents and agrees that neither it nor any of its employees, directors, representatives, fiduciaries, Plans (or any entity performing services for Employer or such Plans), any of its predecessors, successors or assigns have represented or will represent to any Covered Individual that a separate account, fund, or trust is being held on behalf of the Plans that may be used to provide or secure benefits under the Plans. Employer shall advise the Covered Individuals, beneficiaries, and any interested parties that Covered Benefits shall at all times be paid out of the general assets of Employer.

3.3 Provide Information to BCBSRI and TPA. Employer will furnish all information determined by BCBSRI to be necessary for BCBSRI or TPA to provide services under this Agreement. Such information will be provided to BCBSRI or TPA in the time and in the manner agreed to by Employer and BCBSRI. BCBSRI shall assume that all such information provided to BCBSRI or TPA by Employer, Authorized Persons, or any designee of Employer (e.g. a broker or another service provider) is complete and accurate, and BCBSRI is under no duty to question or verify the completeness or accuracy of such information. Employer understands that BCBSRI and TPA cannot accurately perform their duties under this Agreement without accurate and timely information, and therefore BCBSRI and TPA shall have no liability to Employer or any Covered Individual as a consequence of inaccurate and/or untimely information provided to BCBSRI or TPA by Employer, a Covered Individual, or any third party on Employer’s behalf. Employer understands that an additional fee may be required if BCBSRI is required to take corrective action as a result of such inaccurate or untimely information.

3.4 Designate Authorized Persons to Act. Employer shall provide BCBSRI with the names of any Authorized Persons. On behalf of Employer and Plans, Authorized Persons may: give instructions and directions; receive notices; provide documents, materials, and other information; and make determinations. In performing the services, BCBSRI and TPA shall be entitled to rely upon instructions, directions, documents, materials, and information provided by Authorized Persons, whether the instructions, directions, documents, materials, and information are conveyed in writing, by telephone, by facsimile, by electronic communication, or by any other means. Unless BCBSRI is notified in writing to the contrary, any person reasonably believed by BCBSRI or TPA to have the authority to act on behalf of Employer and the Plans, including but not limited to the individuals executing this Agreement, shall be deemed to be an Authorized Person.

3.5 Reviewing and Correcting Information. Employer shall review and reconcile reports and records of activity made available from BCBSRI or TPA, and shall notify BCBSRI of any discrepancies promptly but in no event more than one (1) month after the report or record is made available. BCBSRI and TPA shall have no responsibility or liability for any discrepancy not disclosed within the one-month window.

3.6 Reporting. Employer assumes all responsibility for tax reporting relating to the payment to or reimbursement of any benefit for a Covered Individual, and for operation of the Plans, including but not limited to income withholding, employer-based reporting, and filing of Form 5500, to the extent required.

ARTICLE IV. RELATIONSHIP OF THE PARTIES

4.1 Independent Contractors. BCBSRI and TPA are independent contractors, both to Employer and to each other, and will not be deemed partner, agent, engaged in a joint venture, or governed by any other legal relationship. To avoid creating confusion regarding the respective duties and obligations of BCBSRI and the Employer with respect to the Plans, Employer agrees not to use

BCBSRI's name, logo, or information in any release or printed form without BCBSRI's prior written approval.

4.2 Business Associates. BCBSRI and TPA are Business Associates of the Plans as such term is used in HIPAA. Accordingly, Employer (individually and on behalf of the Plans) and BCBSRI agree that the HIPAA Agreement, incorporated as Article IX of this Agreement, shall govern BCBSRI's and TPA's obligations regarding the use and disclosure of personally-identifiable health information (within the meaning of HIPAA) when performing any functions under the Agreement.

4.3 Plans are Self-Funded. The Plans are self-funded; benefits are funded entirely by Employer and shall be paid as provided in Article II of this Agreement. BCBSRI and TPA provide only administrative services under the Agreement, and do not assume any financial risk or obligations with respect to Covered Benefits provided under, and/or expenses incurred related to, the Plans and Consumer Spending Accounts. Employer shall disclose the self-funded nature of the Plans, and the parties' relative financial responsibilities, in all communications distributed to Covered Individuals and third parties.

