

AGREEMENT TO PROVIDE ADMINISTRATIVE SERVICES FOR THE EARLY RETIREE REINSURANCE PROGRAM

1. Purpose

This agreement (the "Agreement") is made as of June 1, 2010 (the "Effective Date") by and between Blue Cross and Blue Shield of Florida, Inc. ("BCBSFL") and Nassau County BOCC ("Sponsor"), for the purpose of delineating the terms and conditions under which BCBSFL will provide services related to Sponsor's participation in the early retiree reinsurance program (the "Program") administered by the Department of Health and Human Services.

2. Definitions

A. The terms "Certified," "Claim," "Employment-Based Plan," and "Health Benefits" shall have the same meanings as in 45 C.F.R. § 149.2.

B. The term "Chronic and High-Cost Condition" means any condition for which \$15,000 or more in Health Benefits claims are likely to be incurred during a plan year by one Employment-Based Plan participant.

C. The term "HHS" means the United States Department of Health and Human Services, and references to HHS include the Secretary of HHS or the Secretary's designee.

D. The term "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended.

E. The term "Program" means the Early Retiree Reinsurance Program established in Section 1102 of the Patient Protection and Affordable Care Act and implementing HHS interim final rule at 45 C.F.R. Part 149.

F. The term "Program-Eligible Individual" means an individual who is age 55 or older, enrolled for Health Benefits in a Certified Employment-Based Plan, not eligible for coverage under Medicare (Title XVIII of the Social Security Act), and not an active employee of Sponsor, as well as such individual's enrolled spouse, surviving spouse, and dependents (if applicable).

G. The term "Program Requirements" means the requirements of 45 C.F.R. Part 149, and any administrative guidance there issued.

H. The term "Negotiated Price Concession" means any direct or indirect remuneration (including discounts, direct or indirect subsidies, charge backs or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits), received by BCBSFL or Sponsor, that would serve to decrease the costs incurred under the Employment-Based Plan.

3. Term and termination

A. Term. The term of this Agreement will commence on the Effective Date and will continue until one (1) year from the Effective Date. The Agreement will be renewed automatically for successive one (1) year terms, unless terminated in accordance herewith.

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 sixty (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 thirty (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 thirty (30) 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 thirty (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 thirty (30) days after either party provides written notice that it is unable to agree on any amendment required under Section 11(C).

C. Transition requirements. If this Agreement is terminated by BCBSFL 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. BCBSFL will continue to provide services in accordance with this Agreement for a reasonable transition period. Unless the parties mutually agree otherwise, the transition period will not exceed ninety (90) days from the date of notice of termination. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement will apply during the transition period. 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. Program application.

1. Responsibility for preparing and submitting Program application. Sponsor will be responsible for preparing and submitting the Program application. BCBSFL agrees to provide to Sponsor any data in its possession that Sponsor requires in order to complete its application. BCBSFL and Sponsor will work cooperatively to provide the data needed to complete Sponsor's Program application on a timely basis.

2. Projection of claims.

(a) Responsibility for preparing projection. BCBSFL shall prepare and submit to Sponsor a projection of amounts to be received by Sponsor under the Program for the first two plan year cycles, as described in 45 C.F.R. § 149.40. BCBSFL will provide the projection to Sponsor within 60 days of receiving the data for the projection (as described below) from Sponsor.

(b) Data for projection. Sponsor shall provide all information BCBSFL requests for the projection including, without limitation, information regarding retiree contributions, demographic data, and benefit options related to Sponsor's coverage of Program-Eligible Individuals under the Employment-Based Plan. Sponsor shall also provide BCBSFL with a list of all Program-Eligible Individuals or, at the option of BCBSFL, another suitable method of identifying all Program-Eligible Individuals.

3. Fraud, waste, and abuse policies. BCBSFL has implemented, or will implement, policies and procedures to detect and reduce fraud, waste, and abuse in connection with the Employment-Based Plan, in accordance with 45 C.F.R. § 149.40.

Upon request by HHS for Sponsor or BCBSFL to substantiate the existence of such policies and procedures, pursuant to 45 C.F.R. § 149.40(f)(4)(iii), BCBSFL shall provide such substantiation information directly to HHS or, if required by HHS, to Sponsor. BCBSFL will include a copy of its policies and procedures as part of such substantiation information to the extent required by HHS. In the event that BCBSFL provides information about, or a copy of, such policies and procedures to Sponsor, Sponsor agrees to hold the information in confidence, in accordance with Section 4(A)(8).

4. Programs that generate savings for Chronic and High-Cost Conditions. BCBSFL shall provide Sponsor with a summary explanation describing the procedures or programs it has in place that have generated or have the potential to generate cost savings with respect to Employment-Based Plan participants with Chronic and High-Cost Conditions. Such summary shall be provided not later than 60 days after the Effective Date. Sponsor agrees to hold the information in confidence, in accordance with Section 4(A)(8).

