

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BA Agreement") is effective upon execution, and amends and is made a part of the Administrative Services Contract ("ASC") between Blue Cross and Blue Shield of Michigan ("BCBSM") and City of Royal Oak ("Group"), on behalf of itself and as plan sponsor of its group health plan ("GHP"). The requirements of the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 ("HITECH Act") shall be made applicable under this BA Agreement upon the effective date of any implementing regulations.

WITNESSETH AS FOLLOWS:

WHEREAS, Group has established and maintains GHP as an employee welfare benefit plan, as defined by Section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA") that is **(1) subject to ERISA pursuant to ERISA section 4(a), (2) is a governmental plan as defined by ERISA section 3(32) that is exempt from ERISA pursuant to ERISA section 4(b)(1), or (3) is a church plan as defined in ERISA section 3(33) that is exempt from ERISA pursuant to ERISA section 4(b)(2)** and is therefore subject to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations codified as 45 CFR Parts 160-164 (collectively, "HIPAA") as a Covered Entity performing the Covered Functions of a Health Plan.

WHEREAS, Group and GHP represent and warrant GHP has written documentation ("Plan Document") that informs Enrollees of the benefits to which they are entitled from GHP and describes the procedures for:

- (I) establishing and carrying out funding of the benefits to which Enrollees are entitled under GHP's plan document
- (II) allocating and delegating responsibility for GHP's operation and administration under the Plan Document, and
- (III) amending the Plan Document.

WHEREAS, Group, GHP and BCBSM mutually agree to modify the ASC to incorporate the provisions of this BA Agreement to comply with applicable requirements of HIPAA and the HITECH Act that are applicable to business associates. This BA Agreement further includes additional provisions Group, GHP, and BCBSM desire to have as part of the ASC.

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, Group, GHP, and BCBSM hereby agree as follows:

### **I. SERVICES BCBSM PROVIDES**

Group, GHP and BCBSM agree to incorporate into this BA Agreement any regulations issued with respect to the HITECH Act that relate to the obligations of business associates. BCBSM recognizes and agrees that it is obligated by law to meet the applicable provisions of the HITECH Act.

BCBSM will manage, operate and administer Coverage(s) (as defined in the ASC) and perform the services set forth in attached Exhibit I with respect to benefits provided to Enrollees under GHP.

## II. PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

**A. Definitions.** All capitalized terms in this BA Agreement that are not defined by this BA Agreement will have the meaning ascribed to them by 45 C.F.R. Parts 160-164 or in the HITECH Act. The following terms have the following meanings

1. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended.

2. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subparts A and C, as amended.

3. "Standard Transaction Rule" shall mean the Standards for Electronic Transactions at 45 C.F.R. Parts 160 and 162, as amended.

### **B. Confidentiality of PHI**

BCBSM will maintain the confidentiality of all Protected Health Information (PHI) BCBSM creates or receives for, on behalf of, or from GHP (or another business associate of GHP) in the performance of its duties under the ASC and this BA Agreement. BCBSM will neither use nor disclose PHI except (1) as this BA Agreement permits or requires, (2) as GHP permits or requires in writing, (3) as an Enrollee authorizes, or (4) as Required by Law.

### **C. Security of PHI**

As required by the Security Rule and the HITECH Act, BCBSM maintains reasonable and appropriate administrative, physical, and technical safeguards, to protect against reasonably anticipated threats or hazards to, and to ensure the security and integrity of, PHI; to protect against reasonably anticipated unauthorized use or disclosure of PHI; and to reasonably safeguard PHI from any intentional or unintentional use or disclosure in violation of this BA Agreement.

### **D. Permitted Uses and Disclosures**

BCBSM may use or disclose PHI only as follows:

#### **1. Functions and Activities**

BCBSM may use and disclose PHI as permitted by HIPAA and consistent with the HITECH Act for (a) management, operation, and administration of Enrollee benefits, (b) the services set forth in the ASC and the attached Exhibit 1, and (c) Treatment, Payment, Health Care Operations, and Data Aggregation.

#### **2. Management and Administration**

##### **a. Protected Health Information Use**

BCBSM may use PHI for BCBSM's proper management and administration or to carry out BCBSM's legal responsibilities.

