Amendment to Business Associate Agreements and All Other Contracts Containing Embedded Business Associate Provisions as stated in a Health Insurance Portability and Accountability Act Section between Independent Contractor and Blue Cross and Blue Shield of Michigan ("Amendment")

RECITALS

WHEREAS, Blue Cross and Blue Shield of Michigan ("BCBSM") and **TYPE VENDOR NAME HERE**, ("Independent Contractor") are currently parties to one or more active and legally binding stand-alone business associate agreements and/or other contracts containing embedded business associate provisions as stated in a Health Insurance Portability and Accountability Act Section (in their cumulative total, "the Agreements");

WHEREAS, the Office for Civil Rights, Department of Health and Human Services, recently published final regulations fully implementing the Health Information Technology for Economic and Clinical Health (HITECH) Act ("HITECH Act") (42 U.S.C. §17934 et. seq.), and also making various technical, conforming and other amendments to the HIPAA rules, being entitled "Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Non-Discrimination Act; Other Modifications to the HIPAA Rules" (the "Final Rule") (published at 78 F.R. 5566 (January 25, 2013));

WHEREAS, this Amendment incorporates the various amendments, technical and conforming changes to HIPAA implemented by the Final Rule; and

WHEREAS, both parties to the Agreements desire to continue conducting business with each other, to remain fully compliant with the law and to amend the Agreements as otherwise stated below;

Therefore, in consideration of their mutual promises and other valuable consideration, the sufficiency of which is acknowledged by the parties, the parties hereby agree to amend the Agreements, effective upon execution of this amendment, as follows:

1. For that subset of the Agreements consisting of stand-alone business associate agreements, if any, such business associate agreements and any previous amendments thereto shall be amended and completely restated by deleting all previous language contained therein and replacing it with all of the language immediately following the three consecutive paragraphs of which this is the first.

2. For that subset of the Agreements consisting of contracts containing embedded business associate provisions as stated in a Health Insurance Portability and Accountability Act Section and any previous amendments thereto, if any, such contracts shall be amended by deleting all of the embedded business associate provisions and any previous amendments therein and replacing them with all of the language immediately following the three consecutive paragraphs of which this is the second. However, for the subset of Agreements described by this paragraph, the language immediately following the three consecutive paragraphs of which this is the second shall be modified as follows: (a) each instance of the term, "Business Associate Agreement" shall be deleted and replaced by the term, "section of this Agreement" and (b) section 16 entitled, "Conflicts" shall be deleted in its entirety.

3. All other terms and conditions of the Agreements not referenced in this Amendment shall remain unchanged.

HIPAA Business Associate Agreement

Section 1: Applicable Law and Policy.

1.1 Independent Contractor acknowledges that if it performs services or assists BCBSM in the performance of a function or service that involves the use or disclosure of Protected Health Information ("PHI"), then the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and stricter state and federal laws, as applicable, require that the PHI be protected from inappropriate uses or disclosures.

1.2 Independent Contractor acknowledges that under HIPAA, its use and disclosure of PHI must be in compliance with the terms of this Business Associate Agreement and 45 C.F.R. §164.504(e).

1.3 Capitalized terms not otherwise defined shall have the meaning as set forth in HIPAA.

Section 2: Use and Disclosure of PHI.

2.1 PHI, in electronic form or otherwise, may be used or disclosed only when required by law or as necessary to enable Independent Contractor to satisfy the obligations and to perform the functions, activities, services and operations to which Independent Contractor is contractually obligated by BCBSM. Independent Contractor shall not and shall ensure that its directors, officers, employees, contractors and agents, do not, use PHI received from BCBSM in any manner that would constitute a violation of applicable law.

2.2 Independent Contractor shall not and shall ensure that its directors, officers, employees, contractors, and agents do not disclose PHI received from BCBSM in any manner that would constitute a violation of applicable law if disclosed by BCBSM. Independent Contractor may disclose PHI (a) as permitted and pursuant to the requirements of this Business Associate Agreement or (b) as required by law.

2.3 To the extent Independent Contractor discloses PHI to a third party, Independent Contractor must obtain, prior to making any such disclosure:

2.3.1 Reasonable assurances evidenced by written contract from such third party that PHI will be held confidential and safeguarded consistent with the terms of this Business Associate Agreement, and only used or further disclosed for the purpose for which Independent Contractor disclosed it to the third party or as required by law; and

2.3.2 An agreement from such third party to immediately notify Independent Contractor (who will in turn notify BCBSM in accordance with Section 4 of this Business Associate Agreement) of any:

2.3.2.1 Unauthorized access, use or disclosure of PHI;

2.3.2.2 Security Incident as defined in 45 C.F.R. §164.304 and further explained in Section 4.2 of this Business Associate Agreement; and

2.3.2.3 Breaches of the confidentiality of the PHI, as Breach is defined by 45 C.F.R §164.402, to the extent such third party has discovered such unauthorized access, use or disclosure of PHI, Security Incident or Breach.

2.4 Independent Contractor shall utilize a Limited Data Set, if practicable, for all uses, disclosures or requests of PHI. Otherwise, any uses or disclosures of PHI shall be limited to the "Minimum Necessary," as defined in 45 C.F.R. §514(d) and any further guidance that may be issued by the Department of Health and Human Services. Independent Contractor acknowledges its obligation under 45 C.F.R. §164.502(b) to determine what constitutes the minimum necessary to accomplish the intended purposes of any disclosure of PHI.