ARTICLE V. TERM AND TERMINATION

5.1 Effective Date. The effective date of this Agreement is listed on the signature page of this Agreement. An Appendix may have a later effective date than this Agreement, which shall be indicated in the applicable Appendix.

5.2 Term. This Agreement shall be effective from and after the Effective Date for an initial term of one (1) year. This Agreement shall be automatically renewed for consecutive 1-year terms thereafter, unless (a) either Party notifies the other of its intent not to renew not later than 30 days prior to the expiration of the then-current term or (b) the Agreement is terminated as provided in Section 5.3. Any such renewal shall be on all of the same terms and conditions, unless otherwise amended or modified in writing and signed by the Parties hereto; provided, however, that for each extension, the financial terms hereunder shall automatically change at the beginning of each subsequent period, as described in Article II of this Agreement.

5.3 Termination. Either Party may terminate the Agreement for Breach upon 60 days' prior written notice to the other Party; provided, however, that the notice shall identify the specific Breach(es); and provided, further, that the other party shall have the right to cure any alleged Breach within 30 days following receipt of such notice. In addition, this Agreement may be terminated immediately upon the occurrence of any of the following: (a) either Party terminates, liquidates, or dissolves its business or disposes of a substantial portion of its assets; (b) any finding or admission that either Party is insolvent, or making of a filing under state or federal bankruptcy or similar laws; (c) termination of all the Plans, or of the BCBSRI Plans; or (d) the effective date of any law, regulation, or guidance enacted after the Effective Date that would prohibit, or is interpreted by BCBSRI to prohibit, the continuance of the Agreement on the terms and conditions provided herein.

5.4 Partial Termination. If there is more than one Appendix attached hereto, termination of one Appendix will not terminate the entire Agreement or the other Appendices except as specifically set forth in the written notice. In addition, at the option of the Employer, a Participating Employer may be individually terminated from the Agreement upon 90 days' prior written notice to BCBSRI. If the termination of the Participating Employer causes a material change, BCBSRI may, in its sole discretion, amend the financial terms as of the date of termination of the Participating Employer.

5.5 Effect of Termination. Upon termination of the Agreement for whatever reason, all of the services provided under the Agreement shall be terminated. In the event this Agreement is terminated, all requests for reimbursement submitted to TPA after the effective date of termination will be returned to the Employer, or at the Employer's request, submitted to another third party administrator, and TPA will have no further responsibility with respect to such claims submitted after the effective date of termination; provided, however, that, at the request of Employer, TPA will oversee a run-out period of not more than 6 months during which TPA will continue to process Covered Benefits in accordance with the terms of this Agreement for an additional fee. The fee payable during the run-out period shall be the then-current Service Charge, multiplied by the number of Covered Individuals for whom Covered Benefits are processed during the run-out month. Except as expressly provided under this Agreement, termination of the Agreement shall constitute a full and final discharge of all obligations of BCBSRI or TPA under the Agreement.

ARTICLE VI. GENERAL PROVISIONS

6.1 Entire Agreement; Severability; Headings. Each Appendix attached hereto is incorporated by reference and made a part of this Agreement. This Agreement embodies the entire agreement and understanding between the parties with respect to, and supersedes all prior oral or written agreements and understandings relating to, the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. If a court declares any term of this Agreement invalid, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

6.2 Waiver. Failure by Employer or BCBSRI to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless accomplished pursuant to Section 6.3.

6.3 Assignment; Amendment. Employer cannot assign its rights under this Agreement without the BCBSRI's written consent. Except as expressly indicated in this Agreement, this Agreement may be amended only in a writing signed by duly authorized individuals of each party.

6.4 Confidentiality and Non-Disclosure. As a result of entering into this Agreement, Employer, BCBSRI, and TPA have and will continue to reveal and disclose information that is proprietary and/or confidential. Each party will: (a) keep such proprietary and/or confidential information of the other party in strict confidence; (b) not disclose confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (c) not use confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure); provided, however, that BCBSRI or TPA may: (i) disclose any information as required by applicable law; (ii) identify Employer as a client in any marketing material; or (iii) communicate such information to an Authorized Person, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted.