**b. Protected Health Information Disclosure**

BCBSM may disclose PHI for BCBSM's proper management and administration or to carry out BCBSM's legal responsibilities only:

(i) if the disclosure is Required by Law, or

(ii) if before the disclosure, BCBSM obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written contract, that the entity will hold PHI in confidence, use or further disclose PHI only for the purposes for which BCBSM disclosed it to the entity or as the entity is Required by Law; and notify BCBSM of any instance of which the entity becomes aware that confidentiality of any PHI was breached.

**3. Creation of Limited Data Sets and De-Identified Health Information**

In conformance with the provisions and requirements set forth in HIPAA, BCBSM may use PHI to:

- a. create De-Identified Health Information, and
- b. create Limited Data Sets containing the minimum necessary amount of PHI reasonably needed for Research, Public Health or Health Care Operations activities.

**4. De-Identified Health Information Use and Disclosure**

BCBSM may use and disclose De-Identified Health Information for any purpose, including after any cancellation, termination, expiration, or other conclusion of the ASC.

**5. Limited Data Set Use and Disclosure (Data Use Agreement)**

BCBSM may use and disclose a Limited Data Set for Research, Public Health or Health Care Operations purposes. BCBSM may make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of the ASC.

**a. DUA - Prohibition on Unauthorized Use and Disclosure**

BCBSM will neither use nor disclose the Limited Data Set for any purpose other than as this section permits, as GHP otherwise permits in writing, or as Required by Law. BCBSM will never use or disclose the Limited Data Set in a manner that would violate the HIPAA Privacy Rule, if done by GHP.

**b. DUA - No Identification**

When using or disclosing a Limited Data Set, BCBSM will not attempt to identify the information contained in the Limited Data Set or contact any individual who may be the subject of information contained in the Limited Data Set.

**c. DUA - Information Safeguards**

BCBSM will adopt and use appropriate administrative, physical, and technical safeguards to preserve the integrity and confidentiality of the

Limited Data Set and to prevent its use or disclosure other than as permitted by this Section or as Required by Law.

**d. DUA - Reporting Non-Permitted Use or Disclosure**

BCBSM will report to GHP any non-permitted use or disclosures of the Limited Data Set. BCBSM will make the report to GHP not more than fifteen (15) business days after BCBSM learns of such non-permitted use or disclosure.

**e. DUA - Permitted Recipients**

BCBSM and the following entities may receive and use a Limited Data Set, provided they agree to the same restrictions and conditions applicable to BCBSM's use and disclosure of the Limited Data Set:

- (i) BCBSM affiliates,
- (ii) BCBSM Business Associates,
- (iii) BCBSM subcontractors and agents,
- (iv) other GHP Business Associates,
- (v) and other recipients when those recipients enter into a Data Use Agreement with BCBSM.

**E. Minimum Necessary and Limited Data Set.**

BCBSM's use, disclosure or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, unless excepted by HIPAA and as required by the HITECH Act, any uses or disclosures of PHI shall be limited to the Minimum Necessary.

**F. Disclosure to BCBSM's Subcontractors and Agents**

BCBSM may disclose PHI to subcontractors and agents when those subcontractors and agents provide reasonable assurance, as evidenced by a written contract, that they will comply with the same privacy and security obligations with respect to PHI as applies to BCBSM in this BA Agreement, including reasonable and appropriate safeguards to protect it.

**G. Disclosures to Group and Group's Business Associates**

BCBSM will not disclose any PHI to Group or Group's business associates, except as this BA Agreement permits.

**H. Reporting Non-Permitted Use or Disclosure, Security Incidents & Breaches**

1. BCBSM will report to GHP any use or disclosure of PHI not permitted by this BA Agreement or in writing by GHP except BCBSM will not report incidental uses and disclosures that occur as a result of a use or disclosure otherwise permitted by this BA Agreement. BCBSM will

make the report to GHP not more than fifteen (15) business days after BCBSM learns of such non-permitted use or disclosure.

2. BCBSM will report to GHP any security incident of which it becomes aware. BCBSM will make the report to GHP not more than fifteen (15) business days after BCBSM learns of such security incident.

3. In addition, BCBSM will report, following discovery and without unreasonable delay, but in no event later than fifteen (15) business days following discovery, any Breach of Unsecured PHI as those terms are defined by the HITECH Act and any implementing regulations. Any such report shall include the identification (if known) of each Enrollee whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such Breach, along with any other information required to be reported under the HITECH Act and any accompanying regulations.

