of Tennessee

Medicare Products Broker Agreement

This Medicare Advantage and Medicare Prescription Drug Products (hereinafter "Medicare Products") Broker Agreement (hereinafter referred to as the "Agreement") is made by and between BlueCross BlueShield of Tennessee*, Inc., a Tennessee not-for-profit corporation and any of its wholly owned subsidiaries or affiliates selling Medicare Products (hereinafter referred to as "BCBST"), and the Broker listed on the signature page of this Agreement (hereinafter referred to as the "Broker").

Recitals

Whereas, BCBST is an independent corporation operating under a license from the BlueCross BlueShield Association (the "Association.") That license permits BCBST to use the Association's service marks within its assigned geographical location. BCBST is not a joint venturer, agent or representative of the Association nor any other independent licensee of the Association; and

Whereas, BCBST is a corporation that serves as a Plan sponsor for certain Medicare products which desires to contract with and appoint the Broker to market, sell and distribute certain Medicare program health insurance products and services of BCBST in accordance with applicable Laws; and

Whereas, the relevant laws require special training, documentation, marketing and other requirements of a Plan utilizing Brokers or Agents in relationship to Medicare Products; and

Whereas, the Broker desires to contract with and be appointed by BCBST to market, sell and distribute BCBST's Medicare Products offerings in accordance with applicable Laws and the terms of this Agreement; and

Whereas, the Broker understands that there are special requirements he or she must maintain in order to market, sell and distribute Medicare Products.

Whereas, the Broker understands that its ability to market, sell and distribute Medicare Products is different and independent of its ability to market, sell and distribute any other BCBST products; and

Now, Therefore, in consideration of the promises and mutual covenants of the parties, the sufficiency of which is hereby acknowledged, the parties have agreed as follows:

Definitions

Defined terms, which are referenced in this Agreement, shall have the following meanings:

"Addendum" is the document executed by BCBST and the Broker, which is incorporated into this Agreement by reference, and sets forth the terms and conditions upon which the Broker will solicit and be compensated for placing Business with BCBST, and otherwise amends the Agreement.

"Broker Account" is a Member whose Contract with BCBST is currently in force and was placed through the Broker.

"Application" is the document completed by an individual for the issuance of a Contract for Medicare Advantage or Medicare Prescription Drug Products from BCBST.

“Business” shall be classified as either:

1. “New Business” which are Contracts with individuals that have not previously been covered by BCBST in the Medicare Advantage or Medicare Prescription Drug Program; or whose coverage from BCBST’s Medicare Products has lapsed, been canceled, or expired for a period of thirty (30) days or more; or

2. “Renewal Business” which is not New Business.

“Commission” is the compensation paid to the Broker in accordance with the terms of the applicable Addendum.

“Contract” is the Medicare Products Agreement between BCBST and the individual.

“Coverage” is the Contract and other documents that describe the covered Medicare benefits that BCBST has agreed to provide to Members.

“Laws” are applicable State or Federal statutes, regulations, instructions and other requirements which include the Compliance Fraud, Waste and Abuse requirements as described in Section 1860D-4(C)(1)(D) of the Social Security Act.

“Member” is an individual who is enrolled for Coverage under a Medicare Advantage or Medicare Prescription Drug Contract.

“Officer” is a person so designated by BCBST’s Board of Directors, or his/her designee.

“Premiums” are the periodic payments required to keep a Contract in force.

Broker Duties and Performance Obligations

A. **Appointment.** The Broker represents that the information contained in each application for appointment by BCBST, which is incorporated into this Agreement by reference, is and shall remain true and accurate throughout the term of this Agreement. The Broker shall promptly notify BCBST of any: (1) material changes in the information set forth in a Broker application; (2) inquiries or disciplinary actions initiated against a Broker by regulatory agencies; (3) termination of the Broker’s authority to represent other insurers or health maintenance organization; (4) cancellation, material modification or non-renewal of the Broker’s liability insurance coverage or fidelity bonds; (5) loss of a Broker’s license; (6) actions to have the Broker excluded, suspended or debarred from doing business with the federal government or from participating in federal healthcare programs; or (7) other matters which adversely affect the Broker’s ability to perform his/her duties pursuant to this Agreement.

