

Data Sharing Agreement

AGREEMENT TO PROVIDE ADMINISTRATIVE SERVICES FOR THE RETIREE DRUG SUBSIDY FOR BCBSM & BCN GROUPS

1. Purpose

This agreement (“Agreement”) is made as of _____ (the “Effective Date”) by and between Blue Cross and Blue Shield of Michigan and/or Blue Care Network, as applicable, (“BCBSM/BCN”) and _____ (“Sponsor”), for the purpose of delineating the terms and conditions under which BCBSM/BCN will provide services related to Sponsor’s participation in the retiree drug subsidy (“RDS”) program administered by the Centers for Medicare and Medicaid Services (“CMS”).

2. Definitions

A. The terms “allowable retiree costs,” “benefit option,” “gross retiree costs,” “group health plan”, “Part D drug”, “qualified retiree prescription drug plan” and “qualifying covered retiree” shall have the same meaning as in 42 C.F.R. §423.882.

B. The term “data match” means the match performed by CMS to determine which retirees submitted on Sponsor’s Initial or Updated lists of qualifying covered retirees are Part D eligible individuals who are not enrolled in a Part D plan and is used in the same context as that term is employed in 42 C.F.R. §423.884.

C. The term “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

D. The term “Initial list of qualifying covered retirees” means a list of all individuals Sponsor believes (using information reasonably available to Sponsor when it submits an RDS application) are qualifying covered retirees enrolled in each prescription drug plan (including spouses and dependents, if Medicare-eligible) and that is submitted to CMS with an RDS application required by 42 C.F.R. §423.884(c)(2)(v).

E. The term “Part D eligible individual” means an individual enrolled in Sponsor’s group health plan who is entitled to Medicare benefits under Part A or enrolled in Medicare Part B and lives in the service area of a Part D plan as defined under 42 C.F.R. §423.4.

F. The term “RDS” means the retiree drug subsidy described in Section 1860D-22 of the Social Security Act.

G. The term “RDS Requirements” means the requirements of 42 C.F.R. Part 423, Subpart R (42 C.F.R. §423.880 et seq.), and the administrative guidance issued by CMS thereunder.

H. The term “rebates” shall mean any manufacturer or pharmacy discounts, chargebacks, rebates, and similar price concessions attributable to covered Part D drugs provided to Sponsors’ qualifying covered retirees, and received by BCBSM/BCN.

I. The term “Updated lists of qualifying covered retirees” means the updates to the Initial list of qualifying covered retirees required by 42 C.F.R. §423.884(c)(6).

3. Term and termination

A. Term. The term of this Agreement will commence on the Effective Date and will continue for 1 year. The Agreement will be renewed automatically for successive 1 year terms thereafter.

B. Termination of Agreement. The Agreement may be terminated under any of the following circumstances:

1. Termination with notice. Either party may terminate this Agreement in its entirety at any time upon 60 days’ prior written notice to the other party.

2. Termination for material breach. In the event that either party fails to cure a material breach of this Agreement within 30 days of receipt of written notice to cure from the other, (which notice will state the material breach with specificity and attach any then available documentation of the material breach) the non-defaulting party may terminate this Agreement upon 5 days prior written notice. If the breach is cured within such 30 day period, or if the breach is one that cannot reasonably be corrected within 30 days, and the non-defaulting party determines that the defaulting party is making substantial and diligent progress toward correction during such 30 day period, this Agreement will remain in full force and effect.

3. Termination based on failure to reach agreement following regulatory change. Either party may terminate this Agreement effective 30 days after either party provides written notice that it is unable to agree on any changes required under Section 11(C).

C. Transition requirements. If this Agreement is terminated by BCBSM/BCN under Section 3(B)(1) or by either party under Section 3(B)(3), then the parties agree to take the following specific actions to minimize disruption:

1. Transition plan. The parties will develop and implement a detailed plan for transitioning the services and both parties will cooperate fully to arrange for the transfer of services to Sponsor’s designee.

2. Transition period. At BCBSM/BCN's option, services will continue to be provided in accordance with this Agreement for a reasonable transition period after the effective date of termination. Transition services will continue until BCBSM/BCN gives 60 days advance written notice. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement will apply during the transition period.

