BROKER CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is effective on the latest date and year set forth on the signature page hereof (the "Effective Date"), by and between _____("Broker") and Blue Cross & Blue Shield of Rhode Island ("Blue Cross").

RECITALS

WHEREAS, Blue Cross is in the business of, among other things, insuring, providing, and administering health benefits coverage for various employer groups and other purchasers of health benefits;

WHEREAS, Broker has been engaged to provide certain services by one or more of the groups (the "Companies") for which Blue Cross insures, provides, or administers health benefits coverage on behalf of the group health plan(s) sponsored by such Companies ("the Group Health Plans"); and

WHEREAS, at the request of a Company, Blue Cross will provide certain health claims data, diagnosis or procedure information and other information relating to the Group Health Plan enrollees, some or all of which may be Confidential Health Care Information (as defined herein), to Broker for purposes of the Broker conducting management audits, financial audits, program evaluations and/or actuarial, insurance underwriting and/or similar studies and/or assisting the Company in obtaining reinsurance on a Group Health Plan and/or Company specific basis;

WHEREAS, Blue Cross desires to release such Confidential Health Care Information in accordance with applicable federal and state laws and regulations upon a Company's request; and

WHEREAS, Blue Cross and Broker wish to enter into this Agreement in order to assure that the confidentiality of such Confidential Health Care Information is maintained and that all the parties comply with all applicable federal and state laws and regulations with respect to safeguarding the confidentiality of the Confidential Health Information.

NOW, THEREFORE, in consideration of the following, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1.   Definitions. The parties agree that the following terms, when used in this Agreement, shall have the following meanings:

a. "Confidential Health Care Information" shall include, without limitation, all PHI and any other confidential information regarding Group Health Plan enrollees that is disclosed by Blue Cross to Broker. Without limiting the generality of the foregoing, Confidential

Health Care Information also shall include information which is deemed confidential pursuant to the Rhode Island Confidentiality of Health Care Communications and Information Act, R.I. Gen. Laws §§ 5-37.3-1, et seq., as amended from time to time (the "Rhode Island Confidentiality of Health Care Communications and Information Act"), or any other applicable state or federal law or regulation.

b. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended from time to time.

c. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, as amended from time to time.

d. "PHI" means Protected Health Information as that term is defined under 45 C.F.R. 164.501, as amended from time to time.

2.   Permitted Uses, Confidentiality and Nondisclosure.

At the direction of a Company or on behalf of the Group Health Plan, Blue Cross may disclose to Broker such Confidential Health Care Information as is reasonably and minimally required for Broker to provide the following services to the Company on behalf of the Group Health Plan: to undertake a management audit, financial audit, program evaluation, statistical, actuarial, underwriting, and/or other studies for purposes which include obtaining and setting reinsurance rates for a Company. Prior to Blue Cross disclosing such information to Broker, if Company is acting on behalf of the Group Health Plan, Company and Broker must have entered into a HIPAA-compliant business associate agreement. Broker agrees to use Confidential Health Care Information received from Blue Cross under this Agreement solely for such purposes and in accordance with applicable laws and regulations.

Broker agrees that it shall keep confidential all Confidential Health Care Information received from Blue Cross. Broker shall not disclose Confidential Health Care Information to any third party or for any purpose or in any manner whatsoever; provided, however, that Broker shall be permitted to disclose to a prospective licensed reinsurer or managing general underwriter ("Prospective Reinsurer/MGU") information necessary for such Prospective Reinsurer/MGU to provide reinsurance for a Company so long as such Prospective Reinsurer/MGU has signed an agreement with Broker substantially similar to this Agreement. Without limiting the foregoing, Broker agrees that it will not release Confidential Health Care Information to any Company or its officers, employees or agents.

3.   Safeguards. Broker agrees that it will establish, with respect to the Confidential Health Care Information, at least the following security and confidentiality procedures:

a. Limit authorized access to Confidential Health Care Information to persons having a "need to know" that information.

b. Identify an individual or individuals who have responsibility for maintaining security procedures for Confidential Health Care Information.

c. Provide a written statement to each employee or agent of Broker as to the necessity of maintaining the security and confidentiality of Confidential Health Care Information, and of the penalties provided for in the Rhode Island Confidentiality of Health Care Communications and Information Act for the unauthorized release, use or disclosure of such Confidential Health Care Information. The receipt of such statement shall be acknowledged by the employee or agent, who shall sign and return the statement to Broker, which shall retain a signed original. The employee or agent of Broker shall be furnished with a copy of the signed statement.

d. Take no disciplinary or punitive action against any employee or agent solely for bringing evidence of violation of the Rhode Island Confidentiality of Health Care Communications and Information Act to the attention of any person.