   If BCBST elects to contract with the Broker, Broker will be appropriately licensed to place Medicare Advantage and Medicare Prescription Drug Coverage with BCBST pursuant to applicable Laws. Broker warrants that it will comply with all applicable Laws, including but not limited to, any and all state and federal privacy and do-not-call laws, when representing BCBST pursuant to this Agreement and that its representation of BCBST will not conflict with its obligations to, or interfere with the rights of, any third parties. Broker shall be bound by the terms of this Agreement when representing BCBST and, if there is any conflict between the terms of this Agreement and any agreement between any third party, this Agreement shall be controlling.

   Broker acknowledges that it must successfully complete an annual compliance program training that includes information on the compliance requirements of the Medicare Products with specific reference to conflicts of interest marketing guidelines, limitations or the marketing of other products to Medicare beneficiaries, security requirements related to Medicare information and information sharing practices and auditing rights between BCBST, the state licensing authorities and the Centers for Medicare & Medicaid Services (CMS) or its designated agents: Broker understands that its failure to successfully complete the training will preclude it from selling BCBST's Medicare Products.

B. **Solicitation of Eligible Individuals.** The Broker shall exercise its best efforts to identify and solicit eligible individuals to apply for Medicare Coverage from BCBST during the term of this Agreement. The Broker shall make reasonable efforts to assure that prospective individuals are eligible for Medicare Coverage in accordance with the Medicare Advantage and Medicare Prescription Drug Program requirements. BCBST shall provide the Broker with a reasonable supply of individual Application forms and other approved solicitation materials necessary to accurately describe the types of Medicare Coverage offered to prospective individuals.

C. **Solicitation Materials.** The Broker shall not use the name, service marks or symbols or otherwise make reference to BCBST, without the express written consent of an Officer of BCBST. The Broker shall not use the name, service marks or symbols or otherwise make reference to BCBST on any Agency or Broker Website without the express written consent of an Officer of BCBST.

D. **Modification and use of Materials.** Applications, solicitation materials or proposals provided by BCBST must adhere to Marketing Guidelines and other requirements established by CMS, therefore they shall not be amended or altered by the Broker They shall only be used in connection with the Broker's activities on behalf of BCBST pursuant to this Agreement, shall remain the property of BCBST, and shall promptly be accounted for or returned to BCBST upon request or upon the termination of this Agreement.

E. **Submission of Applications.** The Broker shall make a good faith effort to submit Applications to BCBST within a reasonable time period prior to the effective date of the Contract. BCBST may postpone the effective date of the Contract if the Broker does not submit a fully completed Application prior to the proposed effective date of a Contract.

The Broker shall not collect any application fees, deposits, or Premiums unless expressly authorized to do so, in writing, signed by an Officer of BCBST. BCBST shall bill individuals for any Premiums payable for their Coverages and pay Commissions to the Broker pursuant to the section of this Agreement entitled "Commission Payments", below, following receipt of such payment.

F. **Service Responsibilities.** The Broker shall cooperate with representatives of BCBST, upon reasonable request, to assist with the installation of coverage and provision of ongoing support services to Broker Accounts

G. **Limitation of Authority.** The Broker shall have no authority to bind BCBST to provide Coverage, alter BCBST's established Premiums, or modify the terms, conditions, limitations or exclusions of BCBST's Medicare Product Coverage, without the prior express written consent of an Officer of BCBST. BCBST shall have the sole discretionary authority to either accept or reject an Application and to establish the terms and conditions upon which it will offer Coverage to any prospective individuals consistent with CMS Medicare Part C and Part D program requirements. This Agreement shall not grant the Broker an exclusive or preferential right to represent BCBST, or solicit individuals in a geographical area or to solicit any specified individual or category of individuals, except as otherwise specifically provided in this Agreement or an Addendum.

