

BLUE CROSS & BLUE SHIELD OF RHODE ISLAND

BROKER AGREEMENT

THIS AGREEMENT (the "Agreement") is made by and between _____ hereinafter designated as "Broker," located at _____, and Blue Cross & Blue Shield of Rhode Island ("the Company"), and will be effective the ____ day of _____, 20__ (the "Effective Date").

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

1. **DEFINITIONS:** For purposes of this Agreement, the following terms shall have the meanings indicated:
 - a. Account – a group, association, or other entity having a contract with the Company for one of the Company's insurance related products.
 - b. Producer – a person required under Rhode Island law to be licensed to sell, solicit or negotiate insurance and/or a company employing such person(s).
 - c. Underwriting Guidelines – The Company's standards, rules, procedures, guidelines, instructions and manuals in effect from time to time regarding underwriting, enrollment, billing, rating, and conditions governing the Company's acceptance or rejection of new or renewal business.

2. **BROKER'S AUTHORITY:** Broker is authorized, subject to the Underwriting Guidelines, to market, sell, and service products that the Company offers from time to time on behalf of Broker's clients during the term of this Agreement. Nothing in this Agreement prohibits or otherwise restricts Company from: (1) soliciting new business directly without going through any General Agent or Broker; or (2) having direct contact or communications with Broker's Accounts for any reason.

3. **LIMITATIONS:**
 - a. Broker has no other authority except as stated in this Agreement. No other authority is implied from the authority expressly granted in Section 2. The authority of Broker under this Agreement shall not extend to or affect the general practices and policies of the Company. Any sale by Broker shall be binding on the Company only when accepted in writing by the Company. Broker may collect premiums on products sold only as authorized in this Agreement. Broker has no other authority except as stated in this Agreement.

- b. Broker is without authority to do or perform, and expressly agrees not to do or perform, the following on behalf of the Company or its employees, directors, officers, or affiliates:
 - i. Incur any debt or liability;
 - ii. Make, issue, alter, vary, discharge or cancel any policy or contracts, or any portion thereof;
 - iii. Waive or extend any policy obligation condition or defaults by customers;
 - iv. Change or modify any policy premium or quote any rates other than those provided by the Company;
 - v. Extend the time for or method of payment by customers;
 - vi. Withhold monies or property;
 - vii. Settle or adjust claims against;
 - viii. Purport to represent the Company or its employees, directors, officers, or affiliates with respect to, or render any decisions regarding, complaints, grievances, or appeals;
 - ix. Make representations with respect to the Company's products except as may be contained in written material furnished by the Company to Broker;
 - x. Develop and/or use any written or electronic material to market, sell, enroll, or bill the Company's products other than the written material furnished by the Company to Broker, unless Broker obtains the Company's prior written authorization.
- c. Broker must (1) comply with all requests by the Company for pertinent information, including information reasonable necessary to assess the financial condition of the Account and information necessary to certify group size, and (2) strictly adhere to all provisions of the Underwriting Guidelines including, but not limited to, group location within the geography served by the Company, group size, contribution, and participation levels.
- d. Broker is granted a non-assignable, revocable license to use the Blue Cross & Blue Shield name and service marks as the Company authorizes in writing from time to time. Broker shall not advertise the Company's name or products, place any advertisement regarding the Company, or use the Blue Cross & Blue Shield name and service marks in any manner, without the prior written consent of the Company's Vice President, Sales & Marketing Services.

4. BROKER'S DUTIES AND RESPONSIBILITIES:

- a. Compliance with Applicable Law and Guidelines. Broker warrants that all obligations, duties and activities performed under this Agreement shall be in strict adherence to and compliance with the laws and regulations of Rhode Island (including but not limited to the Small Employer Health Insurance Availability Act, state confidentiality act and the applicable regulations, interpretive bulletins, and guidance), as well as any applicable federal laws and

regulations. Broker shall also at all times strictly adhere to and comply with the Underwriting Guidelines. The Company may change the Underwriting Guidelines from time to time in its sole discretion. The Company shall notify Broker of any change to the Underwriting Guidelines affecting Broker's obligations under this Agreement within a reasonable period before the effective date of the change; provided, however, that failure to inform Broker of a change prior to the effective date shall not limit the validity or applicability of the change on a prospective basis.

