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CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the “Agreement”) is entered into by and among Blue Cross and Blue Shield of Massachusetts, Inc., with a business address of 101 Huntington Avenue, Suite 1300, Boston, MA 02199 (“BCBSMA”) and _____ (**LEGAL NAME OF ACCOUNT**), with a business address of _____ (“Account”) (BCBSMA and Account referred to individually as a “Party” and collectively as the “Parties”).

WHEREAS, BCBSMA and Account are parties to an Administrative Services Account Agreement (“Account Agreement”) pursuant to which BCBSMA provides certain health care administrative services on behalf of the Account’s self-funded group health plan (the “Plan”);

WHEREAS, among other services, BCBSMA administers pharmacy claims for Account pursuant to the Account Agreement;

WHEREAS the Consolidated Appropriations Act of 2021 (“CAA”) included a provision requiring insurance carriers and self-funded health plans to report to the Centers for Medicare and Medicaid Services (“CMS”) certain data related to prescription drug coverage, including but not limited to pharmacy utilization, pharmacy spend, rebates and fees (the “Required Reporting”);

WHEREAS Account has declined BCBSMA’s offer to perform the Required Reporting on behalf of the Plan;

WHEREAS Account has requested that BCBSMA provide it with pharmacy data needed to fulfill the Required Reporting so that it can file the Required Reporting without further assistance from BCBSMA (the “Pharmacy Data”);

WHEREAS, in connection with such proposed disclosure of Pharmacy Data, the Parties wish to enter into this Agreement regarding the terms and conditions of BCBSMA making such disclosure to the Account;

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1) For the purposes of this Agreement, the Parties agree that reference to Account shall include its employees, agents and affiliates and that the references to BCBSMA shall include its employees, agents and affiliates.
- 2) Account acknowledges and agrees that BCBSMA shall have no responsibility to perform the Required Reporting on behalf of the Account or its Plan.

- 3) The confidential information consists of all Pharmacy Data and any and all other information or data disclosed by BCBSMA to Account for purposes of the Required Reporting, including but not limited to medical or pharmacy information, payment information, and information regarding Blue Cross and Blue Shield policies and procedures. The confidential information may also include information obtained from other Blue Cross and Blue Shield Association licensees (“Participating Licensees”) that participate in the administration of the Plan or from BCBSMA subcontractors. All information released to the Account by Blue Cross and Blue Shield under this Agreement is deemed to be “Confidential Information.”
- 4) Notwithstanding the foregoing, Confidential Information shall not include the following:
 - a) Information that is lawfully now in the public domain or subsequently enters the public domain through no fault of Account;
 - b) Information that is presently known or becomes known to Account from its own independent sources as evidenced by its written records; or
 - c) Information that is lawfully received from any third party not under any obligation to keep such information confidential.
- 5) BCBSMA shall release Confidential Information directly to the Account solely for the purpose of the Required Reporting. The Account agrees to hold the Confidential Information of the BCBSMA in strict confidence and not to use or disclose such Confidential Information except (i) as expressly permitted in this Agreement, (ii) as necessary to fulfill its obligations or exercise its rights in connection with the Required Reporting or (iii) upon the prior written consent of the BCBSMA, given in the BCBSMA’s sole discretion. BCBSMA must approve in writing any disclosure of the Confidential Information to a third party. Any authorization by BCBSMA allowing Account to disclose Confidential Information to any third party shall not constitute a waiver of any of the terms of this Agreement with respect to any other third party. Account shall restrict the possession, knowledge disclosure and use of Confidential Information to the directors, officers, employees, agents, vendors, and advisors of the Account and its affiliates (collectively, “Representatives”) who have a need to know such Confidential Information consistent with the Account’s limited right described in this section and pursuant to this Agreement. Account shall cause its Representatives to comply with the terms and conditions of this Agreement and with all applicable federal and state privacy and security laws, rules and regulation. Account shall be responsible for any breach of this Agreement by its Representatives and any third party to which Account makes disclosure of, or otherwise provides access to, the Confidential Information.
- 6) Except with regard to the Required Reporting, in the event that Account is required by law, regulation, rule, act or order of any governmental authority or agency to disclose any Confidential Information, Account shall give BCBSMA sufficient advance written notice to permit it to seek a protective order or other similar order with respect to such Confidential Information and thereafter Account shall disclose only the Confidential Information required to be disclosed in order to comply.