H. **Notice of Complaint.** Legal Action or Other Potential Compliance Problems. The Broker shall immediately notify BCBST of receipt of any customer complaint or if it is served any paper or has knowledge of any legal or administrative action, investigation or proceeding against BCBST or which involves BCBST. The Broker shall also immediately notify BCBST if it learns of any compliance problems including but not limited to: marketing violations or breaches in data security.

BCBST Duties and Performance Obligations

A. **Medicare Products.** BCBST shall provide the Broker with information about the Medicare Advantage and Medicare Prescription Drug individual and group product offerings available under the BCBST brand. BCBST shall provide underwriting, fulfillment, billing, claims processing, adjudication and customer service.

B. **Establish Compliance Expectations and Monitor Broker's Adherence to These Expectations.** BCBST shall facilitate Annual Broker Training regarding compliance expectations related to the handling of BCBST's Medicare Products. BCBST shall monitor Broker's performance and take corrective action up to and including termination of this Agreement for non-compliance with laws, regulations or other requirements related to the delivery of the Medicare Products.

C. **Rights Reserved By BCBST.** BCBST specifically reserves the right, without the approval of the Broker:

1. To cease doing business, or discontinue or withdraw from sale any BCBST product anywhere in the state of Tennessee consistent with applicable state or federal regulations.

2. To modify, change, or amend any certificate, contract or premium rate issued in conjunction with any of its products consistent with applicable state or federal regulations.

3. To determine all terms, conditions or limitations of any certificate or contract issued in conjunction with any of its products and to modify or change the terms under which any product may be sold, except as otherwise provided in this Agreement consistent with applicable state or federal regulations.

Books, Records and Monitoring

A. **Maintenance.** The Broker shall maintain complete and accurate business records concerning its activities pursuant to this Agreement, consistent with CMS guidelines and appropriate retention schedules. BCBST shall have the right to review and copy records directly related to the Broker's activities pursuant to this Agreement, at its expense upon reasonable advance notice, at the Broker's offices, during its normal business hours. This section shall survive the termination of this Agreement.

B. **Record Ownership.** In the event this Agreement is terminated, the Broker's records shall remain the property of the Broker and left in the Broker's undisputed possession. In the event this Agreement is terminated, then BCBST may continue to service BCBST customers directly.

C. **Purchasers.** Individuals who purchase a BCBST offering from a Broker are neither the property of BCBST nor the property of the Broker. If an individual purchases a BCBST offering, the Broker will be considered to be the agent of such individual for that particular transaction, and the individual shall be a policyholder of BCBST. This Agreement shall not prohibit either the Broker or BCBST from soliciting said individual for other products. The fact that the Broker may have offerings from other carriers shall not be considered to be "solicitation" by the Broker.

D. **Monitoring.** The Broker understands that BCBST shall monitor its adherences to the compliance requirements related to the Medicare Products and any required periodic reports or evaluations of the Broker's performance as it relates to the products.

E. **Access to Books and Records.** Broker agrees that as it relates to BCBST's Medicare Products, CMS and its agents shall have audit evaluation or review rights related to any materials or activities generated in support of these Medicare Products.

Commission Payments

A. **Commissions.** BCBST shall bill and collect all Premiums. The Broker shall not, under any circumstances, bill, charge or collect Premiums, or any other charges from Members, unless expressly authorized in writing to do so by an Officer of BCBST. Commissions shall be payable to the Broker as outlined in Addendum A. Commissions shall not be due or payable pursuant to this Agreement, until BCBST has received and accepted the Premium payment from a Member pursuant to the individual Contract. Commissions payable by BCBST shall be subject to adjustment in accordance with subsection C, below.

B. **Payment of Commissions.** Commissions payable pursuant to this Agreement shall be calculated and paid in accordance with the applicable Addendum, within forty-five (45) days after BCBST accepts payment of the Premium from a Member.