6.5 Disclosure of Individually Identifiable Health Information. Both parties agree to the additional limitations and conditions set forth in the HIPAA Agreement set forth in Article VIII with respect to Covered Individuals' protected health information, as such term is defined in HIPAA, created or received by BCBSRI or TPA while performing services under this Agreement. If there is a conflict between this Agreement and the HIPAA Agreement, the HIPAA Agreement will control, but only with respect to the subject matter of the HIPAA Agreement.

6.6 Notices and Communications. All notices between Employer and BCBSRI provided for herein shall be sent by any of the following to the address set forth on page 1 of this Agreement: confirmed facsimile; first class United States mail, postage prepaid; email addressed to the other party at their respective addresses; or guaranteed overnight mail, with tracing capability. All notices shall be deemed provided when sent except as otherwise set forth in this Agreement.

6.7 Interpretations. The parties hereto acknowledge and agree that the terms and provisions of this Agreement will be construed fairly as to all parties and not in favor of or against a party, regardless of which party was responsible for the preparation of this Agreement.

6.8 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Rhode Island to the extent not otherwise preempted by Federal law.

6.9 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Employer, BCBSRI and their respective successors or assigns, any rights, remedies or obligations whatsoever.

6.10 Limitation of Liability; Indemnification.

(a) Neither party is liable to the other, even if advised of the possibility, for any of the following: (i) indirect, consequential or punitive loss, damage, cost, or expense of any nature; (ii) loss of business, profits, or revenue; (iii) loss of goodwill or anticipated savings; (iv) loss of or corruption to data; or (v) loss of operation time or loss of contracts.

(b) BCBSRI is not liable for any amount in excess of the aggregate Service Charges payable under this Agreement.

(c) BCBSRI is not to be liable for, and will be excused from any failure or delay in performing its obligations for any Service if, such failure or delay is caused by circumstances beyond its control, including but not limited to: (i) any natural disaster (such as earthquakes, hurricanes or floods); (ii) emergency conditions (such as war, riot, fire, theft or labor dispute); (iii) legal constraint or governmental action or inaction; (iv) failure of a third party vendor to continue any services to BCBSRI; (v) or breakdown or failure of equipment not otherwise caused by BCBSRI's negligence.

(d) BCBSRI is not liable for, and Employer shall hold BCBSRI harmless for: (i) any Covered Benefits; (ii) any actions, liabilities, damages, costs, and expenses, including reasonable attorneys' fees arising out of, based on, or in connection with, the act, omission, negligence or fault of Employer or its employees or subcontractors, including but not limited to failure to comply with the terms of the Agreement or applicable law; (iii) any claim, demand, expense or liability arising from error, omission, unauthorized transaction, or inaccuracy of any nature in the data provided to BCBSRI or TPA; (iv) any discrepancies with respect to which it is not was notified within one (1) month as provided in Article III.

(e) BCBSRI will not be liable to the Employer for mistakes arising from actions taken in good faith. In addition, BCBSRI will not be liable for any failure to act, nor shall any failure to act be considered a Breach, if BCBSRI had a reasonable belief that such action would constitute a violation of applicable law. It shall not be considered a breach of this Agreement if BCBSRI refuses to perform services generally required under this Agreement if the manner in which Employer desires such services to be performed requires material changes to BCBSRI's existing standard operating procedures.

6.11 Recording and Monitoring Telephone Calls. BCBSRI and TPA may record or monitor telephone calls between BCBSRI/TPA and Employer and/or between BCBSRI/TPA and Covered Individuals. BCBSRI will remind Employer or Covered Individual of the recording or monitoring before each call.

6.12 Survival of Terms. The obligations of the Parties which by their nature would continue beyond the termination, cancellation, or expiration of the Agreement shall survive termination, cancellation, or expiration of the Agreement, including, but not limited to, the provisions regarding confidential information, compliance with laws, and post-termination obligations.