4. In the event notification to individuals is required under the HITECH Act or any accompanying regulations, BCBSM will prepare and deliver such notification to individuals on GHP's behalf. Such notifications to individuals will be consistent with the notification content requirements established in the HITECH Act and any accompanying regulations.

**I. Termination for Breach of Privacy Obligations**

1. GHP may terminate this BA Agreement and the ASC if BCBSM has engaged in a pattern of activity or practice that constitutes a material breach or violation of BCBSM's obligations regarding PHI as set forth in this BA Agreement and, on notice of such material breach or violation from GHP, BCBSM fails to take reasonable steps to cure the breach or end the violation. If BCBSM fails to cure the material breach or end the violation within twenty (20) business days after receipt of GHP's notice, GHP may terminate the ASC by providing BCBSM written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Termination of the ASC will immediately terminate this BA Agreement. If for any reason GHP determines that BCBSM has breached the terms of this BA Agreement and such breach has not been cured, but GHP determines that termination of the ASC is not feasible, GHP will report such breach to the U.S. Department of Health and Human Services.

2. BCBSM may terminate the ASC if GHP has engaged in a pattern of activity or practice that constitutes a material breach or violation of GHP's obligations regarding PHI and, on notice of such material breach or violation from BCBSM, fails to take reasonable steps to cure the breach or end the violation. If GHP fails to cure the material breach or end the violation within twenty (20) business days after receipt of BCBSM's notice, BCBSM may terminate the ASC by providing GHP written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Termination of the ASC will immediately terminate this BA Agreement. If for any reason BCBSM determines that GHP has breached the terms of this BA Agreement and such breach has not been cured, but BCBSM determines that termination of the ASC is not feasible, BCBSM will report such breach to the U.S. Department of Health and Human Services.

**J. Disposition of Protected Health Information**

**1. Return or Destruction After ASC Termination**

BCBSM will, if feasible upon cancellation, termination, expiration, or other conclusion of the ASC return to GHP or destroy all PHI in whatever form or medium in BCBSM's custody or control (or in the custody or control of any subcontractor or agent to which BCBSM disclosed PHI), including all copies of and any data or compilations derived from PHI that allow identification of any present or past Enrollee who is a subject of the PHI, except BCBSM may continue to use and disclose De-Identified and Limited Data Set information as permitted by Sections C4 and C5 of this BA Agreement.

**2. Disposition When Return or Destruction Not Feasible**

To the extent return or destruction of PHI is not feasible, BCBSM's duties, rights, and obligations with respect to Enrollee PHI will continue in full force and effect after the date of the ASC or BA Agreement termination.

**III. PHI ACCESS, AMENDMENT, AND DISCLOSURE ACCOUNTING**

**A. Access**

BCBSM will make available to GHP or to the Enrollee for inspection and copying any PHI about the Enrollee that qualifies as part of a Designated Record Set, is not exempted from access, and which BCBSM has in its custody or control, so GHP can meet its access obligations under HIPAA and, where applicable, the HITECH Act. Any requests for access must be submitted on BCBSM's request form. When required by the HITECH Act and requested by the Enrollee or GHP, BCBSM shall make such information available in an electronic format.

**B. Amendment**

After BCBSM's receipt of an Enrollee's or GHP's written request on BCBSM's form, or other Business Associate's or Covered Entity's written request, BCBSM will amend the appropriate Designated Record Set PHI BCBSM has in its custody or control, unless, in its sole discretion, BCBSM determines, as HIPAA permits, an amendment is not appropriate. If BCBSM accepts a request to amend PHI, it will make reasonable efforts to inform others, including individuals or entities that received the Enrollee's PHI, of the amendment.

**C. Disclosure Accounting**

BCBSM will make available to GHP or to the Enrollee the disclosure information regarding the Enrollee, so GHP can meet its disclosure accounting obligations. Further, BCBSM will do the following:

**1. Disclosure Tracking**

As required by HIPAA and the HITECH Act, record each disclosure of PHI, unless such disclosure is excepted from accounting by HIPAA or the HITECH Act, ("Accountable Disclosures"). For each Accountable Disclosure BCBSM will record:

(a) the disclosure date,

- (b) the name and (if known) address of the entity to whom BCBSM made the disclosure,
- (c) a brief description of PHI disclosed,
- (d) a brief statement of the purpose of the disclosure, and
- (e) any additional information to the extent required by the HITECH Act and any accompanying regulations.