C. **Adjustment of Commissions.** BCBST shall adjust the Commissions payable to the Broker to reflect any retroactive adjustment of the Premium paid by Broker Accounts in accordance with the terms of their Contract. BCBST may deduct the amount of any refund of Premiums or other indebtedness owed to BCBST pursuant to this Agreement from future Commissions payable to the Broker by BCBST, as a first lien against such payments to the Broker.

BCBST may require the Broker to repay the amount of the indebtedness, upon reasonable notice, as an alternative to offsetting the outstanding indebtedness against future Commission payments to the Broker.

BCBST may modify the premium structure with a replacement Commission Addendum, upon providing the Broker sixty (60) days advance written notice of the modification.

D. **Continuation of Commission.** BCBST shall pay Commissions to the Broker, in accordance with the terms of this Agreement, provided: (1) the Contract remains in effect and the Member pays required Premiums pursuant to that Contract; (2) the Broker remains appointed by BCBST; and (3) such payments are not prohibited by applicable Laws.

Marketing, Advertising and Publicity

A. **In General.** BCBST and the Broker shall mutually agree on any BCBST Medicare Products offerings portfolio which the Broker markets.

1. The Broker will be responsible for all advertising and marketing content and materials that are for the express purpose of marketing and/or advertising the Broker (“generic materials”).

2. Advertising and marketing materials that make specific references to BCBST offerings will not be used without the prior written consent of BCBST.

3. Such materials shall not violate BCBST’s guidelines regarding branding or health insurance market conduct or CMS marketing guidelines.

4. All material, generic and specific, will be fully compliant with all applicable Department of Commerce and Insurance and other regulatory authority rules and regulations regarding the advertising and marketing of insurance products, via the Internet or in general.

5. The Broker is responsible for adhering to applicable federal and other health laws related to its activities involving Medicare Products including CMS’ Marketing Guidelines and other CMS policies.

B. **Announcements or Press Releases.** Except as may be required by law, neither party hereto shall, without the prior consent of the other, which consent shall not be unreasonably withheld or delayed, make any public announcement or issue any press release with respect to this Agreement. Prior to making any public disclosures required by applicable law, the disclosing party shall consult with the other to the extent feasible, as to the content and timing of such public announcement or press release.

Confidentiality, Proprietary Information, and Technology

A. **Nondisclosure.** The Broker acknowledges that BCBST may furnish information identified as trade secret, proprietary or confidential information ("Confidential Information") to it during the term of this Agreement. The Broker agrees that it shall not disclose such Confidential Information to third parties without the written consent of an Officer of BCBST. The Broker agrees to promptly return all originals and copies of such Confidential Information to BCBST upon request or upon the termination of this Agreement. Both parties recognize that certain technologies, innovations, and processes may be considered as proprietary trade secrets and agree to make no disclosures of these technologies, innovations or processes except as required by applicable Laws, regulations, or pursuant to a court order.

B. **Exceptions.** It is understood and agreed between the parties that Confidential Information does not include or encompass information which is generally available to the public other than as a result of breach of this Agreement, nor does it include either of the following: information disclosed pursuant to a court or governmental Broker order; or information required to be disclosed pursuant to applicable Laws.

C. **Use.** The Broker shall only utilize Confidential Information as necessary or appropriate to perform its duties pursuant to this Agreement. The Broker shall not otherwise utilize such Confidential Information for its benefit or the benefit of any third party. The Broker may disclose Confidential Information to its Producing Agents, employees and other representatives (its "Representatives") as necessary to permit the Broker to perform its duties pursuant to this Agreement, but only after informing those Representatives of their obligation to maintain the confidentiality of such Confidential Information. The Broker shall be responsible if its Representatives breach this section of the Agreement.

D. **Disclosure to Third Parties.** The Broker may disclose Confidential Information to third parties only with BCBST's written consent or if compelled to do so by a subpoena, court order or other legally binding order, but only after providing BCBST with notice of an opportunity to challenge such efforts to compel disclosure of that Confidential Information. This non-disclosure obligation shall not be applicable to any Confidential Information that is or becomes publicly available other than as a result of the Broker's breach of this non-disclosure obligation.