3. Prompt payment. The parties will take reasonable steps to ensure that any payments due under this Agreement will be made promptly following termination of this

Agreement, including without limitation any amounts due to BCBSM/BCN for services performed during the Transition Period which will be paid at the rates set forth in Appendix A. Termination of this Agreement will not terminate the rights or liabilities of either party arising out of the period prior to the effective date of the termination.

4. Scope of services

A. RDS application.

1. Responsibility for preparing and submitting RDS application. Sponsor will be responsible for preparing and/or submitting the RDS application. BCBSM/BCN agrees to provide Sponsor with such data in its possession that it has identified as being sufficient in its determination to meet CMS's requirements for this purpose as the Sponsor requires in order to complete its application. BCBSM/BCN and Sponsor will work cooperatively to provide the data needed to complete Sponsor's RDS application on a timely basis.

2. Attestation of actuarial equivalence

(a) Responsibility for preparing attestation. Sponsor shall be responsible for obtaining or preparing the attestation of actuarial equivalence for its qualified retiree prescription drug plan.

(b) Data for attestation. BCBSM/BCN shall provide, to the best of its ability, such data in BCBSM/BCN's possession that BCBSM/BCN has identified as being sufficient in its determination to meet CMS's requirements for this purpose as the Sponsor requests for the actuarial analysis.

3. Notices of Creditable Prescription Drug Coverage.

(a) Determination of creditable prescription drug coverage. Sponsor shall determine whether the prescription drug coverage provided under Sponsor's group health plan(s) is creditable prescription drug coverage within the meaning of 42 C.F.R. §423.56.

(b) Preparation of notices of creditable prescription drug coverage. Sponsor shall prepare notices of creditable prescription drug coverage and, if applicable, non-creditable prescription drug coverage. The notices shall comply with the creditable coverage guidance issued by CMS.

(c) Distribution of notices of creditable prescription drug coverage. Sponsor shall distribute notices of creditable or non-creditable prescription drug coverage to Part D eligible individuals enrolled in group health plan(s) designated by Sponsor.

4. List of qualifying covered retirees.

(a) Responsibility and standard for determining qualifying covered retirees. Sponsor shall be solely responsible for determining whether an enrollee in

Sponsor's qualified prescription drug plan is a qualifying covered retiree using information reasonably available to Sponsor in accordance with 42 C.F.R. §423.884(c)(2). BCBSM/BCN shall have no responsibility to determine or confirm whether a particular enrollee is a qualifying covered retiree.

(b) Responsibility for preparing lists of qualifying covered retirees

(i) Initial list of qualifying covered retirees. Sponsor shall be solely responsible for preparing the Initial list of qualifying covered retirees. Sponsor shall submit the Initial list of qualifying covered retirees to CMS electronically.

(ii) Updated lists of qualifying covered retirees. Sponsor shall be solely responsible for preparing the Updated lists of qualifying covered retirees. Sponsor shall submit the Updated lists of qualifying covered retirees to CMS electronically.

(c) CMS data match. Sponsor shall receive data match information from CMS. Sponsor shall be solely responsible for cross-checking the CMS data match information against Sponsor's Initial or Updated list of qualifying covered retirees. Sponsor shall provide BCBSM/BCN with any additions, corrections or deletions to such lists as required by BCBSM.

B. Data required for RDS payments.

1. Responsibility for compiling and submitting data. Please elect ONE of the following Options indicating your selection by initialing the blank line next to the option chosen.

_____ *Option A: Submission of Data to CMS.*

BCBSM/BCN shall submit the RDS payment data indicated below to CMS in the form and manner directed by CMS, either in the aggregate for all qualifying covered retirees or for each individual qualifying covered retiree. BCBSM/BCN shall not submit data on behalf of the Sponsor that originates from any third party that is not subcontracted by BCBSM/BCN or for non-BCBSM/BCN members. Sponsor will provide BCBSM/BCN with Sponsor's appropriate list of qualifying covered retirees determined consistent with RDS Requirements. BCBSM/BCN shall compile and submit data in the form and manner specified by CMS based upon the monthly CMS approved retiree listings provided by Sponsor. For interim payments, an estimate of the expected rebates known to BCBSM/BCN will be provided to CMS, while for annual reconciliation, the actual rebate and other price concession data for the plan year of Sponsor's qualified retiree prescription drug plan known to BCBSM/BCN will be provided.