6.13 Disputes. The Parties agree that, before initiating any litigation concerning the Agreement, they will attempt in good faith to resolve their dispute. In any litigation concerning the Agreement or their respective obligations under the Agreement, the Parties agree that the forum shall be a state or federal court of competent jurisdiction in Rhode Island, and the Parties waive any right to a jury trial and any right to maintain claims arising out of the Agreement as a class action.

ARTICLE VII. DEFINITIONS

Whenever used in the Agreement the following capitalized terms shall have the respective meanings set forth below, unless otherwise expressly provided herein:

7.1 Agreement. The Administrative Service Contract for Consumer Spending Account between the Employer and BCBSRI as of the Effective Date, including the Appendices as amended from time to time.

7.2 Authorized Person. A person or persons who are designated by the Employer as authorized to deal with BCBSRI and/or TPA on behalf of Employer.

7.3 Breach. Failure or refusal to comply with any material term or condition of this Agreement, including any Appendix, and specifically including failure to pay any Covered Benefit or Service Charge.

7.4 BCBSRI Plans. The high-deductible health Plans maintained and sponsored by the Employer and administered [and underwritten, if fully insured] by BCBSRI.

7.5 Claims Funding Method. Unless otherwise agreed to in writing by BCBSRI, TPA, and the Employer, the claims funding method for HRAs is an EFT debit method under which the TPA will automatically withdraw funds from the Employer's bank account; the claims funding method for HSAs and FSAs will be payroll deductions and member funding, using a method agreed upon by the Employer and TPA.

7.6 Claims Reimbursement Liability. The difference between all claim reimbursements of Covered Benefits for Covered Individuals by BCBSRI or TPA, and the funds received from Employer to reimburse BCBSRI or TPA for the previous funding of those Covered Individuals' Covered Benefits in accordance with this Agreement.

7.7 Consumer Spending Account or Consumer Spending Accounts. The Health Reimbursement Arrangement (HRA), Health Spending Account (HSA), or Flexible Spending Account (FSA) selected by the Employer herein.

7.8 Covered Benefits. All benefits provided by the Plans, including but not limited to payment or reimbursement of qualified medical expenses incurred under the BCBSRI Plan that are the responsibility of a Covered Individual.

7.9 COBRA. The Consolidated Omnibus Budget Reconciliation Act of 1986, as amended from time to time, including regulations and guidance prescribed pursuant thereto.

7.10 Code. The Internal Revenue Code of 1986, as amended from time to time, including regulations and guidance prescribed pursuant thereto.

7.11 Covered Individuals. An employee of an Employer or a Participating Employer, or other individual, enrolled in the BCBSRI Plan, determined by Employer to be eligible for benefits under one or more Plans, and enrolled in one or more Plans.

7.12 ERISA. The Employee Retirement Income Security Act of 1974, as amended from time to time, including regulations and guidance prescribed pursuant thereto.

7.13 HIPAA. The Health Insurance Portability and Accountability Act of 1996, as amended from time to time, including regulations and guidance prescribed pursuant thereto.

7.14 Participating Employer. Any employer affiliated with the Employer that is permitted by the Employer to adopt one or more of the Plans.

7.15 Plan or Plans. The consumer spending plan(s) maintained and sponsored by the Employer in connection with the BCBSRI Plans. The Plans(s) may be a Health Reimbursement Arrangement (HRA), Health Spending Account (HSA), or Flexible Spending Account (FSA).

7.16 PPACA. The Patient Protection and Affordable Care Act of 2010, as amended from time to time, including regulations and guidance prescribed pursuant thereto.

7.17 TPA. The organization that contracts with BCBSRI to provide third party administration services with respect to the Plans in the manner provided under this Agreement.

ARTICLE VIII. HIPAA AGREEMENT

This HIPAA Agreement, (the “HIPAA Agreement”) is made and entered into on the Effective Date by and between BCBSRI and the Employer, on behalf of itself and the BCBSRI Plan and Plan(s), if self-funded as defined in the Agreement. Employer, Plan, and BCBSRI wish to make clear their respective obligations under the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act,” collectively “HIPAA”), the HIPAA implementing regulations (“HIPAA Regulations”), along with any guidance and/or regulations issued by the Department of Health and Human Services that are applicable to business associates. This HIPAA Agreement shall replace any HIPAA Agreement previously executed by and between the parties with regard to the Agreement.