4. <u>Compliance With Law</u>. Broker agrees to comply with all applicable federal and state laws and regulations, including without limitation the Rhode Island Confidentiality of Health Care Communications and Information Act, HIPAA, the HIPAA Regulations and any other applicable state or federal security or privacy laws in effect from time to time.

5. <u>Indemnification</u>. Broker acknowledges that an unauthorized use or disclosure of Confidential Health Care Information could be regarded as a violation of state and/or federal law and shall therefore indemnify and hold Blue Cross harmless from any and all losses, liability, damages, expenses, costs, or other obligations (including reasonable attorneys' fees) that may be imposed upon, incurred by or brought against Blue Cross as a result of Broker's failure to keep such Confidential Health Care Information confidential, or for the violation of any federal or state act relating to the confidentiality of such information.

6. <u>Term and Remedies</u>.

a. *Term*. This Agreement shall be effective as of the Effective Date and shall continue until either party provides the other party sixty (60) days notice of its intent to terminate the Agreement or until the Agreement is otherwise terminated in accordance with the provisions of Section 6(b) or 8(c).

b. *Remedies*. If Blue Cross determines that Broker has breached or violated a material term of this Agreement, Blue Cross may, at its option, either (i) terminate this Agreement immediately or (ii) take any reasonable steps that Blue Cross, in its sole discretion, shall deem necessary to cure such breach or end such violation. Broker acknowledges that in the event of an improper use or disclosure of Confidential Health Care Information under this Agreement, Blue Cross shall have suffered irreparable harm and, as a consequence, Blue Cross may immediately pursue all available remedies, at law or in equity, and shall not be required to separately demonstrate irreparable harm in seeking injunctive relief.

7.   <u>Return or Destruction of Records.</u> Upon termination of this Agreement for any reason, Broker shall return to Blue Cross or destroy all Confidential Health Care Information received, or created or received by Broker on behalf of the Group Health Plan that Broker still maintains in any form, and shall retain no copies of such Confidential Health Care Information.

8.   <u>Miscellaneous Terms</u>.

a. *Governing Law*. 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.

b. *Assignment*. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and the respective successors and assigns of the parties hereto. This Agreement cannot be assigned, pledged or hypothecated by any party hereto to a third party without the prior written consent of all parties to this Agreement.

c. *Amendment.* This Agreement may only be amended by the mutual written consent of the parties; <u>provided</u>, <u>however</u>, that amendment of this Agreement may be required to ensure that the parties comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of certain health information. Blue Cross may terminate this Agreement upon thirty (30) days written notice in the event that Broker does not promptly enter into an amendment that Blue Cross, in its sole discretion, deems sufficient to ensure that Blue Cross will be able to comply with such laws and regulations.

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

e. *Consent and Waiver*. The failure of any party to insist upon strict performance of a covenant hereunder or of any obligation 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, express 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 such waiver is in writing and signed by the party against whom such waiver is sought to be enforced.

f. *Entire Understanding*. This Agreement constitutes the entire understanding between the parties hereto with respect to the transactions contemplated herein and this Agreement shall not be modified except in writing executed by all parties hereto.

g. *Survival*. The rights and obligations of the parties set forth herein in Sections 2, 5 and 6(b) shall survive the termination of this Agreement and shall continue in full force and effect.

h. *Severability*. Any part, provision, representation or warranty of this Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

i. *Headings*. The captions contained in this agreement are inserted as a matter of convenience and in no way define, limit or extend the scope or intent of any provisions hereof.

j. *Counterparts*. This Agreement may be executed simultaneously in one or more counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BROKER

By:_____

Name:_____

Title:_____

Date:_____

**BLUE CROSS & BLUE SHIELD OF
RHODE ISLAND**

By:_____

Name: _____

Title:_____

Date:_____