Section 3: Safeguards Against Misuse of Information.

3.1 Independent Contractor agrees that it will implement all appropriate safeguards, including at least the minimum provisions set forth in BCBSM's Vendor Information Security Program Requirements Document, the terms of which are incorporated into this Business Associate Agreement by reference, to prevent the access, use or disclosure of PHI other than pursuant to the terms and conditions of this Business Associate Agreement. Such safeguards include administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of BCBSM as required by 45 CFR Part 160 and Subparts A and C of Part 164 ("Security Rule"). Independent Contractor shall implement all Security Rule provisions and requirements as more fully described in the Final Rule and the associated implementing regulations, as may be amended from time to time.

3.2 Independent Contractor will require any of its subcontractors and agents, to which Independent Contractor is permitted by this Business Associate Agreement or in writing by BCBSM to disclose PHI, to provide satisfactory assurances, as evidenced by written contract in accordance with 45 C.F.R. §164.504(e)(1)(i), that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to PHI that are applicable to Independent Contractor under this Business Associate Agreement, including but not limited to the provisions set forth in Section 2.3.

Section 4: Reporting of Disclosures of PHI, Breaches & Security Incidents.

4.1 Independent Contractor shall, within five (5) business days of becoming aware of: (a) a Security Incident (as defined in 45 C.F.R. §164.304 and further explained below), (b) the Breach of unsecured PHI (as defined in 45 C.F.R §164.402), or (c) an access, use or disclosure of PHI in violation of this Business Associate Agreement by Independent Contractor, its officers, directors, employees, contractors, or agents, or by a third party to which Independent Contractor disclosed PHI pursuant to Section 2 of this Business Associate Agreement, report any such disclosure to BCBSM by sending an email to privacy@bcbsm.com.

4.2 The HIPAA Security Rule defines a "Security Incident" as an attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, involving PHI that is created, received, maintained or transmitted by or on behalf of BCBSM in electronic form (45 C.F.R. §164.304). Independent Contractor shall also notify BCBSM of attempts to bypass Independent Contractor's electronic security mechanisms.

4.2.1 Both parties recognize, however, that the significant number of meaningless attempts to, without authorization, access, use, disclose, modify or destroy PHI in Independent Contractor's information systems could make a real-time reporting requirement formidable for both parties. Both parties believe that the Security Rule notice requirements are met by instituting a process by which:

4.2.1.1 Independent Contractor discloses to BCBSM the rate and types of attempted incidents that are occurring at the time this Business Associate Agreement is signed;

4.2.1.2 Independent Contractor monitors the rate and nature of such attempts over time; and

4.2.1.3 Independent Contractor reports to BCBSM any substantive changes to the rate or nature of such attempts that could adversely affect BCBSM directly or indirectly.

4.2.2 The following are illustrative of unsuccessful security incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:

4.2.2.1 Pings on a firewall;

4.2.2.2 Port scans;

4.2.2.3 Attempts to log on to a system or enter a database with an invalid password or username; and

4.2.2.4 Malware (e.g., worms, viruses).

4.2.3 If Independent Contractor observes through ongoing monitoring successful Security Incidents that extend beyond these routine, unsuccessful attempts in such a way that they could impact the Confidentiality, Integrity or Availability of PHI, Independent Contractor agrees to promptly notify BCBSM.

4.3 If Independent Contractor is required to report (a) a Security Incident, (b) a data Breach, or (c) any other non-permitted access, use or disclosure of PHI, such report must be sent to the BCBSM HIPAA Privacy and Security Official and include at a minimum:

4.3.1 The date and time the event occurred and the date it was discovered;

4.3.2 A complete description of the PHI accessed, used or disclosed;

4.3.3 A complete description of the event, its cause, and the effect it had on our systems and data. This should include the names of the affected systems, servers, programs, etc.;

4.3.4 Contact information for communications regarding the event;

4.3.5 A description of the initial mitigation steps taken to contain the event and an assessment of the level of compromise to our data incurred by Independent Contractor;

4.3.6 A description of the plan to correct the compromises to our data and to prevent reoccurrences of the event in the future; and

4.3.7 Such other information, including a written report, as BCBSM may reasonably request.

4.4 Independent Contractor shall comply with applicable laws that require notification to individuals in the event of an unauthorized access to or release of personally-identifiable information ("PII") or PHI, as defined by applicable state or federal law, or other event requiring notification ("Notification Event"), whether such Notification Event was the responsibility of Independent Contractor or a third party to which Independent Contractor disclosed PII or PHI. When notification to individuals is required by law or determined by BCBSM, in its sole discretion, to be necessary under this Business Associate Agreement, whether such Notification Event was the responsibility of Independent Contractor or a third party to which Independent Contractor disclosed PII or PHI, Independent Contractor shall coordinate with BCBSM to (a) investigate the Notification Event, (b) inform all affected individuals and (c) mitigate the Notification Event. At BCBSM's sole discretion, mitigation includes but is not limited to securing credit monitoring or protection services for affected individuals. Independent Contractor shall be responsible for any and all costs associated with responding to and mitigating such Notification Events, including but not limited to mailing costs, personnel costs, attorneys fees, credit monitoring costs, and other related expenses or costs. Notwithstanding any limitation of liability provided in this or any other agreements, including statements of work, between the parties, Independent Contractor agrees to indemnify, hold harmless, and defend BCBSM from and against any and all claims, damages, fines, costs or other related harm associated with Notification Events.