**2. Disclosure Tracking Time Periods**

Unless otherwise provided by the HITECH Act and/or any accompanying regulations, BCBSM will maintain disclosure information about Accountable Disclosures for six (6) years. Any requests for a report of disclosure accounting must be submitted on BCBSM's request forms.

**D. Restriction Requests**

GHP will consult with BCBSM before GHP agrees to an Enrollee's request to restrict the use or disclosure of PHI related to the Enrollee that may affect BCBSM. BCBSM will respond to all requests submitted directly by Enrollees to restrict the use or disclosure of Enrollee PHI. GHP will promptly notify BCBSM in writing of any request for restriction on the use or disclosure of PHI. Any restriction requests must be submitted on BCBSM's request forms.

**E. Confidential Communications**

BCBSM will accommodate an Enrollee's request for confidential communications (the use of reasonable alternative means or alternative locations when communicating PHI to them) if the Enrollee provides a clear statement that disclosure of all or part of the PHI could endanger the Enrollee.

**IV. COMPLIANCE WITH STANDARD TRANSACTIONS**

**A. BCBSM, SUBCONTRACTORS, AND AGENTS**

BCBSM will comply, and require any of its subcontractors or agents to comply, with each applicable requirement for the Standard Transaction Rule when conducting all or any part of a Standard Transaction electronically for, on behalf of, or with GHP.

**B. TRADING PARTNER AGREEMENTS**

BCBSM will not enter into, or permit its subcontractors or agents to enter into, any Trading Partner Agreement in connection with the conduct of Standard Transactions on behalf of BCBSM that

- 1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- 2. Adds any data element or segment to the maximum defined data set;

3. Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or

4. Changes the meaning or intent of the Standard Transaction's implementation specification.

**V. INSPECTION OF BOOKS AND RECORDS**

BCBSM will make its internal practices, books, and records relating to its use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services to determine GHP's compliance with HIPAA.

**VI. DATA EXCHANGE BETWEEN GROUP AND BCBSM**

BCBSM may disclose to Group the minimum necessary information regarding whether an individual is an Enrollee participating in, enrolled in, or disenrolled from GHP.

If Group electronically exchanges data with BCBSM regarding the enrollment and disenrollment of Enrollees in GHP, health plan premium payments, and other matters governed by HIPAA, then Group is required to meet the requirements of HIPAA and BCBSM's payer-specific instructions.

**VII. SUMMARY HEALTH INFORMATION**

Upon Group's written request to either (a) obtain premium bids for providing health insurance coverage for GHP, or (b) modify, amend, or terminate GHP; BCBSM will provide Summary Health Information regarding Enrollees participating in GHP to Group.

**VIII. PLAN SPONSOR CERTIFICATION**

As Plan Sponsor, Group performs plan administration functions for GHP and needs access to PHI to carry out those plan administration functions. Group, as GHP's Plan Sponsor, has amended GHP's Plan Document to incorporate the provisions 45 CFR 164.504(f)(2) requires.

Group certifies that it has amended GHP's Plan Document to incorporate the provisions 45 CFR 164.504(f)(2) requires and Group agrees to comply with GHP's Plan Document as amended. GHP authorizes BCBSM to disclose the information Group has requested and certifies to BCBSM that such information is the Minimum Necessary PHI for Group to perform the plan administration functions required as described in GHP's Plan Document.

BCBSM may rely on Group's certification and shall have no obligation to verify (1) that GHP's Plan Document has been amended or (2) that Group is complying with GHP's Plan Document as amended.

**IX. COMPENSATION TO BCBSM**

For the services to Group, GHP, and Enrollees under this BA Agreement; BCBSM reserves the right to charge Group (a) a reasonable Designated Record Set Request Fee for each request for access to PHI BCBSM fulfills, plus a reasonable per page fee for each requested copy of such PHI BCBSM provides and any postage expense BCBSM incurs in delivering such PHI, and (b) a reasonable PHI Disclosure Accounting Fee for each request from GHP for Disclosure Information BCBSM fulfills. BCBSM will provide Group with a fee schedule should BCBSM exercise its right to charge such fees.

**X. ENTIRE AGREEMENT**

This BA Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

**XI. AUTOMATIC AMENDMENT TO CONFORM TO APPLICABLE LAW**

Upon the compliance date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of electronic PHI, or other aspects of HIPAA applicable to this BA Agreement or to the ASC, this BA Agreement will automatically amend such that the obligations imposed on Group, GHP, and BCBSM remain in compliance with such regulations, unless BCBSM elects to terminate the ASC by providing Group and GHP notice of termination in accordance with the ASC.