- b. Licensure. Broker and all of its agents or employees acting as a Producer hereunder shall maintain all licenses required by the Company, the State of Rhode Island, and any applicable local or federal laws and regulations to engage in business as an insurance agency or Producer. Broker will furnish to the Company written proof of licensing satisfactory to the Company prior to the Effective Date of this Agreement and thereafter upon request. Broker agrees to notify the Company promptly of any termination, revocation, suspension, lapse, or expiration of Broker's license or of the license of anyone providing services hereunder through Broker.
- c. Payment of Required Taxes and Fees. Broker will pay license, income, self-employment, unemployment, and any and all other taxes and levies upon the business of Broker and will indemnify and hold the Company harmless against all liability for the same. Broker will furnish the Company with Form W-9 as required by law.
- d. Manner of Performance. Broker and each employee or agent of Broker assigned to act as a Producer under this Agreement shall perform using best efforts, in a professional manner, and in accordance with all applicable industry standards and the performance standards set forth in this Agreement including, but not limited to, the Underwriting Guidelines. All written, oral, and electronic communication by Broker, its employees, and its agents on behalf of or concerning the Company or its employees, agents, products, services, or customers shall be conducted in a responsible and professional manner.
- e. Reporting. Broker shall render reports in form and substance acceptable to the Company detailing all material transactions under this Agreement, including all information required by the Underwriting Guidelines and/or necessary to document and otherwise substantiate the premium charge to the Account and all compensation payable to Broker. Broker shall maintain separately identifiable records regarding Accounts.

5. RELATIONSHIP OF THE PARTIES:

- a. Broker of Record.
 - i. Broker must hold an active, unsuperseded letter of record or written designation as "broker of record" for the Account and present the letter or designation to the Company prior to the enrollment of the Account in

Company, and prior to each renewal that forms the basis for payment of such compensation for renewal business. The Company may from time to time, at its discretion, develop, implement, modify, or eliminate conditions, procedures, or protocols regarding designation of agents by existing or prospective Accounts.

- ii. If a conflict exists as to which Producer(s) are authorized to represent an existing or prospective Account, the Account's written statement designating his/her Producer, in form and substance acceptable to the Company, shall control. Regardless of the existence of such a written statement from the Account, in no event may Broker convert an Account directly written by the Company to a commissionable brokered group without the express prior written consent of the Company.

b. Broker Is An Independent Contractor.

- i. Broker is an independent contractor and Broker (and Broker's agents and employees, if any) shall not be construed to be an agent, employee, or representative of the Company. Nothing in this Agreement shall constitute or be construed to be or have created a partnership, employee or servant relationship, or joint venture between the Company and Broker.
- ii. The Company shall not be liable or accountable to Broker or to any third party for any act or omission of Broker. The Company shall not be responsible for any of Broker's expenses.
- iii. The Company acknowledges that Broker's first duty is to Broker's clients. Neither this Agreement nor any policies or rules promulgated by the Company shall be construed to abridge Broker's independent judgment as to the time, place, and manner of soliciting accounts, or to create the relationship of employer and employee between Company and Broker. Consistent with the above, Broker shall use best efforts to seek applicants for the Company's policies, service those applicants which the Company accepts, and to maintain in force the Company's business.
- iv. The employees and agents of Broker are independent contractors as to the Company and employees as to Broker for all purposes under this Agreement. Broker is solely responsible for the control and health and safety of its employees and agents. Broker is solely responsible for and agrees to pay timely to its employees and agents all wages, benefits, and other compensation, including overtime pay, if applicable. Neither Broker nor its employees or agents are entitled to participate in any health, pension, or other benefit plan maintained by the Company. Broker is solely responsible for any agrees timely to comply with any and all withholding requirements of applicable federal, state, and local law and to pay over such withheld amounts to the appropriate government agency including, but not limited to, withholding of taxes and charges required to be paid under federal, state, and local payroll tax requirements, FICA requirements, social security tax requirements, Medicare tax requirements, income tax requirements, unemployment insurance tax requirements, and temporary disability insurance tax requirements, and workers' compensation insurance