4.5 Independent Contractor agrees to indemnify and hold BCBSM harmless from any and all liability, damages, costs (including reasonable attorney fees and costs) and expenses imposed upon or asserted against BCBSM arising out of any claims, demands, awards, settlements, fines or judgments relating to Independent Contractor's access, use or disclosure of PHI contrary to the provisions of this Business Associate Agreement.

Section 5: Agreements by Third Parties. Independent Contractor shall enter into an agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by Independent Contractor on behalf of, BCBSM pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to Independent Contractor pursuant to this Business Associate Agreement with respect to such PHI, including those safeguards described in Section 3 above.

Section 6: Access to Information.

6.1 Within five (5) business days of a request by BCBSM for access to PHI about an individual, Independent Contractor shall make available to BCBSM such PHI for so long as such information is maintained by Independent Contractor.

6.2 In the event any individual requests access to PHI directly from Independent Contractor, Independent Contractor shall within two (2) business days forward such request to BCBSM. Any denials of access to the PHI requested shall be the responsibility of BCBSM. Independent Contractor will make available to BCBSM or at BCBSM's direction, to the individual, such PHI in a manner consistent with 45 C.F.R. §164.524, so that BCBSM may meet its access obligations under 45 C.F.R. §164.524.

6.3 To the extent Independent Contractor maintains electronic PHI in a Designated Record Set, with respect to such electronic PHI of an individual, Independent Contractor agrees that the individual, and BCBSM on behalf of the individual, shall have a right to obtain an electronic copy of such information in the form and format requested by the Individual or BCBSM, if such electronic PHI is readily reproducible in the form and format so requested. If the information is not readily reproducible in the form or format requested by either the individual or BCBSM, Independent Contractor shall make the information available in a readable electronic format as mutually agreed to by the individual, Independent Contractor and BCBSM. Independent Contractor also agrees to transmit an electronic copy of electronic PHI information directly to a person or entity designated by the individual, or designated by BCBSM on behalf of the individual, provided the direction is in writing, and is clear, conspicuous and specific. Independent Contractor shall provide a copy of any request by an individual for access to electronic PHI to BCBSM within two (2) business days of its receipt of the request.

Section 7: Availability of PHI for Amendment. Within ten (10) business days of receipt of a request from BCBSM for the amendment of an individual's PHI, Independent Contractor shall provide such information to BCBSM for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.

Section 8: Accounting of Disclosures.

8.1 Within ten (10) business days of notice by BCBSM to Independent Contractor that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Independent Contractor shall make available to BCBSM such information as is in Independent Contractor's possession and is required for BCBSM to make the accounting required by 45 C.F.R. §164.528.

8.2 To the extent Independent Contractor maintains PHI as an Electronic Health Record, Independent Contractor acknowledges that the exception at 45 C.F.R. §164.528(a)(1)(i) not requiring disclosures for the purpose of carrying out Treatment, Payment, and Healthcare Operations is inapplicable and that these disclosures must be tracked for three years.

8.3 For disclosures that it is required to track, at a minimum, Independent Contractor shall provide BCBSM with the following information:

8.3.1 the date of the disclosure;

8.3.2 the name of the entity or person who received the PHI, and if known, the address of such entity or person;

8.3.3 a brief description of the PHI disclosed;

8.3.4 a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure; and

8.3.5 Independent Contractor further shall provide any additional information to the extent required by the HIPAA or the Final Rule, and any accompanying regulations.

8.4 In the event the request for an accounting is delivered directly to Independent Contractor, Independent Contractor shall within two (2) business days forward such request to BCBSM. It shall be BCBSM's responsibility to prepare and deliver any such accounting requested.

8.5 Independent Contractor hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.

Section 9: Restriction Agreements and Confidential Communications. Independent Contractor shall comply with any agreement that BCBSM makes that either (a) restricts use or disclosure of PHI pursuant to 45 C.F.R. §164.522(a), or (b) requires Confidential Communication about PHI pursuant to 45 C.F.R. §164.522(b), provided BCBSM notifies Independent Contractor of the restriction or Confidential Communication obligations. BCBSM shall promptly notify Independent Contractor in writing of the termination of any such restriction agreement or Confidential Communication requirement, and with respect to termination of such restriction agreement, instruct Independent Contractor whether any PHI will remain subject to the terms of the restriction agreement.

Section 10: Restriction on Remuneration for EHR, PHI, and Marketing. Independent Contractor shall neither directly nor indirectly receive remuneration in exchange for any PHI except as permitted by 45 C.F.R. §164.502(5)(ii)(B). In addition, Independent Contractor shall neither directly nor indirectly receive remuneration in connection with a communication to purchase or use a product except as permitted by 45 C.F.R. §164.508(a)(3) and with BCBSM’s express prior written permission.

Section 11: Fundraising. Independent Contractor shall not make any fundraising communication to a BCBSM member.

Section 12: Availability of Books and Records. Independent Contractor hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Independent Contractor on behalf of, BCBSM available to; (i) the Secretary of the Department of Health and Human Services for purposes of determining BCBSM's and Independent Contractor’s compliance with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 (“Privacy and Security Standards”); and (ii) to BCBSM for its purposes in responding to a formal investigation or enforcement action by the Secretary of Health and Human Services, Office for Civil Right, or, alternatively, the Centers for Medicare and Medicaid Services, or for the purposes of evaluating and/or responding to a compliance review performed, conducted, overseen, or managed, in whole or in part, by the aforementioned governmental agencies.