8.1 Definitions. The terms “Electronic Protected Health Information” (ePHI), “Disclosure,” “Genetic Information,” “Protected Health Information” (PHI), “Subcontractor,” and “Use” have the meanings set out in 45 C.F.R. § 160.103. The term “Required by Law” has the meaning set out in 45 C.F.R. § 164.103. The terms “Data Aggregation” and “Health Care Operations” have the meanings set out in 45 C.F.R. § 164.501. All other capitalized terms used herein and not defined have the meanings set out in the Agreement.

8.2 Relationship of the Parties. For purposes of HIPAA compliance, the Plan is a “covered entity” (as defined in 45 C.F.R. § 160.103), Employer is an employer sponsor and plan administrator of the Plan, and BCBSRI is a Business Associate with respect to the Plan and has access to Protected Health Information (“the Plan’s PHI”). This HIPAA Agreement is intended to constitute a Business Associate agreement as required by the HIPAA Regulations and shall be deemed to include any provisions required by HIPAA or the HITECH Act with respect to a Business Associate agreement.

8.3 Permitted Uses and Disclosures under HIPAA and the HITECH Act. From time to time during the course of this HIPAA Agreement, BCBSRI may receive or create PHI on behalf of the Plan.

(a) With respect to its Use and Disclosure of the Plan’s PHI, BCBSRI agrees to comply with any applicable Business Associate requirements under HIPAA and the HIPAA Regulations. Employer agrees, as plan sponsor and plan administrator, that Employer and Plan will fully comply with each of Employer and Plan’s respective obligations, under HIPAA and the HIPAA Regulations.

(b) The Plan’s PHI. With respect to the Plan’s PHI, BCBSRI may:

1. Use and Disclose the Plan’s PHI for the performance of Services by BCBSRI and/or TPA under the Ancillary Services Agreement, including Disclosure to and Use by TPA, and including reviewing and evaluating information collected from BCBSRI internal systems, and providing an eligibility feed based on that data to TPA in order to enroll Covered Individuals into the Plans;

2. Disclose the Plan’s PHI to Employer subject to the provisions of Section VI.A below and the limitations set forth in the Employer Certification (as that term is defined in Section VI.A below) for the purpose of performing plan administrative functions (as that term is defined in the HIPAA Regulations);

3. Use and Disclose the Plan’s PHI for BCBSRI’s proper management and administration or to carry out BA’s legal responsibilities, provided that, with respect to Disclosure of Plan’s PHI, either:

a. The Disclosure is Required by Law; or

b. BCBSRI will require any third party, including vendors and agents to which BCBSRI Discloses Plan’s PHI, to provide reasonable assurance evidenced by written contract, that such vendor or agent will:

i. Hold Plan’s PHI in confidence and Use or further Disclose Plan’s PHI only for the purpose for which BCBSRI Disclosed Plan’s PHI to the person or entity or as Required by Law; and

ii. Promptly notify BCBSRI (who will in turn notify Employer in accordance with Section 8.5 of this HIPAA Agreement) of any instance of which the person or entity becomes aware in which the confidentiality of Plan’s PHI was breached.

4. Use and Disclose the Plan’s PHI in its capacity as a business associate of Plan to provide Data Aggregation services relating to the Health Care Operations of the Plan.

5. Otherwise Use and Disclose the Plan’s PHI in any manner that Plan may Use and Disclose PHI under the HIPAA Regulations.

(c) **Subcontractors.** BCBSRI shall require any Subcontractor that creates or receives the Plan’s PHI to engage in a written agreement requiring that the Subcontractor comply with the same restrictions and conditions that apply through this Agreement to BCBSRI with respect to such PHI. BCBSRI shall require any Subcontractor that creates or receives Electronic PHI to agree in writing to comply with the Security Rule (45 C.F.R. Part 164, Subpart C).

(d) **Minimum Necessary.** BCBSRI will make reasonable efforts to Use, to Disclose, and to request of the Plan only the minimum amount of the Plan's PHI reasonably necessary to accomplish the intended purpose of the Use, Disclosure or request. BCBSRI is not obligated to comply with this minimum necessary limitation with respect to Uses and Disclosures excepted from the requirement in 45 C.F.R. § 164.502(b)(2).