**XII. CONFLICTS**

The provisions of this BA Agreement will override and control any conflicting provision of the ASC. All non-conflicting provisions of the ASC will remain in full force and effect.

**XIII. SURVIVAL OF PRIVACY AND SECURITY OBLIGATIONS**

BCBSM's obligations to preserve the privacy and security PHI as specified in this BA Agreement will survive termination or other conclusion of the ASC and this BA Agreement.

**SIGNATURES**

**BLUE CROSS AND BLUE SHIELD OF MICHIGAN:**

**GROUP, on behalf of itself and as Plan Sponsor of GHP:**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT I

### BCBSM ADMINISTRATIVE SERVICES

#### **A. ACTUARIAL AND STATISTICAL**

Determining claims projections, pricing administrative services, and stop-loss coverage.

#### **B. BUSINESS PLANNING AND DEVELOPMENT**

Business planning and development such as conducting cost-management and planning-related analysis related to managing and operating BCBSM.

#### **C. CLAIMS ADJUDICATION**

Examining claims and determining payment levels; including data entry of claims, maintenance of claims experience files, use of medical consultants, review of utilization and reasonable and customary charges, coordination of benefits, and subrogation.

#### **D. CLAIMS/MEMBERSHIP INQUIRIES**

Handling inquiries—written, phone, or in-person—related to membership, benefits, claims payment, and claims payment denial.

#### **E. DATA AGGREGATION**

Conducting data analyses for Health Care Operations using data BCBSM created or received for, on behalf of, or from GHP and for, on behalf of, or from other Covered Entities for whom BCBSM acts as a Business Associate.

#### **F. ENROLLMENT**

Preparing proposals and registering, coding, and preparing new applications; and contacting Group and Enrollees regarding adding, changing, or renewing coverage.

#### **G. FINANCIAL**

Performing financial functions, such as cash receipts, cash disbursements, payroll and general ledger processing, general accounting, preparation of financial statements, billing, group settlements, and wire transfers.

#### **H. HEALTH CARE OPERATIONS**

Conducting activities on behalf of GHP that relate to the functions of GHP that make it a Health Plan; group servicing, including the provision of data analysis for policyholders, plan sponsors, or other customers.

#### **I. MEMBERSHIP FILE UPDATES**

Maintaining membership status files and processing inter-plan transfers and contract conversions and changes, subject to conversion fees.

**J. MEMBERSHIP VALIDATION**

Verifying membership by wire, listing, electronic query, or other methods before or during adjudication.

**K. PAYMENT ACTIVITIES**

Conducting activities relating to claims payment and management, coverage determination, benefits provision and eligibility, risk adjustment, utilization review, medical necessity determination, and all related functions affecting obligations and amounts payable for health benefits coverage.

**L. PHARMACY BENEFITS MANAGEMENT**

Providing or arranging (if Group elects to include pharmacy benefits in GHP) the provision of prescription drug management services, such as mail-order and network pharmacy dispensing, and disease and drug utilization management; formulary development and administration, development and improvement of methods of payment or coverage policies.

**M. PROVIDER NETWORKS**

Establishing, arranging, and maintaining provider networks, including managed care point-of-service, preferred provider, and traditional networks through contractual arrangements with preferred participating hospitals, physicians, incentive programs, quality improvement programs, and other health care providers and with other Health Plans within designated service areas.

**N. PUBLIC HEALTH**

Approaching medicine as a concern to the health of the community as a whole. Public health includes but is not limited to the following functions: 1) the assessment and monitoring of the health of communities and populations at risk to identify health problems and priorities; 2) the formulation of public policies designed to solve identified local and national health problems and priorities; and 3) the assurance that all populations have access to appropriate and cost-effective care, including health promotion and disease prevention and evaluation of the effectiveness of that care.

**O. RESEARCH**

Systematically investigating, including research development, testing, and evaluation, in order to develop or contribute to generalizable knowledge.

**P. STANDARD REPORTS**

Generating monthly statements and claim listings

**Q. STANDARD TRANSACTIONS AND OTHER ELECTRONIC DATA INTERCHANGE**

Conducting health care administrative and financial transactions for standards established in 45 CFR Part 162 as Standard Transactions, and engaging in such other electronic data interchange as necessary or appropriate to BCBSM's activities.