Section 13: Termination and Return of Records.

13.1 Upon termination of this Agreement, Independent Contractor shall, if feasible, return or destroy all PHI received from, or created or received by the Independent Contractor on behalf of, BCBSM that Independent Contractor still maintains in any form and retain no copies of such information.

13.1.1 Independent Contractor will require any subcontractor or agent, to which Independent Contractor has disclosed PHI, to, if feasible, return such PHI to Independent Contractor (so that Independent Contractor may return it to BCBSM) or destroy all PHI in whatever form or medium received from Independent Contractor, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of the PHI, and certify to Independent Contractor that all such information has been returned or destroyed.

13.1.2 Independent Contractor will complete these obligations as promptly as possible, but not later than forty-five (45) business days following the effective date of the termination or other conclusion of this Business Associate Agreement.

13.2 If such return or destruction of PHI by Independent Contractor or their subcontractor or agent is not feasible, Independent Contractor and their subcontractors and agents shall limit their further use or disclosure of such information to the purposes that make return or destruction of the PHI infeasible.

13.3 Independent Contractor's obligation to protect the privacy and safeguard the security of PHI as specified in this Business Associate Agreement will be continuous and survive termination or other conclusion of this Business Associate Agreement or any other agreements, including statements of work, entered into between Independent Contractor and BCBSM.

13.4 If BCBSM determines that Independent Contractor has violated the provisions of this Business Associate Agreement, BCBSM may immediately terminate this Business Associate Agreement and any other agreements, including statements of work, entered into between the parties that require Independent Contractor to access, use or disclose PHI.

Section 14: Compliance with Transaction Standards.

Section 14.1 – ICD-10 Code Sets

14.1.1 If Independent Contractor's services or products use or require the use of Code Sets, as defined in HIPAA, then Independent Contractor shall on or before October 1, 2014 utilize the International Classification of Diseases, 10th Revision, Clinical Modification ("ICD-10-CM") for diagnosis coding, and the International Classification of Diseases, 10th Revision, Procedural Coding System ("ICD-10-PCS") for inpatient hospital procedure coding for all services or products for which Independent Contractor is contractually obligated to provide to BCBSM.

14.1.2 BCBSM is not responsible for any additional services, programming, processing, testing, or other implementation costs incurred by Independent Contractor to implement ICD-10-CM and ICD-10-PCS, as these are the responsibility of Independent Contractor. BCBSM shall have no obligation to reimburse Independent Contractor for any costs related to testing, implementation, or remediation associated with Independent Contractor's implementation of ICD-10-CM and ICD-10-PCS.

14.1.3 If BCBSM reasonably determines that Independent Contractor's products or services have not implemented or addressed the applicable provisions of the HIPAA Code Set Standards or the provisions set forth in this Section, and provided Independent Contractor does not remediate such issue within thirty (30) calendar days of notification, or as otherwise agreed to by BCBSM in writing, BCBSM may withhold payments to Independent Contractor until such time as the issue is remediated to BCBSM's reasonable satisfaction.

Section 14.2 – Compliance with HIPAA Standard Transactions

14.2.1 If Independent Contractor (or its agent or subcontractor) performs or conducts (in whole or in part) electronic Transactions on behalf of BCBSM for which the Department of Health and Human Services ("DHHS") has established Standards (collectively referred to as "Transactions"), Independent Contractor shall comply (and shall require any subcontractor or agent involved in the acceptance or processing of such Transactions to comply) with the requirements of the Transaction Rule, 45 C.F.R. Part 162, including any Implementation Guide specifications incorporated into the Rule by reference.

14.2.2 Independent Contractor 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:

14.2.2.1 Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;

14.2.2.2 Adds any data element or segment to the maximum defined data set;

14.2.2.3 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

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

14.2.3 Independent Contractor acknowledges that DHHS published modifications to the HIPAA Standard Transaction Rules on January 16, 2009, replacing current versions of the standards with versions 5010, D.0, and 3.0, effective January 1, 2012.

14.2.3.1 Version 5010 is the new version of the X12 standards for HIPAA transactions;

14.2.3.2 Version D.0 is the new version of the National Council for Prescription Drug Program ("NCPDP") standards for pharmacy and supplier transactions; and

14.2.3.3 Version 3.0 is a new NCPDP standard for Medicaid pharmacy subrogation.

14.2.4 Independent Contractor acknowledges that DHHS published modifications to the HIPAA Code Set Rules on January 16, 2009, effective on October 1, 2014. Independent Contractor further acknowledges that DHHS modified the standard medical data code sets for coding diagnoses and inpatient hospital procedures by adopting the International Classification of Diseases, 10th Revision, Clinical Modification ("ICD-10-CM") for diagnosis coding, and the International Classification of Diseases, 10th Revision, Procedural Coding System ("ICD-10-PCS") for inpatient hospital procedure coding. These new codes replace the current International Classification of Diseases, 9th Revision, Clinical Modification, Volumes 1 and 2, and the International Classification of Diseases, 9th Revision, Clinical Modification, Volume 3 for diagnosis and procedure codes, respectively.

14.2.5 BCBSM is not responsible for any additional services, programming, processing, testing, or other implementation costs incurred by Independent Contractor to attain compliance with the HIPAA Standard Transaction Rules V5010, ICD-10-CM, and

ICD-10-PCS, as these are the responsibility of Independent Contractor. BCBSM shall have no obligation to reimburse Independent Contractor for any costs related to testing, implementation, or remediation associated with Independent Contractor's HIPAA Standard Transaction Rule V4010A1, HIPAA Standard Transaction Rule V5010, ICD-10-CM, or ICD-10-PCS compliance.