E. **Damages.** Broker acknowledges that any actual or threatened violation of this section may cause irreparable damages to BCBST that are inadequately compensable by damages or other legal remedies. In the event of any such breach or threatened breach of this section, BCBST may seek and obtain injunctive relief, specific performance, or any other equitable remedies available to it.

F. **Joint Technologies.** Each party may elect, by a separate Attachment, to license technologies, innovations, or processes for use by the other. Technologies, innovations, or processes developed by either party during the course of this Agreement for use in the sale of products offered through this Agreement shall be considered as joint property of the parties and may not be disclosed to or licensed for use by any third party without the express written consent of both BCBST and the Broker.

G. **Health Insurance Portability and Accountability Act ("HIPAA").** Broker agrees to comply with applicable provisions of the Health Insurance Portability and Accountability Act ("HIPAA"), including the HIPAA privacy regulation, 45 CFR 160 – 164 and the Business Associate Addendum of this Agreement (the "Business Associate Addendum"). The Business Associate Addendum shall supercede this subsection if it is determined that there is a conflict between the Business Associate Addendum and any provision of this Agreement.

The Business Associate Addendum shall survive the termination of this Agreement.

H. **Survival.** This section shall survive the termination of this Agreement.

Termination

A. This Agreement or an Addendum may be terminated:

   1. immediately upon written notice if either party loses any license which is required to perform its duties pursuant to this Agreement or an Addendum, or becomes insolvent, or is charged with an act of moral turpitude;

   2. immediately if based upon CMS guidelines or direction, Broker is unable to continue marketing BCBST's Medicare Products;

   3. upon thirty (30) days advance written notice if either party otherwise breaches this Agreement and does not cure that breach within thirty (30) days of being notified of such alleged breach by the non-breaching party; or

   4. without cause upon sixty (60) days advance written notice to the other party.

B. Upon the termination of this Agreement, the Commissions payable to the Broker shall be limited to the Commissions payable on Premiums that:

   1. have been paid; or

   2. are owed prior to termination and subsequently paid to BCBST.

C. The parties agree to cooperate in good faith to promptly resolve any outstanding administrative or payment issues following the termination of this Agreement.

D. The parties acknowledge that they each have a valuable interest in their relationship with Broker Accounts and Members. BCBST reserves the right to solicit Broker Accounts and Members to continue coverage after termination of this Agreement.

E. This Agreement may also be terminated at any time immediately:

   1. If while the Broker is conducting business on BCBST's behalf, either party fails to comply with the Laws or regulations governing the insurance business in Tennessee or federal requirements related to Medicare Products;

   2. If the Broker makes false or misleading statements about BCBST or Medicare Products;

   3. If the Broker induces any policyholder or BCBST Member to discontinue payments, cancel, or fail to renew his/her policy;

   4. If the Broker fails to remit BCBST funds to BCBST or subjects BCBST to any liability (except for that incurred by BCBST under a properly issued policy or contract) or commits any fraud hereunder.

Termination pursuant to subsections E 1-4 voids any obligation by BCBST to provide future compensation under the terms of this Agreement.

Independent Contractor Relationship

A. **No Employer-Employee Relationship.** The Broker and its Representatives are independent contractors of BCBST. This Agreement shall not be construed to create an employer-employee or joint venture relationship among those parties.

B. **Insurance Coverage.** The Broker shall obtain and maintain all insurance coverages, including but not limited to errors and omissions, workers' compensation and comprehensive general liability coverages, in amounts that are reasonably acceptable to BCBST, and that are necessary or appropriate to insure the Broker against liability or to comply with applicable Laws. The Broker agrees to submit evidence of such coverages to BCBST upon request. The Broker shall also be responsible for paying all wages, benefits, license fees and taxes for itself and its Representatives related to the provision of services to BCBST pursuant to this Agreement.