(e) **Prohibition on Non-Permitted Uses and Disclosures.** BCBSRI will neither use nor disclose the Plan's PHI except as permitted or required by this HIPAA Agreement or in writing by Employer or as Required by Law. Except as permitted in Sections III.C.3 and III.C.4 of this Agreement, BCBSRI may not use or disclose the Plan's PHI in a manner that would violate the HIPAA Regulations if done by the Plan. BCBSRI will not sell the Plan's PHI. BCBSRI will not use or disclose Genetic Information except as permitted by 45 C.F.R. § 164.502(a)(5)(i).

8.4 Safeguards

(a) **Protected Health Information.** BCBSRI will use reasonable and appropriate safeguards to prevent the Use or Disclosure of the Plan's PHI in a manner not permitted by this HIPAA Agreement.

(b) **Electronic Protected Health Information.** BCBSRI will comply with the Security Rule (45 C.F.R. Part 164, Subpart C) with respect to the Plan's PHI that BCBSRI maintains or transmits in electronic format.

8.5 BCBSRI Reporting Obligations for a Privacy Breach or Security Incident

(a) **Privacy Breach.** BCBSRI will report to Employer within ten (10) business days following discovery of any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the HITECH Act and its implementing regulations. Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by BCBSRI to have been, accessed, acquired, or Disclosed during such Breach. BCBSRI shall cooperate with Employer in investigating the Breach and in meeting the Plan's obligations under the HITECH Act and any other security breach notification laws.

(b) **Other Non-Permitted Disclosures.** BCBSRI will provide to Employer upon request a report of Uses or Disclosures of the Plan's PHI that do not qualify as "Breaches" but are nevertheless non-permitted Uses or Disclosures under this HIPAA Agreement.

(c) **Security Incident.** BCBSRI will report to Employer any attempted or successful (i) unauthorized access, Use, Disclosure, modification, or destruction of the Plan's ePHI, or (ii) interference with BCBSRI's system operations in BCBSRI's information systems involving PHI, of which BCBSRI becomes aware. With respect to any incident not reported pursuant to Section 5.1 or 5.2, above, BCBSRI will make this report upon Employer's request, except if any such incident resulted in significant interference with system operations in BCBSRI's information systems involving PHI, BCBSRI will make this report to Employer within ten (10) business days.

(d) BCBSRI shall cooperate with and provide information to Employer in investigating any non-permitted Disclosure, breach or security incident involving PHI and in meeting the Plan's obligations under the HITECH Act. BCBSRI shall not notify individuals of any such unpermitted Disclosure, breach or security incident unless directed by Employer.

8.6 Obligation to Provide Access, Amendment, and Accounting of PHI

(a) **Access to PHI.** BCBSRI agrees to comply with requirements pertaining to the rights of individuals under the HIPAA Regulations and agrees to respond to enrollee requests for information as they are referred to BCBSRI by the Plan. BCBSRI shall make such information available in an electronic format where directed by the Plan.

(b) **Amendment of PHI.** BCBSRI will, upon receipt of written notice from the Plan, promptly amend or permit the Plan access to amend any portion of the Plan's PHI, so that the Plan may meet its amendment obligations under 45 C.F.R. § 164.526.

(c) **Accounting of Disclosures of PHI.** BCBSRI shall maintain a record of Disclosures of the Plan's PHI and provide the record to Employer as necessary for the Plan's compliance with 45 C.F.R. § 164.528.

(d) **Inspection of Internal Practices, Books and Records.** BCBSRI will make its facilities, internal systems, books and records relating to its Use and Disclosure of the Plan's PHI available to the Department of Health and Human Services to monitor compliance with this HIPAA Agreement and with the Privacy Rule, 45 C.F.R. Part 164, Subpart E.

(e) **Delegation.** To the extent that the Plan delegates to BCBSRI any obligation imposed on the Plan by the HIPAA Regulations, BCBSRI will comply with the requirements of the Privacy Rule that apply to the Plan in the performance of such delegated obligation.