14.2.6 Upon BCBSM's request, Independent Contractor shall conduct end-to-end or other Transactions and Code Set compliance testing and certify to BCBSM that Independent Contractor complies with the applicable laws.

14.2.7 Upon BCBSM's request, Independent Contractor shall provide a copy of its compliance certification (for both levels 1 and 2) from an approved third-party certification company. Absent BCBSM's reasonable determination of Transactions or Code Set compliance issues, such requests shall be limited to once per year.

14.2.8 Upon BCBSM's written notice of a Transactions or Code Set compliance issue, Independent Contractor and BCBSM, as applicable, shall investigate and remediate such issue within a mutually agreed upon timeframe. Remediation shall include any testing activities that may be required to validate compliance. If BCBSM and Independent Contractor disagree on the interpretation of the standard, regulation or rules, the parties agree to submit a request for clarification and / or interpretation to an industry recognized or designated body, including but not limited to, the Accredited Standards Committee (ASC) X12 or Workgroup for Electronic Data Interchange (WEDI).

14.2.9 If BCBSM reasonably determines that Independent Contractor is not in compliance with the Transactions or Code Set rules or the provisions set forth in this Section, and provided Independent Contractor does not remediate such compliance issue within thirty (30) calendar days of notification, or as otherwise agreed to by BCBSM in writing, BCBSM may withhold payments to Independent Contractor until such time as the compliance issue is remediated to BCBSM's reasonable satisfaction. To the extent BCBSM is fined, assessed a penalty, or is otherwise held responsible for any Transactions or Code Set compliance issue and such non-compliance is related to Independent Contractor's actions or omissions, Independent Contractor shall reimburse BCBSM for all such fines, penalties, or other associated costs imposed on BCBSM.

Section 15: Amendment to Agreement. Upon the effective date of any amendment to the Privacy Standards or the Security Rule or the effective date of any other final regulations with respect to PHI, this Business Associate Agreement will automatically be amended so that the obligations they impose on Independent Contractor shall remain in compliance with such regulations.

Section 16: Conflicts. The terms and conditions of this Amendment supersede and override any other Health Insurance Portability and Accountability Act of 1996 (HIPAA) terms and conditions contained within any agreements, including statements of work, entered into by BCBSM and Independent Contractor, including but not limited to, any agreements with its subsidiaries, affiliates, parent companies, officers, directors, employees, contractors, and/or agents.

<u>Section 17: Disclaimer of Agency Relationship.</u> Nothing in this Amendment or any services or similar agreement between the parties shall give rise to an agency relationship as between Independent Contractor and BCSBM and the parties expressly disclaim the existence of any such relationship.

Signatures

The above Amendment is agreed to by both parties as witnessed by their respective signatures below. By signing this Amendment, the signatory certifies and warrants that he or she has the actual authority to bind Independent Contractor to this Amendment for all of Independent Contractor's agreements and statements of work with BCBSM. Notwithstanding any statement to the contrary in any other agreements and statements of work between Independent Contractor and BCBSM, this Business Associate Agreement Amendment is effective when signed by the BCBSM Procurement Agent and Independent Contractor.

BLUE CROSS AND BLUE SHIELD
OF MICHIGAN

By: ______________________________

(signature)

Name: ___________________________

Title: ____________________________

Date: ____________________________

INDEPENDENT CONTRACTOR

By: ________________________________

(signature)

Name: _____________________________

Title: ______________________________

Date:_______________________________

Blue Cross Blue Shield of Michigan

A nonprofit corporation and independent licensee of the Blue Cross and Blue Shield Association

BCBSM VENDOR INFORMATION SECURITY PROGRAM REQUIREMENTS DOCUMENT

Purpose & Disclaimer: This BCBSM IT Security Document ("Document") describes the minimum information security program requirements that must be implemented by Independent Contractor. Independent Contractor may have additional obligations and be responsible for implementing additional privacy and security requirements in excess of the requirements set forth in this Document. Compliance with and implementation of the requirements set forth in this Document may not satisfy all the legal and contractual responsibilities with which Independent Contractor must comply and should not be relied upon for such purposes.

Definition: For the purposes of this Document, BCBSM Data shall mean Protected Health Information, as that term is in HIPAA and Personally Identifiable Information ("PII") as that term may be defined under other federal and state laws

Section 1: Security Program and Policy

1.1 **Security Program.** Independent Contractor shall have an established formal security program that addresses the management of security and the controls employed within the organization.

a. Independent Contractor shall maintain a published and formally approved data security policy.

b. Independent Contractor shall maintain administrative, technical, physical and operational measures designed to keep BCBSM Data secure. Such administrative, technical, physical and operational measures shall be consistent and comply with applicable laws and regulations.

c. Independent Contractor shall institute measures to protect against any anticipated threats or hazards to the confidentiality, integrity and availability of BCBSM Data and protect against unauthorized access, use or disclosure of such BCBSM Data .

d. Independent Contractor shall keep all privacy and security safeguards current and shall document privacy and security measures in written standards, policies, procedures or guidelines, which shall be periodically reviewed, and updated as necessary to address changes in regulations or law and advancements in available technology.