requirements in the state in which Broker is headquartered and any state in which its employees and agents perform services. Broker is solely responsible for any expenses incurred in performance of any services, including any required tools, supplies, equipment or materials not supplied by the Account.

- c. Blue Cross and Blue Shield Association. Broker expressly acknowledges the understanding that this Agreement constitutes an agreement between Broker and the Company, and that the Company is an independent corporation operating under a license from the Blue Cross and Blue Shield Association (the “Association”), an association of independent Blue Cross and Blue Shield plans. The Association permits the Company to use the Blue Cross and Blue Shield service marks in the State of Rhode Island, and the Company is not contracting as the agent of the Association. Broker further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than the Company, and that no person, entity, or organization other than the Company shall be held accountable or liable to Broker for any of the Company’s obligations to Broker created under this Agreement.

6. BROKER COMPENSATION:

- a. Commission and Fee Compensation.
 - i. As compensation for Accounts placed through and accepted by the Company pursuant to the authority granted in Section 2, Broker will receive commissions or fees from the Company in accordance with the Company’s commission schedules as they are in effect from time to time.
 - ii. Company may amend such schedules from time to time for both new business and renewals. Company shall notify Broker in writing of any such amendments. In the event any revised schedule of compensation is unacceptable to Broker, Broker may give notice of such unacceptability, in writing, and terminate this Agreement effective on the date the revised schedule is to take effect.
 - iii. The compensation payable to Broker under this Section is sufficient to fully and completely compensate and reimburse Broker for all fees, costs, and expenses incurred by Broker in connection with its performance and/or satisfaction of its duties and obligations hereunder, including, but not limited to, rent, transportation expenses, facilities, clerical help, solicitor’s fees, postage, advertising, license fees, and any other agency expenses, and Broker is not entitled to receive from the Company, and the Company shall not be obligated in any manner whatsoever to pay or reimburse Broker for, such expenses.
- b. Limitations on Compensation. Notwithstanding the foregoing:
 - i. No commission or fee shall be paid or payable by the Company to Broker for services rendered by Broker or any of its employees or agents acting as a

Producer hereunder during any period that such person or entity is not licensed under Rhode Island General Laws Chapter 27.2.4.

- ii. No commission or fee compensation will be paid by the Company to Broker until the Company receives the payment from the account on which the commission or fee compensation is based and Broker has complied with the terms of this Agreement.
 - iii. No commission will be paid on any interest assessed on premiums.
 - iv. No commission will be paid that is duplicative of any service fee received by the Broker from any group or association.
 - v. If the Company or an Account cancels a product and premiums are returned, the Broker shall repay to the Company, on demand, the full amount of the commission that the Company has paid on the returned premiums. All rights to commissions that might otherwise have accrued under such Account shall cease. The Company also reserves the right to withhold from future commission payments an amount equal to any commissions on returned premium amounts.
 - vi. Broker shall waive any right to compensation once premium collection is referred to a collection firm or, in any event, on premium payments ninety (90) days past due.
 - vii. No commission or fee will be paid on renewal or other business that was in effect directly with the Company on or after the time this Agreement was entered into, except as permitted by the filed commission schedules, or as otherwise permitted by law or regulation.
- c. Broker Receiving Monies as Fiduciary. All monies or other settlements received by Broker for or on behalf of Company shall be received by Broker in a fiduciary capacity and immediately delivered in full to the Company.
 - d. Assignment. No assignment of commissions and fees payable pursuant to this Agreement or assignment of this Agreement itself shall be valid unless approved in writing by the Company.