For interim payments, at BCBSM/BCN's discretion, a reasonable calculation of the portion of the Plan premium attributable to covered drug costs and an estimate of the expected rebates known to BCBSM/BCN will be provided to CMS. Even when the interim payments are handled in this manner, BCBSM/BCN shall still submit actual RDS payment data to CMS for the annual reconciliation, in the form and manner directed by CMS for each individual qualifying covered retiree. Also, for the annual reconciliation,

the actual rebate and other price concession data for the plan year of Sponsor's qualified retiree prescription drug plan known to BCBSM/BCN will be provided.

For interim payments and the annual reconciliation, data will be provided for each month of the plan year.

_____ *Option B: Submission of Data Directly to Sponsor.*

Note that this Option for Submission of Data Directly to Sponsor is ONLY available to Sponsor if Sponsor has executed the applicable BCBSM and/or BCN Plan Sponsor Certification form which certifies to BCBSM/BCN that: (i) Sponsor, Sponsor's designee and Sponsor's qualified retiree prescription drug plan comply with all HIPAA requirements for the use and disclosure of individuals' protected health information; and (ii) the plan documentation for Sponsor's qualified retiree prescription drug plan permits such disclosure. BCBSM/BCN and Sponsor agree that this Agreement satisfies the requirements of 42 C.F.R. §423.884(b) regarding disclosure of information to CMS.

Sponsor, or a third party designee contracted by Sponsor, shall be responsible for submitting RDS payment data to CMS. Sponsor will provide BCBSM/BCN with Sponsor's appropriate list of qualifying covered retirees determined consistent with RDS Requirements. BCBSM/BCN shall compile and submit to Sponsor data in the form and manner specified by CMS based upon the monthly CMS approved retiree listings provided by Sponsor.

For interim payments, an estimate of the expected rebates known to BCBSM/BCN will be provided to Sponsor, while for annual reconciliation, the actual rebate and other price concession data for the plan year of Sponsor's qualified retiree prescription drug plan known to BCBSM/BCN will be provided. For interim payments and the annual reconciliation, data will be provided for each month of the plan year.

2. Receipt of RDS payments. Sponsor shall receive all RDS governmental payments directly, and BCBSM/BCN shall have no responsibility for receiving or handling such payments.

C. Corrections and modifications.

Should BCBSM/BCN learn: (i) that any data provided by either party to this Agreement or by any third party is or was inaccurate; (ii) that Sponsor is or has received RDS overpayments; or 3) that Sponsor's RDS application, Part D drug cost data, or any submissions to CMS fail to comply with RDS Requirements; BCBSM/BCN shall notify Sponsor, and Sponsor shall have the sole responsibility for making necessary corrections and communications to CMS.

If, in its sole discretion, BCBSM/BCN believes that the data is or may be inaccurate or incomplete, or would otherwise not be in compliance with RDS Requirements, BCBSM/BCN shall have no obligation to provide or submit data in support of Sponsor's RDS application or a submission to obtain payment under the RDS.

5. Compensation

Sponsor agrees to pay BCBSM/BCN administrative fees as described in Appendix A for those services performed by BCBSM/BCN under this Agreement. Appendix A shall be updated periodically with at least 60 days prior written notice to Sponsor.

6. Data verification

It is Sponsor's responsibility to review the data submitted or provided by BCBSM/BCN in connection with the RDS data. Sponsor may, at its own expense, retain an independent third party to review the RDS data. BCBSM/BCN agrees to cooperate with and make records available to Sponsor or such independent third party retained to review RDS data as permitted by law. Sponsor shall retain responsibility for making any necessary corrections or disclosures to CMS.

Sponsor shall not use any BCBSM/BCN RDS data: (i) until it has reviewed and approved the accuracy of the data obtained from BCBSM/BCN; (ii) if it is advised by BCBSM/BCN that the data is inaccurate or contains inaccuracies until such data has been corrected; or (iii) if it is advised by BCBSM/BCN that the data submitted is not being released for RDS payment purposes.

7. Acknowledgement of purpose of data

Pursuant to 42 C.F.R §423.884(c)(3)(iii), BCBSM/BCN acknowledges that information it provides to Sponsor pursuant to this Agreement will be used by Sponsor for the purpose of obtaining federal funds.