1.2 **Security of BCBSM Confidential Information**. Independent Contractor agrees to secure BCBSM Data through reasonable means and according to industry best practices and the controls described in this Document.

1.3 **Security Awareness Training**.

a. Upon hire and at least annually, Independent Contractor shall conduct security awareness training for all employees, contractors, agents, subcontractors or vendors (collectively "Employees") who will access, use or disclose BCBSM Data.

b. Upon request from BCBSM, Independent Contractor shall allow BCBSM to review the security awareness training curriculum and implement changes as required.

c. Independent Contractor shall maintain attendance records for all Employees who attend training and, upon request from BCBSM, annually deliver a written certification that those Employees have completed training.

Section 2: Human Resources

2.1 Personnel. Independent Contractor shall not hire, retain or engage Employees who have been convicted of or entered into a court-supervised diversion program for fraud, embezzlement, larceny, perjury, terrorism, or any other breach of trust or fiduciary duty crime to perform any responsibilities or functions in connection with processing or accessing, using or disclosing BCBSM Data.

a. Background Checks. Upon hire, Independent Contractor shall conduct background checks on all new Employees.

2.2 Security Violation. Independent Contractor agrees that any Employee who violates the security requirements of this Document and/or any other obligation to BCBSM Data will be immediately removed and prohibited from providing services to BCBSM under any agreement, including statements of work or engagement letters, entered into between BCBSM and Independent Contractor.

2.3 Employee Identity. Upon BCBSM request, Independent Contractor shall notify BCBSM in writing of the identity of each Employee with access or connection to BCBSM's systems or BCBSM Data, including those Employees who had access and were terminated.

Section 3: Physical and Environmental Security

3.1 Logical Separation of BCBSM Systems and Data. Independent Contractor shall separate and segregate from all other data all BCBSM Data received, developed, or processed. For all data stored or transmitted outside the BCBSM network, such data must be encrypted during storage and transit consistent with industry best practices. Independent Contractor shall also encrypt all at rest BCBSM Data to the extent reasonable.

3.2 Physical security controls.

a. Independent Contractor shall restrict access to environments that store, transmit or process BCBSM Data to those Employees that have a business need to access such Data.

b. Independent Contractor shall implement and regularly test the following security measures in each area containing BCBSM Data: (i) physical access control, (ii) physical security presence and (iii) security management monitoring.

c. Upon BCBSM's request, Independent Contractor shall provide complete and auditable records of Employees who had access to BCBSM Data, including at a minimum, their identity and date and time of access.

3.3 Separation of Duties; Dual Control. Independent Contractor shall prevent and prohibit any individual person from being the only person who performs a service or function that involves the handling, transport, use or development of BCBSM Data.

3.4 Unauthorized Traffic. When applicable and as provided in any agreement, including any statement of work or engagement letter, between BCBSM and Independent Contractor, Independent Contractor shall develop and maintain systems. Independent Contractor systems and their connectivity to BCBSM's systems must prevent unauthorized traffic from accessing or passing through to BCBSM's systems. At BCBSM's request, Independent Contractor shall cooperate with BCBSM to conduct security quality assurance tests.

3.5 Intrusion Detection. Independent Contractor shall monitor systems and processes for security intrusions or violations consistent with industry best practices. Independent Contractor shall notify BCBSM if suspicious conditions or activities are detected indicating any security violation, intrusion or incident.

3.6 Testing. In addition to any specific testing requirements Independent Contractor may have agreed to in any other agreements, including statements of work or engagement letters, entered into between BCBSM and Independent Contractor, Independent Contractor must regularly test the key controls, systems and procedures of its information security program to assure protection of BCBSM's Data. If possible, Independent Contractor shall use independent third-parties to conduct the testing.

3.7 Record-Keeping. Independent Contractor shall maintain, and be prepared to show BCBSM, at BCBSM's request, complete, clear and accurate logs and reports documenting the security tools, controls, and procedures for implementing the security requirements set forth in this Document.

Section 4: Audits, Assessments, and Certifications

4.1 Notice of Audits and Certifications. Upon request from BCBSM, Independent Contractor shall provide BCBSM with data relating to the following audits of, and certifications relating to Independent Contractor's business and operations:

a. Information Network Security System. Upon receipt of reasonable prior notice from BCBSM, Independent Contractor shall permit BCBSM to review the most recent audit of Independent Contractor's data network security system;

b. Certifications. At Independent Contractor's sole cost and expense, Independent Contractor shall perform a SAS 70 Type II certification (or equivalent, i.e., SSAE 16 and ISAE 3402) relating to Independent Contractor's business and operations. Independent Contractor shall provide BCBSM with copies of the results. If Independent Contractor has already performed an annual SAS 70 Type II certification (or equivalent, i.e., SSAE 16 and ISAE 3402) within the current year, then Independent Contractor need only provide BCBSM with copies of the results of such SAS 70 Type II certification (or equivalent, i.e., SSAE 16 and ISAE 3402).

c. Standards. Independent Contractor shall certify it meets the ISO 17799 certification, ISO 27001 certification, and/or BS 7799 standard certification..

4.2 Regulator Audits and Examinations. To the extent permitted, BCBSM shall notify Independent Contractor if a United States federal or state regulatory agency (“Regulator”) requests a review, audit, or other examination of the services or records maintained by Independent Contractor (“Regulatory Audit”). Independent Contractor shall provide BCBSM with immediate written notice if a Regulator contacts Independent Contractor to conduct a Regulatory Audit of the services or records maintained by Independent Contractor. Independent Contractor shall fully cooperate with BCBSM and the Regulator(s) in the event of a Regulatory Audit.