7. ASSIGNMENT, AMENDMENT, AND WAIVER:

- a. Assignment of Agreement. This Agreement and the rights and obligations of the parties hereto shall bind and inure to the benefit of the parties and their respective heirs, executors, assigns, successors, and representatives; provided, however, that no assignment of this Agreement shall be valid unless approved in writing by the Company, which may be withheld in the Company's sole and absolute discretion, but will not be unreasonably withheld.
- b. Modifications and Amendments. During the initial twelve (12) month term of this Agreement, the Agreement may be modified or amended only by an agreement in writing signed by both parties. Following the expiration of the initial twelve (12) month period, changes and amendments to any term or

provision of the Agreement may be made unilaterally at any time by the Company at its sole discretion. Any change or amendments made to any term or provision of this Agreement will be in writing and will be effective one hundred eighty (180) days following written notice to Broker unless Broker and the Company mutually agree to a different period.

- c. Waiver. The failure of any party to insist upon strict performance of a covenant or representation hereunder or of any of the obligations hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such party's right to demand strict compliance in the future. No consent or waiver, expressed or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder. No term or provision of the Agreement may be waived unless agreed to in writing by the party against whom such waiver is sought to be enforced.

8. TERM AND TERMINATION:

- a. Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect through the remainder of that calendar year and for each calendar year thereafter until such time as this Agreement is terminated by either party as provided for herein, unless either party provides notice of non-renewal on or before ninety (90) days prior to expiration of the initial or any extension term.
- b. Termination.
 - i. In addition to a termination by Broker under Section 6(a)(ii), this Agreement may be terminated by either party, with or without cause, upon written notice to the other, made by certified mail, return receipt requested, to be effective one hundred eighty (180) days from the date of such mailing.
 - ii. This Agreement and all agreements for compensation shall automatically terminate upon the death or dissolution of either party.
 - iii. This Agreement may be terminated by the Company immediately in writing by certified mail, return receipt requested, to Broker, and without further notice, for any one or more of the following reasons:

- a) Cancellation, suspension, revocation, non-renewal, lapse, or expiration of Broker's license;
- b) Criminal conviction of Broker;
- c) Filing for bankruptcy by Broker;
- d) Failure to furnish proof of licensing or insurance satisfactory to Company within forty-eight (48) hours of a request by Company for such proof;
- e) Any other cause that reasonably could damage the reputation of the Company including, but not limited to, breach of fiduciary duty or trust, or violation of law;
- f) Broker is named as a defendant in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;
- g) A finding or stipulation that Broker has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which Broker has been joined;
- h) a material breach of the confidentiality provisions of this Agreement; or
- i) failure of Broker to comply with Section 9(e) of this Agreement, or in the event an opinion of the Rhode Island Ethics Commission is necessary and provides that this Agreement presents a conflict of interest for Broker, or a determination by BCBSRI's Audit Committee that this Agreement is not in the best interest of BCBSRI.

c. Effect of Termination.

- i. Upon receipt by Broker of notice of termination of this Agreement, Broker shall have no further power or authority to market, sell, or service any new or renewal health benefit products on behalf of the Company, nor to take any other action on behalf of the Company.
- ii. Upon receipt by Broker of notice of termination of this Agreement, any agreement between the Company and an Account for the provision of health benefits to the employees and/or members of such Account shall remain in effect, subject to the obligation of such Account to pay the applicable premium directly to the Company.
- iii. Upon receipt by Broker of notice of termination of this Agreement, Broker shall immediately return to the Company all Insurance Documentation (defined in Section 10(a)).
- iv. Upon termination of this Agreement for any reason, Broker shall return to the Company or destroy, as specified by the Company, all Proprietary Information (as defined in Section 12) received from, or created or received

by Broker on behalf of, the Company that Broker still maintains in any form, and shall retain no copies of such Proprietary Information.