8. Appeals

In the event that CMS makes an adverse determination with respect to Sponsor's RDS eligibility, subsidy application, attestation of actuarial equivalence, RDS payment, or other similar determination, BCBSM/BCN shall not be responsible for any procedural or substantive activities associated with Sponsor's appeal rights described in 42 C.F.R §423.890. BCBSM/BCN will provide Sponsor with reasonable access to information that Sponsor may need to exercise its appeal rights, but Sponsor shall be solely responsible for submitting any request for reconsideration, request for informal hearing, request for review by the CMS Administrator, or request for reopening in accordance with such appeal rights.

9. Indemnification

Sponsor agrees to indemnify, defend (at BCBSM/BCN's request) and hold harmless BCBSM/BCN and its agents, officers, employees, directors and subcontractors, against any loss, cost, suit, claim, damage, liability or expense, including reasonable attorneys' fees, arising out of any audit, investigation, subpoena, investigative demand, action, proceeding, liability, judgment, settlement, or inquiry by the Department of Health and Human Services or any other government agency or entity or any other person or entity relating to Sponsor's participation in the RDS.

10. Limitation of liability

BCBSM/BCN's liability to Sponsor under this Agreement shall not exceed the amount of compensation paid by Sponsor to BCBSM/BCN under Section 5 of this Agreement. Under no circumstances shall BCBSM/BCN be liable for indirect, consequential, special or punitive damages.

11. Standard of care, cooperation and regulatory changes

A. Standard of care. The parties recognize that because the RDS program is new, the RDS Requirements and procedures are not fully defined and developed, and that subsequent administrative guidance or requirements from CMS may materially alter the scope of services or manner in which the services contemplated by this Agreement are to be provided. In light of these factors, BCBSM/BCN will make a good faith effort to compile and provide complete and accurate information in accordance with its best understanding and interpretation of the RDS Requirements.

In satisfying its obligations under this Agreement, BCBSM/BCN may utilize and/or obtain and/or provide data that is developed and maintained by third parties with which it contracts, including, but not limited to the following: Medco, The Regence Group and MedImpact. By obtaining this data from a third party source, BCBSM/BCN does not warrant and/or assume responsibility for any errors pertaining to such data.

In addition, BCBSM/BCN may obtain or use data or information provided by Sponsor or third parties not contracted by Sponsor. BCBSM/BCN does not warrant and/or assume responsibility for the accuracy of any data provided by Sponsor or any third party not contracted by BCBSM/BCN.

The parties recognize that BCBSM/BCN's existing data sources, and those of its subcontractors, were not designed for purposes of the RDS subsidy. Thus, BCBSM/BCN can not and does not guarantee the accuracy of such information and data.

B. Cooperation. The parties recognize that they must mutually cooperate to perform the services required under this Agreement, and that BCBSM/BCN is not responsible if it is unable to complete any tasks because Sponsor, or any third party contracted by Sponsor, fails to meet its obligations, including providing required data.

C. Regulatory changes. If either party believes that subsequent guidance or requirements from CMS has materially altered the scope of services or manner in which the services contemplated by this Agreement are to be provided, or that any provision of this Agreement is inconsistent with RDS Requirements, that party shall promptly notify the other party in writing, and the parties shall negotiate to modify this Agreement.

12. Retention of records

BCBSM/BCN and Sponsor shall maintain all records required by 42 C.F.R §423.888(d)(3) for a period not less than 10 years after the expiration of the qualified retiree prescription drug plan year in which Part D drug costs were incurred, or as otherwise required by law.

13. HIPAA compliance

The parties acknowledge and agree that this Agreement involves the use and disclosure of HIPAA protected health information. The parties therefore agree that all uses and disclosures of HIPAA protected health information pursuant to this Agreement will be undertaken in compliance with all applicable HIPAA requirements.

14. Miscellaneous provisions

A. Modifications. All modifications to this Agreement must be agreed to in writing by the parties.

B. Assignment. This Agreement may not be assigned by either party to an unrelated third party without the prior written consent of the other party.

C. Subcontracting. The parties acknowledge and agree that BCBSM/BCN may use subcontractors to perform some or all of the services described in Section 4.

D. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or written, between the parties with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement will be valid or binding.

E. Governing Law. The laws of the State of Michigan will govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereunder, without giving effect to principles of conflicts of law.