4.3 Right to Conduct an On-Site Assessment: With reasonable notice and during usual business hours, Independent Contractor agrees to allow BCBSM, or its designated third party (under proper confidentiality obligations), to conduct an on-site assessment to ensure Independent Contractor’s compliance with the terms of this VISPRD and the Business Associate Agreement of which it is a part.

Section 5: Network Security Control Systems

5.1 Diagrams and Devices. Independent Contractor shall demonstrate that BCBSM Data is protected by appropriate network security controls that prevent unauthorized access by providing BCBSM with sanitized network diagrams of the Independent Contractor environment used to provide services to BCBSM. Network security devices shall be used to prevent and detect unauthorized access. Such devices shall log events completely, clearly and accurately.

5.2 Monitor System Use. Consistent with industry best practices, Independent Contractor shall monitor systems in the Independent Contractor environment used to provide services to BCBSM for security intrusions or unauthorized access.

Section 6: Application Security

6.1 Vulnerabilities, Risks and Threats. To the extent Independent Contractor develops, provides, distributes, manages or maintains software on behalf of BCBSM, Independent Contractor shall agree in writing that it will identify vulnerabilities, risks and threats as early as possible at any time during the software lifecycle. The ‘software lifecycle’ shall mean that period from development, management, and updates through retirement of such application. Independent Contractor shall identify the key risks to the important assets and functions provided by the application. Independent Contractor shall conduct an analysis of the most common programming errors and document in writing such programming errors have been mitigated. Independent Contractor shall conduct risk assessment(s) to determine and prioritize risks, enumerate vulnerabilities and understand the impact that particular attacks might have on an application to ensure that the application meets any applicable contractual obligations, regulatory mandates and security best practices and standards.

Independent Contractor shall share with BCBSM in writing all security-relevant information regarding the vulnerabilities, risks and threats to the application immediately and completely upon identification. Such security documentation shall describe security design, risk analysis, or issues.

6.2 Development. Independent Contractor shall provide BCBSM written documentation detailing its application development lifecycle, patch management and update process. The documentation shall clearly identify the measures that will be taken at each level of the process to develop, maintain and manage the software securely.

a Secure Coding. Independent Contractor shall disclose what tools are used in the software development environment to encourage secure coding.

b Configuration Management. Independent Contractor shall use a source code control system that authenticates and logs the team member associated with all changes to the software baseline and all related configuration and build files.

c Distribution. Independent Contractor shall use a build process that reliably builds a complete distribution from source. This process shall include a method for verifying the integrity of the software delivered to BCBSM.

d Disclosure. Independent Contractor shall document in writing to BCBSM all third party software used in the software, including all libraries, frameworks, components, and other products, whether commercial, free, open-source, or closed-source.

e Evaluation. Independent Contractor shall make reasonable efforts to ensure that third party software meets all the terms of this agreement and is as secure as custom developed code developed under this agreement.

6.3 Testing. Independent Contractor shall provide and follow a security test plan that defines an approach for testing or otherwise establishes that each of the security requirements has been met. The level of rigor of this test process shall be detailed in the security test plan. Independent Contractor shall implement the security test plan and provide the test results to BCBSM in writing.

a Source Code. Independent Contractor shall agree in writing to BCBSM that during the application development lifecycle process the source code will be evaluated to ensure the requirements of this document including the security standards, policies and best practices are followed. Independent Contractor shall have a well-documented procedure and framework for conducting code reviews.

b Vulnerability and Penetration Test. Independent Contractor shall agree in writing that prior to production the application will undergo a vulnerability and penetration test. Post production, Independent Contractor shall perform contractually agreed upon security scans (with the most current signature files) to verify that the system has not been compromised during the testing phase. Independent Contractor shall provide to BCBSM written documentation of the results of the scans and tests along with a mitigation plan. Independent Contractor shall agree in writing that these vulnerabilities shall be mitigated within a pre-negotiated period.

6.4 Maintenance. Independent Contractor shall provide notification of patches and updates affecting security within a pre-negotiated period as identified in the patch management process throughout the software lifecycle. Independent Contractor shall apply, test, and validate the appropriate patches and updates and/or workarounds on a test version of the application before distribution. Independent Contractor shall verify and provide written documentation that all updates have been tested and, prior to production, installed. Independent Contractor shall verify application functionality, based upon pre-negotiated procedures, at the conclusion of patch updates, and provide documentation of the results.

6.5 Delivery of Secure Application. Independent Contractor shall provide a "certification package" consisting of the security documentation created throughout the development process. The package shall establish that the security requirements, design, implementation, and test results were properly completed and all security issues were resolved appropriately. Independent Contractor shall resolve all security issues that are identified before delivery. Security issues discovered after delivery shall be handled in the same manner as other bugs and issues as specified in this Agreement.

a Self-Certification. The Security Lead shall certify to BCBSM in writing that the software meets the security requirements, all security activities have been performed, and all identified security issues have been documented and resolved. Any exceptions to the certification status shall be fully documented with the delivery.

b No Malicious Code. Independent Contractor warrants that the software shall not contain any code that does not support a software requirement and weakens the security of the application.

Section 7: Access Control

7.1 Limited Access. Independent Contractor must limit access to Employees that have a need to perform specific responsibilities in providing services which Independent Contractor is contractually obligated by BCBSM.