9. REPRESENTATIONS, WARRANTIES, AND COVENANTS:

- a. No Disparagement. Broker and its employees and agents will not, directly or indirectly, make any disparaging remarks, whether written or oral, concerning the Company or its officers, directors, employees, agents, products, or services to any other person or entity including, but not limited to, any current or potential employee, Account, insured, or vendor of the Company. Nothing contained herein shall be deemed to limit the ability of Broker to solicit and offer insurance products of any competitor of the Company.
- b. Right to Contract. Broker represents and warrants that Broker has full legal authority to enter into this Agreement and that neither the execution or delivery of this Agreement nor compliance with its terms, conditions, and provisions shall conflict with or result in a breach of any law or regulation applicable to Broker or any agreement or instrument to which Broker is a party.
- c. Qualifications. Broker and each of Broker's employees and agents assigned to perform duties and obligations under this Agreement have, and at all times during the term of this Agreement shall have, the proper skill, training, knowledge and professional credentials as may be necessary to perform the duties and obligations described herein.
- d. Non-Solicitation. As a material inducement to the Company to enter into this Agreement and to provide Broker access to the Company's Proprietary Information (defined herein), during the term of this Agreement and for a period of eighteen (18) months from the date of termination thereof for any reason or no reason at all, Broker agrees not to solicit, hire or assist any entity in soliciting or hiring directly as an employee, indirectly as a contractor or subcontractor, or in any other capacity, any persons who are or become employees, independent contractors, or agents of the Company during the term of this Agreement or who, within ninety (90) days prior to the termination thereof, had been so employed or engaged by the Company. This prohibition shall terminate upon the earlier of (a) eighteen (18) months after the date on which the employee leaves the employ of the Company or (b) eighteen (18) months after the date of termination of this Agreement.
- e. Rhode Island Elected Officials and Government Employees. Broker represents that as of the effective date of this Agreement that Broker is neither an employee of nor an elected official for the State of Rhode Island (respectively, "Government Employee" and "Elected Official") and that no Government Employee or Elected Official (a) has a substantial financial interest (e.g. an ownership interest of 10% or greater equity interest) or (b) acts in the capacity of a major decision maker (e.g. CEO, CFO, COO, Chair of the Board, or other senior position) for Broker. In the event that after the execution of this

Agreement Broker either (i) engages a Government Employee or Elected Official as an employee or as a subcontractor providing services to BCBSRI hereunder, or (ii) a Government Employee or Elected Official acquires a substantial financial interest or decision making authority for Broker, then Broker shall immediately notify BCBSRI of such relationship and shall cooperate with BCBSRI and provide documentation requested by BCBSRI to ensure that such Government Employee or Elected Official is compliant with the Rhode Island Code of Ethics and that the ongoing relationship between Broker and BCBSRI is approved by the BCBSRI Audit Committee of the Board of Directors.

- f. Duty to Update. Broker shall inform the Company immediately upon discovery that any information described in this Section is or has become materially different from the representations and warranties made to the Company.

10. RECORD-KEEPING AND AUDIT:

- a. Ownership of Documentation. The Company shall own and exclusively possess all right, title, and interest in and to all policies, forms, applications, manuals and other documentation, including, but not limited to, the Underwriting Guidelines (collectively, the “Insurance Documentation”), furnished to Broker by the Company from time to time, and Broker shall promptly return all originals and copies of the Insurance Documentation to the Company upon the Company’s request and, in any event, upon termination of this Agreement for any reason.
- b. Use of Information. The Company shall have the right to use any and all information, records, or other data generated by Broker and relating to the health benefit products, groups, and enrollees represented thereby or associated therewith. Such use shall include the right to contact each insured directly for the purposes of obtaining underwriting information, performing all audits, providing loss control services, and handling claims.
- c. Audit.
 - i. Broker shall keep full, true, accurate and up-to-date records that may reasonably be deemed necessary for the purpose of showing its compliance with the provisions of this Agreement regarding payment of wages, taxes, fees, and insurance; legal authority to contract; qualifications; non-solicitation; maintenance of insurance and bonding; and protection of confidential information. Said records shall be kept at Broker's principal place of business.
 - ii. Broker shall make said records available for inspection by the Company or its agents during normal business hours upon reasonable advance notice for five (5) years following the end of the calendar year to which they pertain. Should such inspection lead to the discovery of a material violation of a term, condition, representation, warranty, or covenant, in addition to the remedies provided under this Agreement for violation, Broker agrees to take

such corrective action as required by the Company and to pay the full cost of such audit, including the reasonable fees and expenses of the Company's employees and agents.