(f) **Return of Destruction of Records.** To the extent required by HIPAA, upon termination of this HIPAA Agreement for any reason, BCBSRI shall, if feasible, return or destroy any of the Plan's PHI that BCBSRI still maintains in any form, and shall

retain no copies of the Plan's PHI. If return or destruction is not feasible, BCBSRI shall inform Plan of the reason it is not feasible. In addition, BCBSRI and its Subcontractors shall continue to extend the protections of the Agreement to such information and limit further Use and Disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

8.7 Plan's Administrative Obligations Under HIPAA

(a) **Certification.** As a condition precedent to any BCBSRI Disclosure of the Plan's PHI to Employer, Employer hereby certifies and agrees to the terms of the Employer Certification in Article IX, and shall provide BCBSRI with a copy of the evidence of HIPAA compliance as BCBSRI may from time to time request. Nothing herein shall be construed as requiring BCBSRI to make available the Plan's PHI to Employer and Plan except as otherwise provided under this HIPAA Agreement and permitted under applicable law. Any release of PHI by BCBSRI to Employer and Plan (or its designated broker or consultant) must be the minimum amount necessary for Plan or its designated broker/consultant to accomplish the specified administrative function for which the PHI is being released.

(b) **Indemnification.** Employer shall indemnify, hold harmless and defend BCBSRI from and against any and all claims, losses, liabilities, costs and other expenses (including reasonable attorneys' fees) resulting from, or relating to, (a) the acts or omissions of Employer in connection with representations, duties and obligations of Employer and Plan to comply with HIPAA and the HIPAA Regulations or (b) Employer's breach of this HIPAA Agreement.

(c) **Privacy Notice.** In its capacity as plan sponsor and plan administrator, Employer agrees that Employer shall provide each participant in the Plan a plain language privacy notice that meets requirements under HIPAA, and shall provide BCBSRI with a copy of such notice. As a convenience to the Plan, BCBSRI will agree to provide to Plan a form of privacy notice for illustrative purposes only. Notwithstanding the foregoing, Plan shall be solely responsible for complying with its obligations under HIPAA and the HIPAA Regulations, including the provision of a privacy notice.

8.8 Termination of Agreement

(a) **Term.** This HIPAA Agreement shall be effective as of the Effective Date and shall continue unless or until this HIPAA Agreement is terminated in accordance with the provisions of this Section or the business relationship between the Parties terminates.

(b) **Termination by Employer.** Employer may terminate this HIPAA Agreement if it determines that BCBSRI has breached any provision of this HIPAA Agreement and upon written notice to BCBSRI of the breach and BCBSRI fails to cure the breach within thirty (30) days after receipt of the notice. Employer may exercise this right to terminate this HIPAA Agreement by providing BCBSRI written notice of termination stating the failure to cure the breach of this HIPAA Agreement that provides the basis for the termination. Any such termination will be effective upon the date specified in Employer's notice of termination.

(c) **Continuing Privacy and Security Obligation.** BCBSRI's obligation to protect the privacy and safeguard the security of the Plan's PHI as specified in this HIPAA Agreement will be continuous and survive termination or other conclusion of this HIPAA Agreement.

8.9 Miscellaneous Terms

(a) **Federal Law.** Each of Employer and BCBSRI shall comply with their respective obligations under HIPAA, the Gramm-Leach-Bliley Financial Modernization Act (15 U.S.C. §§ 6801 – 6908), as applicable, and any other applicable federal privacy laws and regulations in effect from time to time.

(b) **State Law.** In addition to complying with requirements under HIPAA and any other applicable federal privacy laws, Employer and BCBSRI also shall comply with Rhode Island law governing the privacy of medical records to the extent applicable, including but not limited to the Rhode Island Confidentiality of Health Care Communications and Information Act (R.I. Gen. Laws §§ 5-37.3 et. seq., as amended from time to time). Such responsibilities include but are not limited to (i) limiting authorized access to personally identifiable confidential health care information to those individuals having a need to know, (ii) identifying the individual(s) who have a responsibility for maintaining security procedures for confidential health care information, (iii) providing each Employee a written statement concerning the necessity of maintaining confidentiality of confidential health care information and penalties provided for unauthorized use, and (iv) taking no disciplinary or punitive action against any Employee or agent solely for bringing a violation of the Act to the attention of any person.