C. **No Liability for Acts of Other Party.** Neither party shall have imputed, constructive or vicarious liability for any loss or expense, including attorneys' fees, incurred in the settlement or satisfaction of any claim, action or judgment proximately resulting from any action or failure to act by the other party, its directors, officers, employees, agents or contractors. The responsible party shall indemnify and hold the other party harmless against any and all vicarious losses or expenses related to such claims, actions or judgments; provided the indemnifying party has received timely notice of and been given the opportunity to defend against such actions.

   Broker may be liable to BCBST for fines and or penalties caused by its non-compliance with requirements related to the Medicare Products.

D. **Survival.** This section shall survive the termination of this Agreement.

Miscellaneous

A. **Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

B. **Entire Agreement.** This Agreement and its Addendums incorporated by reference represents the entire Agreement between the parties related to its subject matter. All prior agreements, negotiations, understandings, conversations, and communications, if any, that relate to the sale of Medicare Products by the Broker on behalf of BCBST are merged into this Agreement and shall be of no force and effect other than as expressly set forth in this Agreement.

C. **Severability.** The provisions of this Agreement are severable. If any provision or part of this Agreement is held by any court or other official body of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions or parts hereof shall continue to be given effect and shall bind the parties hereto unless the unenforceability or illegality has the consequence of substantially altering the respective rights and obligations of the parties.

D. **Governing Law.** This Agreement shall be governed by and construed in accordance with applicable Tennessee Laws.

E. **Execution in Counterparts.** This Agreement may be executed by the parties hereto signing the same instrument, or by each party hereto signing a separate counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that documents executed by facsimile shall be acceptable in this transaction, and the signatures thereof shall have the same force and effect as original signatures.

F. **Amendments.** This Agreement may only be amended with the prior written consent of the parties.

G. **Captions.** The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such paragraph(s).

H. **Construction.** This Agreement shall be constructed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party but shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

I. **Assignment.** The Broker shall not assign its rights or delegate its obligations pursuant to this Agreement to a third party without the prior written consent of BCBST.

J. **Notices.** Any notice required pursuant to the terms of this Agreement shall either be hand delivered or given in writing, sent by certified or overnight mail, return receipt requested, to the address listed on the signature page of this Agreement or such other address as a party may designate, in writing, during the term of this Agreement.

K. **Other Acceptable Forms of this Document.** The following shall have the same legal effect as an original: facsimile copy, imaged copy, scanned copy, and/or an electronic version.

L. **Signature.** A scanned, imaged, electronic, photocopy or stamp of the signatures hereunder shall have the same force and effect as an originally executed signature.

M. **Disputes.** Any dispute related to this Agreement, which the parties are unable to resolve through informal discussion within thirty (30) days after the initiation of that dispute, shall be resolved through binding arbitration or some other mutually acceptable dispute resolution procedure (e.g., mediation). Such arbitration or mediation shall be conducted by the American Arbitration Association in Chattanooga, Tennessee, or another mutually agreed upon dispute resolution Broker.

The arbitrator shall be required to issue a written decision explaining the basis of that decision and the manner of calculating any award. The arbitrator may not award punitive or exemplary damages and must base the decision on the terms of this Agreement and applicable Laws. That decision may be entered and enforced in any State or Federal court. It may only be vacated, modified or corrected for the reasons set forth in section 10 or 11 of the United States Arbitration Act, if the award contains material errors of law or is arbitrary and capricious.

In Witness Whereof, the parties have executed this Agreement intending to be bound on and after the
________ day of ________________, ___________ (to be completed by BCBST)
(Month) (Year)

BlueCross BlueShield of
Tennessee, Inc.

By: ___________________________
Title: ____________________________

Printed Name and Title:
____
____

Address/Telephone:
801 Pine Street
Chattanooga, TN 37402
(423) 755-5600

Broker:

By: ______________________________
Title: _______________________________

Printed Name and Title:
____
____

Tax I.D. #: _________________________

Address/Telephone:
____
____
____

of Tennessee
plans for better health. plans for a better life.™

bcbst.com

801 Pine Street
Chattanooga, TN 37402

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