5. Confidentiality requirements. Sponsor agrees that any documents, materials, or other information provided to Sponsor by BCBSFL pursuant to Sections 4.A.3 or 4.A.4 of this Agreement, relating to BCBSFL's fraud, waste and abuse policies, programs that generate savings for Chronic and High-Cost Conditions, or both (collectively, the "Confidential Information"), are the sole property of BCBSFL and are private and confidential in nature. Sponsor further agrees that BCBSFL would suffer competitive or other harm in the event the Confidential Information, or any portion thereof, was disclosed. Sponsor further agrees that it

will hold the Confidential Information in the strictest confidence and will not use or disclose it, or any part thereof, unless: (a) the use or disclosure is necessary for Sponsor to comply with the Program Requirements; (b) the disclosure is made with the prior written consent of BCBSFL; (c) the disclosure is requested by and made to a local, state, or federal law enforcement official, provided Sponsor gives BCBSFL written notice at least 30 days before making such disclosure; (d) the disclosure is made in response to a lawful subpoena or other compulsory process, provided that prior to making the disclosure, Sponsor promptly gives notice thereof to BCBSFL and furnishes BCBSFL with a copy of the subpoena or other process so as to afford BCBSFL a reasonable opportunity to seek a protective order; or (e) the Confidential Information to be disclosed is already in the public domain through no act or failure on the part of Sponsor.

In the event this Agreement is terminated, Sponsor agrees that it will continue to treat the Confidential Information as private and confidential, will return all such Confidential Information to BCBSFL, and will not use or disclose such Confidential Information, or any part thereof, except as permitted in this Section. Sponsor agrees that BCBSFL shall, in addition to any other available legal relief, be entitled to an injunction by any competent court to enjoin and restrain the unauthorized use or disclosure of the Confidential Information, or any part thereof.

B. Claims submission.

1. Responsibility for compiling and submitting data. BCBSFL shall compile and submit Claims data to HHS in accordance with Program Requirements, but in no event more frequently than permitted by HHS. At least 30 days in advance of the date that BCBSFL will submit the Claims data to HHS, Sponsor shall provide to BCBSFL:

(a) Sponsor's current list of Program-Eligible Individuals or, at the election of BCBSFL, another suitable method of identifying such Program-Eligible Individuals;

(b) if Sponsor elects for BCBSFL to include in a Claims submission to HHS any cost-sharing amounts paid by Program-Eligible Individuals for Health Benefits under the Employment-Based Plan, actual payment receipts indicating that such cost-sharing amounts have been paid by the Program-Eligible Individual. In the absence of such receipts, BCBSFL shall only include in a Claims submission amounts paid for Health Benefits by BCBSFL, and any cost-sharing amounts paid by a Program-Eligible Individual will not be taken into account for purposes of calculating payments under the Program.

Sponsor shall be solely responsible for identifying, obtaining, and providing to BCBSFL any Claims data that originates with Sponsor or with any third party that is not subcontracted by BCBSFL.

If BCBSFL receives any post-point-of-sale price concessions with respect to Health Benefits for which Claims data has previously been submitted to HHS, BCBSFL shall disclose the amount of such post-point-of-sale price concessions to HHS in accordance with 45 C.F.R. § 149.110(b).

If Sponsor receives any post-point-of-sale price concessions with respect to Health Benefits for which Claims data has previously been provided to BCBSFL, Sponsor shall, in a time frame consistent with 45 C.F.R. § 149.110(b), notify BCBSFL of such post-point-of-sale price

concession. BCBSFL shall disclose the amount of such post-point-of-sale price concessions to HHS in accordance with 45 C.F.R. § 149.110(b).

2. Duty to monitor. BCBSFL shall have no obligation to Sponsor to monitor whether Claims are re-adjudicated after being submitted to HHS.

3. Receipt of Program payments. Sponsor shall receive all Program payments from the United States directly, and BCBSFL shall have no responsibility for receiving or handling such payments.

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

D. Corrections and modifications. Should BCBSFL learn that any data provided by either party to this Agreement or by any third party is or was inaccurate, that Sponsor is or has received Program overpayments, or that Sponsor's Program application, reimbursement data, or any submissions to HHS fail to comply with Program Requirements, then except as specifically provided in Section 4(B)(2), BCBSFL shall notify Sponsor and Sponsor shall have the sole responsibility for making necessary corrections and communications to HHS.

5. Compensation

Sponsor will not owe BCBSFL any additional administrative fees for the services performed by BCBSFL under this Agreement.

6. Acknowledgement of purpose of data

Pursuant to 45 C.F.R § 149.40(f)(4)(ii), BCBSFL acknowledges that information it provides to Sponsor pursuant to this Agreement may be used by Sponsor for the purpose of obtaining federal funds.