11. INSURANCE AND INDEMNIFICATION:

- a. Broker shall not be liable for any claim, injury, demand, or judgment based on tort or any other grounds (including negligence or breach of contract) arising out of the Company's negligence, breach of contract, or tortious or unlawful conduct, and the Company agrees to defend Broker and indemnify and hold Broker harmless against any and all such claims, injuries, demands, and judgments, including, without limitation, payment of all costs and reasonable attorneys' fees incurred in defending the same or enforcing such right of indemnity.
- b. The Company shall not be liable for any claim, injury, demand or judgment based on tort or any other grounds (including negligence or breach of contract) arising out of Broker's negligence, breach of contract, tortious, or unlawful conduct, and Broker agrees to defend the Company and indemnify and hold the Company harmless against any and all such claims, injuries, demands, and judgments, including, without limitation, payment of all costs and reasonable attorneys' fees incurred in defending the same or enforcing such right of indemnity.
- c. Broker shall provide to the Company a Certificate of Insurance showing errors and omissions coverage as required under applicable Rhode Island law or regulations. Broker shall give written notice to the Company of any change in liability insurance coverage within ten (10) days of such change, and agrees to allow and cooperate with the Company to obtain ongoing verification of such coverage.

12. PROPRIETARY INFORMATION:

- a. Proprietary Information. As used in this Agreement, the term "Proprietary Information" shall mean all information disclosed to Broker by the Company or its agents or employees in any manner, whether orally, visually, by internet access sites or in tangible form (including, without limitation, documents and computer readable media) and all copies thereof, whether created by the Company or Broker, including but not limited to the following: (a) services, products, and service and product ideas; (b) business methods, strategies, plans, practices, marketing plans, business plans and projections; (c) internal operations; (d) costs, pricing, and billing, proposed reimbursement rates, fee schedules and any other pricing or rate information; (e) specific network facts, figures for and information regarding all products and markets; (f) draft contracts; (e) marketing, financial, trading, research, and sales data; (f)

customer, prospect, vendor, sales, or personnel lists or information; (g) customer and supplier contacts and needs; (h) technology, software, computer passwords, program designs, software designs, and hardware configurations; (i) trade secrets; proposed reimbursement rates, fee schedules and any other pricing or rate information, specific network facts, figures for and information regarding all products and markets, draft contracts, marketing plans, business plans and projections, customer lists, financial statements, patient data, (j) secret, confidential, or proprietary information; (k) any information expressly identified as confidential; and (l) any information that might reasonably be deemed confidential. Proprietary Information shall not include any information that Broker can demonstrate: (i) was in Broker's possession prior to disclosure by the Company; (ii) was generally known, in the trade or business in which it is practiced by the Company, at the time of disclosure to Broker hereunder, or becomes so generally known after such disclosure, through no act of Broker or its employees, agents or independent contractors; or (iii) which is made available to Broker by a third party who is not known by Broker to be bound to the Company to maintain the confidentiality of such information, as evidenced by written records of said receiving party.