- 7) All Confidential Information furnished by BCBSMA, or developed as a result of the analysis and validation of Confidential Information, shall be used by Account only for the Required Reporting and shall not be otherwise used or disclosed for any other reason.
- 8) Account understands that the Confidential Information provided under the terms of this Agreement is proprietary or confidential to BCBSMA and/or its providers and/or subcontractors and/or accounts and/or members, and Account agrees to exercise best efforts to preserve and protect its proprietary and confidential nature in the transmission, handling or other use of such information.
- 9) Account shall indemnify, defend and hold harmless BCBSMA, its successors, assigns, officers, directors, employees, agents, representatives and attorneys from and against any and all liability, injury, loss, cost or expense incurred by, imposed upon or asserted against BCBSMA in any way arising from or relating to the Account's receipt of Confidential Information and/or Account's possession or use of such information and/or Account's breach of any term of this Agreement, unless it is determined that the liability was the direct consequence of gross negligence, criminal conduct or fraud on the part of BCBSMA. Account shall further indemnify, defend and hold harmless BCBSMA, its successors, assigns, officers, directors, employees, agents, representatives and attorneys from and against any and all liability, injury, loss, cost or expense incurred by, imposed upon or asserted against BCBSMA in any way arising from or relating to the Account's or the Account's designee's performance of the Required Reporting. Indemnification shall include all legal and related costs including reasonable attorneys' fees, judgments, awards, and settlement or compromise costs incurred by BCBSMA. BCBSMA agrees to give Account prompt written notice of a claim or assertion, if made by a third party, of any such liability, injury, loss, cost or expense and to permit Account, if it so chooses, to defend against such claim or suit (unless Account is also a party to such claim or suit and BCBSMA determines in good faith that joint representation would be inappropriate) and, provided Account can demonstrate its financial ability to assume and diligently pursue such defense, Account may do so with counsel of its choice reasonably acceptable to BCBSMA, and at the expense of Account. BCBSMA will cooperate in the defense of the claim. No compromise or settlement of any such claim or suit may be affected by Account without the prior written consent of BCBSMA.
- 10) This Agreement will be governed by and construed according to the laws of the Commonwealth of Massachusetts, exclusive of its conflicts of laws statute, and any dispute shall be resolved in the proper state or federal court in the Commonwealth of Massachusetts.
- 11) The Parties recognize and acknowledge that the Confidential Information has significant competitive value and is of a confidential nature and that irreparable damage will result to BCBSMA if improperly disclosed by Account. Such harm will not have an adequate remedy at law and will not be compensable solely by monetary damages. Accordingly, the Parties agree that legal proceedings at law or in equity, including injunctive relief, shall be appropriate in the event of a breach of this Agreement by Account.

- 12) As to subject matter contained herein, this Agreement constitutes the entire understanding of the Parties, and shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Any changes, amendments or alterations shall not be effective unless mutually agreed upon in writing by an authorized representative of each Party.
- 13) This Agreement shall not be assigned or transferred in whole or in part by either Party without prior written consent of the other Party. Notwithstanding the foregoing, BCBSMA may assign this Agreement to a successor, affiliate or subsidiary.
- 14) No license to Account under any trademark, patent or copyright, or other right to know-how which are now or may hereafter be owned by BCBSMA, or any affiliates thereof, is either granted or implied by this Agreement.
- 15) A waiver of any breach of this Agreement shall not be construed to be a continuing waiver for a similar breach. Such a waiver must be in writing and signed by an authorized representative of each Party to be effective.
- 16) Nothing contained in this Agreement creates an obligation on the part of BCBSMA to provide Confidential Information to Account, and BCBSMA makes no representation or warranty as to the accuracy or completeness of any Confidential Information.
- 17) Account agrees that all Confidential Information and all copies thereof (including any information, products or materials developed by Account, which incorporated Confidential Information) shall be returned or destroyed within seven (7) days of receipt of written request by BCBSMA, and that it shall not be retained by Account or its representatives in any form or for any reason. Upon written request of BCBSMA, Account shall furnish written confirmation that it has complied with this section.

Blue Cross and Blue Shield of Massachusetts, Inc. and _____ *[LEGAL NAME OF ACCOUNT]*, by their duly authorized representatives, have executed this Agreement in duplicate.

BLUE CROSS AND BLUE SHIELD OF MASSACHUSETTS, INC.

and

BLUE CROSS AND BLUE SHIELD OF MASSACHUSETTS HMO BLUE, INC.

By: _____

David Corkum, Executive Vice President
Chief Commercial Officer

Date: _____

_____ ***[LEGAL NAME OF ACCOUNT]***

By: _____

Print name: _____

Title: _____

Date: _____

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