7. Appeals

In the event that HHS makes an adverse reimbursement determination, BCBSFL shall not be responsible for any procedural or substantive activities associated with Sponsor's appeal rights described in 45 C.F.R Part 149, Subpart F. BCBSFL will provide Sponsor, at Sponsor's request, reasonable access to information that Sponsor may need to exercise its appeal rights, but Sponsor shall be solely responsible for submitting any request for appeal under 45 C.F.R. § 149.500(e).

8. Indemnification

Sponsor agrees to indemnify, defend (at BCBSFL's request), and hold harmless BCBSFL and its agents, officers, employees, directors, and subcontractors, against any loss, cost, suit, claim,

damage, liability or expense, including reasonable attorneys' fees, arising (a) out of any audit, investigation, subpoena, investigative demand, action, proceeding, liability, judgment, settlement, or inquiry by HHS or any other government agency or entity or any other person or entity relating to Sponsor's participation in the Program; or (b) from any inaccurate or incomplete data provided to BCBSFL, or any non-compliance with the Program's requirements by Sponsor or any third party contracted by Sponsor in connection with the Program.

9. Limitation of liability

BCBSFL shall not be liable to Sponsor if HHS terminates or denies Sponsor's Program application, and BCBSFL shall not be liable to Sponsor for any amounts that are not paid or reimbursed by HHS under the Program or that HHS recoups or withholds for any reason. Any information provided by BCBS should not be considered advice, legal or otherwise, regarding Sponsor's compliance with any or all Program Requirements, and BCBS shall not be liable, in whole or in part, for Sponsor's reliance on such information. Under no circumstances shall BCBSFL be liable for indirect, consequential, special or punitive damages.

10. No guarantee of Program participation or reimbursement

BCBSFL does not represent or guarantee that Sponsor is eligible to participate in the Program, that Sponsor's application for the Program will be accepted and Certified, that Sponsor will receive any funds in connection with the Program, or, if Sponsor does receive funds in connection with the Program, the amount of such funds.

11. Standard of care, cooperation, and regulatory changes

A. Standard of care. The parties recognize that because the Program is new, the Program Requirements and procedures are not fully defined and developed, and subsequent administrative guidance or requirements from HHS 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, BCBSFL will make a good faith effort to compile and provide complete and accurate information in accordance its best understanding and interpretation of the Program Requirements. BCBSFL does not undertake to act, and shall not act, as a fiduciary under the Employee Retirement Income Security Act ("ERISA") or otherwise with respect to its actions under the Program. Any fiduciary obligations under ERISA or otherwise with respect to the Program shall be the duties of Sponsor.

In satisfying its obligations under this Agreement, BCBSFL may utilize and/or obtain and/or provide data that is developed and maintained by third parties with which it contracts. By obtaining this data from a third-party source, BCBSFL does not warrant or assume responsibility for the accuracy of such data.

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

The parties recognize that BCBSFL's existing data sources, and those of its subcontractors, were not designed for purposes of the Program. Thus, BCBSFL 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 BCBSFL shall not be 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 HHS have 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 Program Requirements, that party shall promptly notify the other party in writing, and the parties shall negotiate to amend this Agreement.

12. Retention of records

BCBSFL and Sponsor shall maintain all records required by 45 C.F.R § 149.350(b) for a period not less than six years after the expiration of the Employment-Based Plan's plan year in which Program-reimbursable costs were incurred (without regard to the date the Agreement terminates), 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. BCBSFL shall disclose HIPAA protected health information to a third party, other than HHS or other federal government agency in connection with the Program, only upon Sponsor's written certification that such disclosure is permitted under HIPAA. BCBSFL and Sponsor agree that this Agreement satisfies the requirements of 45 C.F.R. § 149.35(b)(2).

14. Miscellaneous provisions

A. Amendments. All amendments 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. Sponsor, not BCBSFL, is responsible for giving advance notice of any change in ownership to HHS pursuant to 45 CFR § 149.700.

C. Subcontracting. The parties acknowledge and agree that BCBSFL 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 Florida 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 five days after postmark by the U.S. Postal Service), or overnight courier addressed as follows:

BCBSFL: Attention: Scott Bryant
 Director, Group Product Management
 Blue Cross and Blue Shield of Florida, Inc.
 4800 Deerwood Campus Parkway, DCC 300-6
 Jacksonville, Florida 32246

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 BCBSFL and Sponsor other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither BCBSFL 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. Any 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 ten days will be deemed to refer to business days and any time period of ten days or more will be deemed to refer to calendar days.

L. Force majeure. Neither BCBSFL 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 twenty 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. BCBSFL 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 of the applicable administrative services, group health or other agreement between the parties.

P. Survival. The provisions of Sections 3, 8, 9, 12, 13, and 14 will survive the expiration or termination of the Agreement for any reason.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Blue Cross and Blue Shield of Florida, Inc.

(BCBSFL)

BY: 

TITLE: Director, Product Management

DATE: 8/3/10

(SPONSOR)

BY: 

TITLE: Co. Mgt.

DATE: 8/12/10