F. No Third Party Beneficiary. Nothing in this Agreement is intended to create, or will be deemed or construed to create, any rights or remedies in any third party including, without limitation, Sponsor's active and retired employees (and their dependents).

G. Notice. Any notice required or desired to be given relating to this Agreement will be in writing and will be either hand delivered, or sent by U.S. mail, postage prepaid and return-receipt requested (receipt will be deemed to be 5 days after postmark by the U.S. Postal Service), or overnight courier addressed as follows:

BCBSM/BCN:

Sponsor:

Notices given hereunder will be deemed given upon documented receipt. The addresses to which notices are to be sent may be changed by written notice given in accordance with this section.

H. Severability. If any provision of this Agreement is rendered invalid or unenforceable by any local, State, or federal law, rule or regulation, or declared null and void by any court of competent jurisdiction, the remainder of this Agreement will remain in full force and effect.

I. Status as Independent Entities. Nothing in this Agreement is intended to create, or will be deemed or construed to create, any relationship between BCBSM/BCN and Sponsor other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither BCBSM/BCN nor Sponsor, nor any of their respective agents, employees, subcontractors or representatives will be construed to be the agent, employee, subcontractor or representative of the other.

J. Appendices. Each Appendix to this Agreement is made a part of this Agreement as though set forth fully herein. Unless otherwise specifically set forth in an Appendix, any provision of this Agreement that is in conflict with any provision set forth in an Appendix will take precedence and supersede the conflicting provision of the Appendix with respect to the subject matter covered by that provision of this Agreement.

K. Calculation of Time. Unless otherwise specifically stated in this Agreement, the parties agree that for purposes of calculating time under this Agreement, any time period of less than 10 days will be deemed to refer to business days and any time period of 10 days or more will be deemed to refer to calendar days.

L. Force Majeure. Neither BCBSM/BCN nor Sponsor will be liable for its failure to perform any obligation under this Agreement because of contingencies beyond its reasonable control, including but not limited to strikes (other than strikes within such party's own labor force), riots, war, fire, acts of God, disruption or failure of electronic or mechanical equipment or communication lines, telephone or other interconnections, unauthorized access, theft, or acts in compliance with any law or government regulation. If a party's failure to perform continues for more than 20 business days, the other party will have the right to terminate this Agreement immediately.

M. Headings. The headings in this Agreement have been included solely for reference and are to have no force or effect in interpreting its provisions.

N. Counterparts. This Agreement may be executed in counterparts, any of which need not contain the signature of more than one party, but all of which taken together, will be one and the same agreement.

O. Dispute Resolution. BCBSM/BCN and Sponsor agree to resolve any controversy or dispute that may arise out of or relate to this Agreement, or the breach thereof, whether involving a claim in tort, contract or otherwise, pursuant to the dispute resolution provisions, if such exist, of the group health agreement between the parties. Otherwise, any suit arising out of this Agreement must be filed within 2 years after the cause of action arose and, unless pre-empted by federal law, shall be brought in a Michigan court of competent jurisdiction. Under no circumstances may a BCN group file suit before exhausting the internal BCN-administered steps of the applicable grievance procedure. However, exercising any such rights shall not extend the 2 year period in which all suits must be filed.

P. Survival. The provisions of Sections Term and Termination, Indemnification, Limitation of Liability, Retention of Records, HIPAA compliance and Miscellaneous provisions will survive the expiration or termination of the Agreement for any reason.

IN WITNESS WHEREOF, the parties have executed this Agreement.

[BCBSM/BCN]

[SPONSOR's Authorized Representative]

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

BCBSM/BCN Customer Identifier: _____]

APPENDIX A:

BCBSM/BCN Retiree Drug Subsidy Administrative Fees

1. No Additional Charge:

There shall be no additional charge for BCBSM/BCN RDS data support furnished to groups. The extent of data support and the functions performed are established by BCBSM in accordance with the processes and procedures established by the company. The functions supported are:

- a) Centers for Medicare & Medicaid Services (CMS)/RDS cost reports
- b) Actuarial Attestation Support
- c) Centers for Medicare & Medicaid Services (CMS)/RDS annual reconciliation report/file
- d) Data storage
- e) Data support related to Centers for Medicare & Medicaid Services (CMS)/RDS audits