- b. Permitted Use of Proprietary Information. Broker shall use Proprietary Information solely for the purpose of performing its duties and obligations under this Agreement (the "Permitted Purpose"). Other than as expressly specified herein, the Company grants no license to Broker under any copyrights, patents, trademarks, trade secrets or other proprietary rights to use or reproduce Proprietary Information.
- c. Nondisclosure of Proprietary Information.
 - i. Except as expressly permitted herein, Broker shall not disclose Proprietary Information and shall prevent the disclosure of such Proprietary Information by Broker's employees, agents and independent contractors.
 - ii. Broker shall disclose Proprietary Information only to those of its employees, agents and independent contractors who have a need to know such information for the Permitted Purpose and have been informed of the confidential and proprietary nature of the Proprietary Information.
 - iii. Notwithstanding the foregoing, in that event that Broker is ordered to disclose the Company's Proprietary Information pursuant to a judicial or governmental request, requirement or order, Broker immediately shall notify the Company and take reasonable steps to assist the Company in contesting such request, requirement or order or otherwise protecting the Company's rights.
- d. Treatment of Proprietary Information.
 - i. Reproduction. Broker agrees not to reproduce or copy by any means the Proprietary Information without the Company's prior written permission in each case, except as reasonably required to accomplish such Broker's Permitted Purpose.

- ii. **Return of Proprietary Information.** Upon demand by the Company at any time, Broker shall return promptly to the Company or destroy, at the Company's option, all tangible materials that disclose or embody Proprietary Information, including all copies or duplications thereof. If not returned or destroyed sooner, all Proprietary Information shall be returned or destroyed at the option of the Company, upon termination of the business relationship of the parties.
- iii. **Legends.** Broker shall not remove any proprietary rights legend from, and shall, upon the Company's reasonable request, add any proprietary legend to, materials disclosing or embodying Proprietary Information.
- e. **Injunctive Relief.** The parties acknowledge that it shall be impossible to measure the damages that would be suffered by the Company if Broker fails to comply with the terms of this Agreement and that in the event of any such failure, the Company shall not have an adequate remedy at law. the Company shall, therefore, be entitled in addition to any other rights and remedies to obtain specific performance of Broker's obligations hereunder and to obtain immediate injunctive relief without having to post a bond. Broker shall not urge, as a defense to any proceeding for such specific performance or injunctive relief, that the Company has an adequate remedy at law.
- f. **Survival.** The provisions of this Section shall survive the termination or expiration of this Agreement, and such provisions shall bind Broker no less than five (5) years following such termination or expiration.

13. MISCELLANEOUS:

- a. **Sale or Transfer of Broker's Business.** Broker hereby agrees and acknowledges that it shall provide the Company with one hundred eighty (180) days' prior written notice of any sale or transfer of Broker's insurance business to, or merger with, a successor agent or agency. Upon receipt of such notice, the Company may, in its sole discretion, (a) terminate this Agreement in accordance with Section 8 hereof, or (b) approve an assignment to the successor agent or agency in accordance with Section 7(a) hereof.
- b. **Severability.** If any clause or provision in this Agreement is illegal, invalid, or unenforceable under any present or future law, the remainder of this Agreement shall not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible which would be valid, legal, and enforceable.
- c. **Construction and Jurisdiction.** This Agreement shall be construed and the obligations, rights, and remedies of the parties hereunder shall be determined in accordance with the laws of the State of Rhode Island, without giving effect to the conflicts of laws or choice of laws principles thereof. This Agreement shall be enforced in, and each party consents to the jurisdiction of, the courts of the

State of Rhode Island..

- d. Further Assurances. From time to time hereafter, each party shall, without further consideration, execute, acknowledge and deliver to the other party such further instruments and documents and take such other action as the other party may reasonably request to assure, complete and evidence the provisions of this Agreement, and to effectuate the purposes of this Agreement.
- e. Notice. Any notice under this Agreement required to be given by Broker to the Company shall be given to the Company by certified mail, return receipt requested, postage prepaid or overnight carrier which requires a receipt, and shall be deemed given upon receipt and addressed as follows:

Blue Cross & Blue Shield of Rhode Island
500 Exchange Street
Providence, Rhode Island 02903
Attn: Broker Relations

Any notice required to be given by the Company to Broker shall be given to Broker by certified mail, return receipt requested, postage prepaid or overnight carrier which requires a receipt, and shall be deemed given upon receipt and addressed as follows:

Attn: _____

- f. Entire Agreement; Primacy. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings or agreements, oral or written. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control.
- g. Survival of Terms. The obligations of Broker which by their nature would continue beyond the termination, cancellation, or expiration of this Agreement including, but not limited to, the obligations imposed upon Broker under Sections 8(c), 9, 10(a), 10(c), 11(a), and 12 of this Agreement, shall survive termination, cancellation, or expiration of this Agreement.
- h. Remedies for Breach. In the event of any breach by Broker of Sections 3(b), 3(d), 4(a), 9(a), 9(d), 10(c), 11(c), or 12 of this Agreement which is not cured within two (2) business days after receipt of written notice of such breach:
 - i. The Company shall cease making payments under this Agreement and Broker shall forfeit Broker's rights to any further payments under this Agreement; and
 - ii. Broker agrees that money damages would be an inadequate remedy for any

such breach, because damages for such breaches are not susceptible to exact measurement in dollars and the Company would be irreparably harmed by any such breach. Broker agrees that the Company shall be entitled to temporary restraining orders, temporary injunctions, and permanent injunctions to prohibit such breaches.

- iii. This paragraph does not limit the remedies to which the Company is entitled at law or equity for breaches of any Section under this Agreement, and the Company may pursue any other remedy available to the Company for breaches of this Agreement.
- i. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which, taken together, shall be deemed to be one and the same instrument.
- j. Section Headings. Titles or headings contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, modify, or describe the scope of this Agreement. If there is any conflict between any such titles or headings and the text of this Agreement, the text shall control.
- k. Successors and Assigns. Except as expressly limited in this Agreement, this Agreement shall bind and inure to the benefit of and be enforceable by the parties thereto and their respective successors and assigns.

14. DELEGATION:

- a. In accordance with 45 C.F.R. § 156.340, the parties agree that in the course of performing the duties and obligations set forth in this Agreement, Broker may constitute a “delegated entity,” and may contract with other vendors who constitute “downstream entities,” as such terms are defined in 45 C.F.R. § 156.20, to assist in performing such duties and obligations.
- b. Broker shall comply with all applicable laws and regulations, including but not limited to the provisions of 45 C.F.R. Parts 155 and 156, to the extent relevant, in performing its duties and obligations set forth in this Agreement.
- c. Broker shall grant access to its books, contracts, computers, or other electronic systems (including medical records and documentation), relating to Broker’s compliance with applicable provisions under 45 C.F.R. Parts 155 and 156 in connection with the duties and obligations set forth in this Agreement, to the U.S. Department of Health and Human Services (“HHS”) and its Office of Inspector General (or their designees), for the duration of the period in which this Agreement is effective, and for a minimum of ten (10) years from the date this Agreement terminates.
- d. Broker shall include in its contract with any downstream entities, and require such downstream entities to include in their contracts with other downstream

entities, language that is the same or substantially similar to that contained in this Section.

- e. Broker shall furnish Company with a copy of the pertinent contract language (including amendments thereto) between Broker and any downstream entities, and among two or more downstream entities, as applicable, to demonstrate compliance with subsection (d). Such contract language (including amendments thereto) shall be furnished to Company as soon as practicable following its adoption.
- f. In the event that BCBSRI or HHS determines that Broker, or any downstream entity with whom Broker contracts as described in subsection (a), has not performed satisfactorily the duties and obligations set forth in this Agreement, Company shall have the right to revoke such duties and obligations and terminate this Agreement upon providing thirty (30) days advance notice and a thirty (30) day opportunity to cure (to the extent that Company determines, in its sole discretion, that such advance notice and opportunity to cure are feasible and proper under the circumstances).
- g. The provisions of this Section shall in no way be interpreted as an assumption by Company of legal liability for the actions of Broker or any downstream entities, including but not limited to malpractice liability.

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Executed by the parties as of the Effective Date.

BROKER

By: _____
(print name)

(signature)

(title)

Company Name: _____

BLUE CROSS & BLUE SHIELD
OF RHODE ISLAND

By: _____
(print name)

(signature)

Title: _____