7.2 Access Accounts. Independent Contractor must assign Employees a unique account ID to access systems that store, process or transmit BCBSM Data. To the extent an Employee has access to BCBSM systems; the Employee's access account must be authorized through BCBSM's authorization system and registered to the individual Employee.

7.3 Authentication. Independent Contractor must require each Employee to use appropriate authentication controls to verify their identities.

7.4 Access Review and Termination. Independent Contractor shall review access to BCBSM Data quarterly. Employees that no longer need access shall have their access terminated immediately.

7.5 Document Retention. Independent Contractor must retain records of access for at least one year. Upon BCBSM's request, Independent Contractor shall provide complete and auditable records of Employees who had access to BCBSM Data.

Section 8: Business Continuity Management

8.1 Business Continuity Program. At all times during the term of its agreements with BCBSM, including statements of work and engagement letters, Independent Contractor will maintain and adequately support a Business Continuity program that ensures the continuous operation and, in the event of an interruption, the recovery of all material business functions needed to meet Independent Contractor's contractual obligations to BCBSM.

a. Business Continuity Plan. Independent Contractor shall develop, implement and maintain a Business Continuity Plan (the "Plan").

i. Delivery of the Plan. Upon request from BCBSM and within 30 days, Independent Contractor shall deliver to BCBSM a copy of Independent Contractor's then-current official company Plan. Such Plan must be dated as not more than 12-months old.

ii. Content. The Plan must, at a minimum, describe the actions and resources required to provide for the continuous operation, and, in the event of an interruption, the recovery of Independent Contractor's contractual obligations to BCBSM under all agreements, including statements of work and engagement letters, including but not limited to all required systems, hardware, software and data, within a Recovery Time Objective (RTO) sufficient to sustain contracted levels of service.

iii. Updates. Independent Contractor shall update and re-publish the Plan whenever there is a significant or material change in Independent Contractor's systems, recovery strategies, recovery resources, actions described in the Plan or other data affecting Independent Contractor's contractual obligations to BCBSM under all agreements, including statements of work and engagement letters, but no less frequently than at least once in every 12-month period.

b. Resources. Independent Contractor shall ensure that all continuity and recovery resources, including without limitation, systems, facilities, equipment and personnel, as described in the Plan and that are needed to perform Independent Contractor's required services or functions, remain available in sufficient quantities throughout the term of any agreements, including statements of work and engagement letters, entered into between BCBSM and Independent Contractor.

c. Environment. Independent Contractor shall ensure that appropriate controls are in place to avoid or prevent interruptions to any of Independent Contractor's contractual obligations to BCBSM under all agreements, including statements of work or engagement letters.

d. Data Back-up. Independent Contractor shall protect and back up software, program files and data, and all BCBSM Data as needed for the operation of any of Independent Contractor's contractual obligations to BCBSM under all agreements, including statements of work and engagement letters.

8.2 Interruption Management and Reporting. If any of Independent Contractor's contractual obligations to BCBSM under all agreements, including statements of work and engagement letters, are interrupted:

a. Recovery. Independent Contractor shall complete the recovery, resumption, and/or restoration activities as described in the Plan to achieve the RTO of each affected function.

b. Incident Reporting.

Unless otherwise provided in any agreement, including statements of work and engagement letters, between BCBSM and Independent Contractor, Independent Contractor shall:

i. Within 30 minutes of an interruption of Independent Contractor's contractual obligations to BCBSM under all agreements, including statements of work and engagement letters, inform BCBSM of the incident.

ii. Within 2 hours of an interruption of Independent Contractor's contractual obligations owed to BCBSM under all agreements, including statements of work and engagement letters, provide to BCBSM an initial report that includes the nature of the interruption, an estimate for the time it will take to return to required service levels, and the actions Independent Contractor is taking to achieve those levels.

iii. Within 3 business days of an interruption of Independent Contractor's contractual obligations to BCBSM under all agreements, including statements of work or engagement letters, shall provide BCBSM with a complete report, including a description of each required function or service that was interrupted, the time required to achieve each RTO and return to the required service levels, Independent Contractor's products or services that were not provided or only partially provided as a result of the interruption, the specific corrective action Independent Contractor took, and the material effect, if any, to BCBSM.

8.3 Plan Testing. Independent Contractor shall test the Plan each time the Plan is re-published, but not less frequently than once every 12 months, by using any of several standard testing methods, including without limitation structured read-throughs, scenario or tabletop testing, functional testing or full-scale testing. Independent Contractor shall report in writing the results of each Plan test and deliver the written test results to BCBSM upon request within 15 days following completion of the test. The report must include all errors, omissions, inaccuracies and outdated data discovered in the Plan, corrective action planned for these errors, omissions, inaccuracies and outdated data, and the date by which Independent Contractor will complete the corrective action. Independent Contractor shall notify BCBSM at least 30 days before any Plan test Independent Contractor will conduct and cooperate with BCBSM if BCBSM participates in the test. BCBSM will have the option to decide upon the nature and extent of its participation in the test, including the opportunity to participate in the planning and scope of the test.

Section 9: Compliance

9.1 Industry Best Practices. Independent Contractor agrees to comply with industry best practices information security standards and controls.

9.2 PCI DSS. To the extent Independent Contractor receives, accesses, or transmits cardholder data (e.g. credit or debit card data), Independent Contractor acknowledges its responsibility to secure cardholder data and agrees to comply with applicable Payment Card Industry Information Security Standard requirements (PCI DSS).