(c) **Amendment.** Employer and BCBSRI agree that amendment of this HIPAA Agreement may be required to ensure that Employer and BCBSRI comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI. Employer may terminate this HIPAA Agreement upon thirty (30) days written notice in the event that BCBSRI does not enter into an amendment that is sufficient to ensure that Employer will be able to comply with such laws and regulations.

(d) **No Third Party Beneficiaries.** Nothing express or implied in this HIPAA Agreement is intended or shall be deemed to confer upon any person other than Employer, BCBSRI, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

(e) **Ambiguities.** The Parties agree that any ambiguity in this HIPAA Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA, the HIPAA Regulations and the HITECH Act.

(f) **Primacy.** To the extent that any provisions of this HIPAA Agreement conflict with the provisions of any other agreement or understanding between the Parties, this HIPAA Agreement shall control.

(g) **Entire HIPAA Agreement.** This HIPAA Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereto. No modification, amendment or waiver of any provisions of this HIPAA Agreement shall be effective unless agreed to in writing by the Parties. This HIPAA Agreement shall be governed under the laws of the State of Rhode Island. The invalidity or enforceability of any provision of this HIPAA Agreement shall not affect the remaining provisions.

(h) **Notices.** All notices required or permitted under this HIPAA Agreement shall be in writing and shall be deemed effective upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail, postage prepaid, to the respective addresses and attentions set forth below.

ARTICLE IX. EMPLOYER CERTIFICATION

Employer, in its capacity as Employer, performs plan administrative functions for the Plan and as a result needs access to the Protected Health Information (PHI) of Plan participants.

Employer, in its capacity as Employer, will fully comply with its obligations under HIPAA and the HIPAA Regulations, and certifies and agrees that the Plan documents have been amended to incorporate the following provisions and Employer agrees to:

1. Not Use or further Disclose PHI other than as permitted or required by the plan documents or as Required by Law;
2. Ensure that any agents, including subcontractors, to whom it provides PHI received from the Plan agree to the same restrictions and conditions that apply to Employer with respect to such information;
3. Not Use or Disclose PHI for employment-related actions and decisions unless authorized to do so by the individual;
4. Not Use or Disclose PHI in connection with any other benefit or employee benefit plan of Employer unless authorized to do so by the individual;
5. Report to the Plan any Use or Disclosure of PHI that is inconsistent with the Uses or Disclosures provided for of which the Employer becomes aware;
6. Make available PHI in accordance with 45 CFR 164.524;
7. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526;
8. Make available the information required to provide an accounting of Disclosures in accordance with 45 CFR 164.528;
9. Make its internal practices, books, and records relating to the Use and Disclosure of PHI received from the Plan available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance by the Plan with 45 CFR Part 164, subpart E;
10. If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such PHI when no longer needed for the purpose for which Disclosure was made. If such return or destruction is not feasible, Employer will limit further Uses and Disclosures to those purposes that make the return or destruction of the PHI infeasible; and
11. Ensure that adequate separation between the Plan and the Employer is established and that the Plan documents:
 - (a) describe the Employer's Employees or classes of Employees or other persons under the control of the Employer to be given access to PHI;
 - (b) restrict the access to and Use by the persons described in 11(a) to the plan administration functions that the Employer performs for the Plan; and
 - (c) provide an effective mechanism for resolving any issues of inappropriate Use or Disclosure of PHI by persons described in 11(a).

If Employer, in its capacity as Employer, has access to Electronic PHI (E PHI), Employer certifies and agrees that the Plan documents have been amended to incorporate the following provisions and Employer agrees to:

1. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the E PHI that it creates, receives, maintains, or transmits on behalf of the Plan;
2. Ensure that the adequate separation required in item 11 above is supported by reasonable and appropriate security measures;
3. Ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate security measures to protect the information; and
4. Report to the Plan any security incident, as defined in the HIPAA Regulations, of which it becomes aware.